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Doctor of Education in Organizational Leadership



Dr. Joey Cope, Dean of the
College of Graduate and
Professional Studies

September 3, 2020

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Abilene Christian University
School of Educational Leadership

Statutory Immunity for Educators: An Analysis of Decisions by the Texas Commissioner of
Education and Texas Appellate Courts After House Bill 4

A dissertation submitted in partial satisfaction
of the requirements for the degree of
Doctor of Education in Organizational Leadership

by

Melissa Ballou Kates

September 2020

Dedication

To Drew, Brett, and Clay Kates for giving me purpose.

Acknowledgments

I first want to thank my chair, Dr. Timothy B. Jones, for all the hours you spent with me dissecting topics, literature, and legal issues facing educators. Just as Socrates shaped Aristotle to think beyond the obvious answers, you stretched me to think beyond the lens of a lawyer in order to think like an academic. Thank you for always challenging me and for keeping me humble. I will forever see the world as an academic because of you.

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Abstract

This qualitative legal study explored statutory immunity protection provided to Texas educators under the Texas Education Code §22.0511 and §22.0512. The Texas legislature enacted the statutory immunity provisions as part of House Bill 4 and tort reform in 2003. Researchers have called for more balance when providing immunity protections for educators. The researcher limited the study to Texas Commissioner of Education decisions and Texas appellate court cases. The study utilized a legal framework to determine under what circumstances the rulings of statutory immunity shields educators from liability. The findings in this study provide evidence that Texas educators have more immunity protection than before the passage of House Bill 4. The study revealed that the adoption of the Texas Education Code §22.0511 and §22.0512 has led to additional immunity protection for educators. The findings are consistent with previous research demonstrating it is a misconception that educators may never lay hands on students. The data provided evidence that Texas educators may use justified force against students to control, train, or educate a student. Further, educators with tenure and no prior reprimands are shielded by immunity if they use reasonable force protected under the Texas Education Code §22.0152. The findings also suggest appellate courts do not want to interfere in employee discipline issues. The study indicated appellate courts did not rule in favor of a disgruntled employee who sues supervisors or other district employees. The passage of Texas Education Code §22.0511 and §22.0512 achieved the legislature's goal of providing additional immunity protection for educators.

Keywords: statutory immunity, teacher tenure, sovereign immunity, contracts, commissioner decisions, appellate cases, appeals, nonrenewal, termination, use of force

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Chapter 1: Introduction

News stories relating to public school teachers' wrongful behavior toward students are common (Shine, 2017). From inappropriate relationships with students to teachers using too much force while disciplining a student, teacher misbehavior incidents appear within news cycles regularly (Zirkel & Johnson, 2011). The perception that educators face potential legal liability daily is not surprising since educators spend more time during the school day with students than their parents (Daniels & Martin, 2018; Zirkel & Holben, 2017). However, suing a school district and its employees is not as easy as suing a private company or a private citizen because of the legal doctrine of sovereign immunity (Buckley, 2017). This chapter begins with the background of the study and provides the statement of the problem, purpose of the study, significance of the study, research questions, legal framework, and definitions.

Background of the Study

Sovereign immunity shields the government from lawsuits (Phelan, 2011; Rich, 2017; Schaefer, 2013). The doctrine of sovereign immunity traces back to England and the "king can do no wrong" (Enrikin, 2018, pp. 364-365). Since the king made the laws, a citizen could not sue the king or hold the king liable for his actions without the king's permission (Schaefer, 2013). Sovereign immunity exists because of the belief that governmental entities, such as school districts, would be paralyzed and unable to do the work of the people if they faced potential liability for all of their actions as government employees (Hendrick, 2016).

Researchers have disagreed on the need for sovereign immunity for the government (Buckley, 2017; Carlson, 2005; Daniels & Martin, 2018; Hendrick, 2016; Hull et al., 2005; Maher et al., 2010; Phelan, 2011; Schaefer, 2013). The consideration for sovereign immunity involves weighing the importance of protecting the government at the expense of a harmed

individual citizen versus holding government actors accountable for injurious conduct (Buckley, 2017; Schaefer, 2013).

Proponents of immunity protections claim public policy reasons require immunity protections for the government (Raboin, 2016). Lawsuits against governmental entities, such as schools, waste taxpayer resources defending legal claims (Buckley, 2017; Nockleby, 2007; Schaefer, 2013). A need for immunity exists to allow for the continuation of the work of the government without its actors fearing litigation while working for the benefit of the state (Buckley, 2017; Daniels & Martin, 2018; Schaefer, 2013).

Opponents of sovereign immunity maintain these protections put the government and its employees above the law since they are unlikely to be held accountable for their actions (Buckley, 2017; Logan, 2015). According to Hendrick (2016), sovereign immunity protections have an astounding effect on citizens. Sovereign immunity leaves many victims of injuries without any viable remedy (Buckley, 2017; Daniels & Martin, 2018). Phelan (2011) questioned whether the broad immunity protections insulate the government and their employees from honest and ethical behavior.

Despite its broad protection power, sovereign immunity is not always guaranteed to protect the government and its employees from every lawsuit or claim (Maher et al., 2010; Phelan, 2011). In certain circumstances, sovereign immunity protections are waived, thereby exposing the government to liability for their actions (Hendrick, 2016; Schaefer, 2013). For instance, federal and state governments have abandoned their immunity protections and provided consent to sue the government and its employees for some torts (Maher et al., 2010).

Tort law “holds defendants responsible for injuries they have caused others through wrongful conduct” (Goldberg & Zipursky, 2010, p. 925). DeMitchell (2006) aptly defined a tort

simply as a wrong. The principle behind tort law is the victim can get a judicial remedy, usually in the form of money damages, for the injuries caused by the tortfeasor (Duncan & Turner, 2012). Goldberg and Zipursky (2010) maintained tort law punishes wrongful conduct by reallocating the costs of the plaintiff's loss back to the wrongdoer defendant. The intent of tort law is to correct and deter certain tortious behavior (Buckley, 2017). If a person who causes harm knows they could face potential legal liability for their actions, tort law consequences should stop that behavior.

Congress realized the government should have accountability for some injuries against citizens (Hendrick, 2016). Thus, Congress passed the Federal Tort Claims Act (FTCA) in 1946 (Phelan, 2011). The FTCA provides victims redress for torts caused by federal government employees by waiving sovereign immunity in certain circumstances (Schaefer, 2013). The FTCA allows victims harmed on federal property or by federal employees to sue the federal government (Phelan, 2011). After the passage of the FTCA, states also began adopting their own versions of tort claims acts to waive immunity for certain tort injuries (Buckley, 2017; Hendrick, 2016).

Maher et al. (2010) discovered the tort claims acts adopted in each state had substantial differences "of general rules and exceptions to immunity or liability for public school districts and their employees across the United States" (p. 245). In 1969, the Texas legislature adopted the Texas Tort Claims Act (Forgey, 2018). The Texas Tort Claims Act (TTCA) amended state law to allow individuals to file lawsuits against government entities and their employees for torts that result in harm (Carlson, 2005; Daniels & Martin, 2018). Under the TTCA, government agencies are liable for property damage, injury, and death if it was the result of (1) a motor vehicle accident and (2) if the government employee responsible would be personally liable as a private citizen under Texas law (Texas Civil Practice and Remedies Code, 2019).

Despite the passage of the tort claims acts at the federal and state level, the tort reform movement has diminished the ability for victims to recover in a lawsuit against the government or its employees (Daniels & Martin, 2018; Hull et al., 2005). Daniels and Martin (2016) described tort reform as a “war on civil justice” (p. 1490). Tort reform attempts to limit the number of frivolous lawsuits (Hull et al., 2005). Additionally, tort reform seeks to cap the amount of damages a plaintiff can recover in a lawsuit (Buckley, 2017; Carlson, 2005; Raboin, 2016). Many states across the country, including Texas, have adopted tort reform legislation that limits tort victims’ ability to sue in civil courts (Carlson, 2005; Phelan, 2011; Raboin, 2016).

In 2003, the Texas legislature adopted House Bill 4, the most sweeping tort reform legislation to date (Carlson, 2005; Hull et al., 2005). Texas Representative Joe Nixon summarized the legislative intent of House Bill 4 as “establish[ing] an equitable and efficient system of justice in Texas that provides meaningful remedies for individuals wronged while protecting the rights of those who have done no wrong” (Carlson, 2005, p. 247). House Bill 4 significantly limited, and in some instances eliminated, lawsuits permitted against various groups or entities, including physicians, hospitals, and nursing homes, to name a few (Daniels & Martin, 2018; Hull et al., 2005; Nockleby, 2007).

The passage of House Bill 4 significantly altered the litigation environment in Texas (Forgey, 2018). Texas tort reform affected the ability of citizens to sue for tort injuries against many groups, including educators (Flynt, 2005; Forgey, 2018). Daniels and Martin (2018) argued the passage of House Bill 4 detrimentally affected a victim’s meaningful access to the rights and remedies available in the court system. House Bill 4 has closed the door to the courts for many citizens by cutting off legitimate lawsuits under the guise of tort reform (Daniels & Martin, 2018).

House Bill 4 significantly benefited Texas educators (Chriss, 2005; Hull et al., 2005; Smith, 2017; Texas Education Code, 2019). Texas Education Code §22.0511 and §22.0512 were two new statutory immunity provisions created under House Bill 4 (Flynt, 2005). Section 22.0511 expanded educator's previous statutory immunity protections (Flynt, 2005; Texas Education Code, 2019). Section 22.0512 allows educators to shield themselves from certain adverse employment decisions or disciplinary proceedings for the "use of physical force against a student if it is justified under Section 9.62, Penal Code" (Chriss, 2005; Texas Education Code, 2019, p. 185).

Athletics, shop class, school buses, and student discipline are a few areas that raise a question of legal liability for school districts and their employees (Holben & Zirkel, 2011; Payne, 2012; Popham & DeSander, 2014; Zirkel & Holben, 2017). Historically, courts have been sympathetic to school districts and public school employees in lawsuits (Mayger & Zirkel, 2014; Payne, 2012). Yet, immunity protections do not deter victims from filing lawsuits for tortious injuries in schools (Zirkel & Holben, 2017; Zirkel & Johnson, 2011).

Texas requires students to attend school under compulsory school attendance laws (Buckley, 2017; Texas Education Code, 2019). School districts and educators are responsible for the care and teaching of these school-aged children (Hendrick, 2016). Hendrick (2016) argued unfettered immunity protections for school districts and educators create insufficient protection for the children. Opponents of broad immunity for educators maintained these protections do not account for the devastating effect the limitation of liability has on students who may be injured at school (Buckley, 2017; Hendrick, 2016). Buckley (2017) asserted immunity protections and limitation of liability keep educators from acting in a manner that reduces the risks to others in schools, particularly students.

Proponents of educator immunity, on the other hand, claimed school districts and educators must be shielded from legal liability (Flynt, 2005; Hendrick, 2016; Hull et al., 2005; Popham & DeSander, 2014). Educators need additional protections since they have a much higher level of scrutiny than other professions (DeMitchell & Onosko, 2016). Finally, school employees have a fear of becoming a defendant in a lawsuit; thus, educators must have immunity protections to be drawn to the teaching profession (Flynt, 2005; Holben & Zirkel, 2011; Payne, 2012).

Statement of the Problem

Researchers, politicians, and lawyers have disagreed on the amount and the extent to which the government should enjoy sovereign immunity protections (Buckley, 2017; Carlson, 2005; Hendrick, 2016; Phelan, 2011). Buckley (2017) reasoned tort law theory should “represent a better balance between the potential costs of liability and the potential costs of immunity” (p. 1015). Liability for torts can deter wrongful conduct and force the government and its employees to act in a manner that prevents risk and limits loss (Buckley, 2017; Schaefer, 2013). Buckley (2017) argued greater immunity protections for the government and its employees undermine the purpose of tort law, which is to correct and deter injurious and tortious behavior.

State legislatures have to balance the use of immunity protections to reduce public exposure to liability and the need to correct and deter injuriously wrongful conduct (Buckley, 2017; Hendrick, 2016). Legislatures need to take into account the need for immunity, which is to protect the government from large judgments (Hendrick, 2016). However, lawmakers also must consider the policy implications for not holding the government and its employees liable for harmful conduct (Buckley, 2017; Hendrick, 2016; Phelan, 2011).

Researchers have called for limiting the liability of school districts and their employees (Buckley, 2017; Hendrick, 2016). Laws need to balance the values of correcting and deterring wrongful behavior with the amount of immunity protection provided to educators (Daniels & Martin, 2018; Hendrick, 2016; Schaefer, 2013). There is a call for a balance between fairness, on the one hand, and the economic soundness of taxpayer money on the other (Centner, 2007). Fairness entails holding governmental entities responsible in the same ways businesses and individuals are held accountable for their wrongful conduct (Buckley, 2017; Centner, 2007). Economic soundness, according to Centner (2007), provides the government with a defense in tort lawsuits to avoid payment of taxpayer dollars. Buckley (2017) advocated for treating school districts and their employees comparably with private actors under state law. While Buckley (2017) did not support the complete elimination of immunity, he did promote narrowing the definition of immunity.

In 2003, Texas passed sweeping tort reform under House Bill 4. The legislation led to greater immunity protections for Texas educators with the passage of the Texas Education Code §22.0511 and §22.0512 (Carlson, 2005; Flynt, 2005; Hull et al., 2005; Maher et al., 2010). The Texas Education Code §22.0511 and §22.0512 created a legal framework that protects public school districts and their employees from liability in certain instances (Texas Education Code, 2019). To date, no research examined the application of the Texas Education Code §22.0511 and §22.0512 regarding educator conduct. The call for research of immunity protections provided to educators in the various states has, therefore been made (Buckley, 2017; Maher et al., 2010). Many questions remain about the impact of the increased immunity protections provided to Texas educators since tort reform in 2003.

Purpose of the Study

The purpose of this study was to describe how the Texas Commissioner of Education and Texas appellate courts have attempted to apply statutory immunity protections provided to educators under the Texas Education Code §22.0511 and §22.0512. The study determined under what circumstances the ruling of statutory immunity shields Texas educators from liability. The goal of the study was to determine the rulings, patterns, and themes found in appellate cases and state agency decisions (Webley, 2010). The analysis of the decisions made by the Texas Commissioner of Education and in Texas appellate cases provided insight and guidance for educators, administrators, school boards, lawmakers, parents, and other Texas public school stakeholders.

Analyzing Texas Commissioner of Education decisions and Texas appellate cases provided an understanding of immunity protections awarded to Texas educators and the victims injured by these government actors (Hendrick, 2016). Buckley (2017) called for research assessing the rulings on immunity defenses and an assessment of the extent that educators are shielded from liability. In order to determine whether the immunity protections provided under the Texas Education Code are too broad or too narrow, an assessment of the extent to which educators currently are shielded from liability is required (Buckley, 2017; Daniels & Martin, 2016; Maher et al., 2010; Payne, 2012).

Significance of the Study

The findings of this study provided valuable insight into the legal questions, decisions, and trends associated with the use of immunity defenses under the Texas Education Code §22.0511 and §22.0512. An understanding of these statutory immunity protections provided to educators might be gained by those who work in Texas public education and may affect day-to-day practices. The findings might offer practical guidelines that enlighten educators, school

administrators, school boards, parents, and attorneys who represent school districts and employees about current legal interpretations of immunity defenses and enable effective administrative practices in Texas schools (Dagley, 2012; Newton, 2019).

Research Questions

The study focused on answering the following research questions:

RQ1: What were the legal questions in cases decided by the Texas Commissioner of Education and Texas appellate courts where educators invoked statutory immunity protections?

RQ2: What were the decisions made by the Texas Commissioner of Education and Texas appellate courts in cases where educators invoked statutory immunity protections?

RQ3: What were the trends in the decisions made by the Texas Commissioner of Education and Texas appellate courts where educators invoked statutory immunity protections?

RQ4: What legal principles for Texas educators can be discovered from the decisions made by the Texas Commissioner of Education and Texas appellate courts where educators invoked statutory immunity protections?

Legal Framework

The study utilized a legal framework to determine under what circumstances the rulings of statutory immunity shields educators from liability. This study aimed to understand the statutory immunity protections provided to Texas educators (Texas Education Code, 2019). The research was centered on a black letter law methodology, also known as doctrinal research, seeking to “identify underlying legal principles on which legal decisions are based” (Lammasniemi, 2018, p. 72).

Definition of Key Terms

The terms operationalized in this study were defined in *Black's Law Dictionary: Pocket Edition* (Garner, 1996).

Actual damages. “An amount awarded to a complainant to compensate for a proven injury or loss; damages that repay actual losses” (Garner, 1996, p. 163).

Administrative adjudication. “The process used by an administrative agency to issue regulations through an adversary proceeding” (Garner, 1996, p. 17). In the current study, the Texas Education Agency represented the administrative agency overseeing the adversary proceedings.

Administrative hearing. “An administrative-agency proceeding in which evidence is offered for argument or trial” (Garner, 1996, p. 17). In the current study, the Texas Commissioner of Education represented the administrative agency holding the hearings.

Administrative law. “The law governing the organization and operation of a branch of government” (Garner, 1996, p. 17).

Administrative law judge. “A person resides in an administrative hearing, with the power to administer oaths, take early testimony, rule on questions of evidence, and make agency determinations of fact” (Garner, 1996, p. 17). In the current study, the Texas Commissioner of Education represented the administrative law judge.

Appeal. “A proceeding undertaken to reverse a decision by bringing to a higher authority, especially the submission of a lower court’s or agency’s decision to a higher court for review and possible reversal” (Garner, 1996, p. 36).

Appellate court. “A court with jurisdiction to review decisions of one or more lower courts” (Garner, 1996, p. 149).

Common law. “The body of law derived from judicial decisions and opinions rather than from statutes or constitutions” (Garner, 1996, p. 113).

Damages. “Monetary compensation for loss or injury to person or property” (Garner, 1996, p. 163).

Defendant. “A person sued in a civil proceeding” (Garner, 1996, p. 175).

Educator. This term refers to a professional employee of a Texas public school district under the Texas Education Code (2019), which was defined as the following:

A superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, school counselor, nurse, and teacher's aide employed by a school district, a teacher employed by a company that contracts with a school district to provide the teacher's services to the district, a student in an education preparation program participating in a field experience or internship, a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety of the State of Texas, a member of the board of trustees of an independent school district; and any other person employed by a school district whose employment requires certification and the exercise of discretion. (Chapter 22. Subchapter B. Section 22.051)

Excessive force in discipline. In determining whether excessive force in discipline was used, “courts must inquire into the need for the application of force, the relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm” (*Hall v. Tawney*, 1980, p. 609).

Force. Moderate restraint and correction used by a school district's professional employee “to prescribe reasonable rules for the government of children under their charge and to enforce obedience to such rules” (*Williams v. Spring ISD*, 2017, p. 8).

Holding. “A determination of a matter of law that is pivotal to a judicial decision; a principle drawn from such a decision. A ruling on evidence or other questions presented at trial” (Garner, 1996, p. 291).

Immunity. “Any exemption from duty, liability, for service of process; especially such an exemption granted to a public official. In tort law, a doctrine providing a complete defense to a tort action; like a privilege, immunity does not negate the tort, and it must be raised affirmatively or it will be waived” (Garner, 1996, pp. 297-298).

Jurisdiction. “A government’s general power to exercise authority over all persons and things within its territory; a court’s power to decide a case or issue a decree” (Garner, 1996, p. 350).

Motion for summary judgment. “A request that the court enter a judgment without a trial because there is no genuine issue of material fact to be decided by the fact-trier. In a motion for summary judgment, the movant claims an entitlement to prevail as a matter of law” (Garner, 1996, pp. 426-427).

Plaintiff. “The party who brings a civil suit in a court of law” (Garner, 1996, p. 482).

Plea to the jurisdiction. “A plea asserting the court lacks jurisdiction either over the defendant or over the subject matter of the case” (Garner, 1996, p. 483).

Precedent. “A deciding case that furnishes a basis for determining later cases involving similar facts or issues” (Garner, 1996, p. 491).

Punitive damages. “Damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit; such damages all are intended to punish and thereby deter blameworthy conduct” (Garner, 1996, p. 164).

Reasonable force. Any force used must be that which the educator “reasonably believes is necessary (1) to enforce compliance with a proper command issued for the purpose of controlling, training, or educating the child, or (2) to punish the child for prohibited conduct; and in either case, the force or physical contact must be reasonable and not disproportionate to the activity or the offense” (*Williams v. Spring ISD*, 2017, p. 8).

Sovereign immunity. “A government’s immunity from being sued in its own courts without its consent. A state’s immunity from being sued in federal court by the state’s own citizens. Also termed *governmental immunity*” (Garner, 1996, pp. 297-298).

Statute. “The law passed by a legislative body” (Garner, 1996, p. 592).

Statutory immunity protections. In the current study, statutory immunity protections refer to the immunity defenses for Texas educators under Texas Education Code §22.0511 and §22.0512 (Texas Education Code, 2019).

Statutory law. “The body of law derived from statutes rather than from constitutions or judicial decisions” (Garner, 1996, p. 593).

Subject-Matter jurisdiction. “Jurisdiction over their nature of the case and the type of relief sought; the extent to which a court can claim to affect the conduct of persons or the status of things” (Garner, 1996, p. 352).

Summary judgment. “A judgment granted on a claim about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law” (Garner, 1996, p. 606).

Tort. “A civil wrong for which a remedy may be obtained, usually in the form of damages; a breach of duty that the law imposes on everyone. The branch of law dealing with such wrongs” (Garner, 1996, p. 629).

Tortfeasor. “One who commits a tort” (Garner, 1996, p. 630).

Tort reform. “A movement to reduce the amount of tort litigation in the judicial system. Tort reform usually involves legislation that restricts legal theories in tort, or that caps damage awards” (Garner, 1996, p. 630).

Trial court. “The court of original jurisdiction where all the evidence is first received and considered” (Garner, 1996, p. 152).

Summary

This chapter provided an overview of the study, background information relating to sovereign immunity and immunity protections for public school employees, research questions, definition of key terms, and a summary of the legal framework. The next chapter is a comprehensive presentation and synthesis of the applicable literature.

Chapter 2: Literature Review

Students lack sufficient protection when immunity protections shield school districts and educators from liability (Hendrick, 2016). Hendrick (2016) argued the protection of school-aged children must be a consideration by the Texas legislature when providing governmental immunity protections to educators. Recent policy changes nationwide have centered on the misperception that there is an explosion of education litigation that results in enormous liability for school districts and school employees (Hull et al., 2005; Lupini & Zirkel, 2003; Zirkel, 2015; Zirkel & Holben, 2009). Tort reform groups, and others who benefit from educators' fear of litigation, actively promote potential litigation and crippling liability educators could face in schools (Holben & Zirkel, 2011; Zirkel, 2015). Politicians respond to these outcries by implementing new legislation, including statutory immunity protections, to safeguard educators from liability (Hull et al., 2005; Zirkel, 2012).

Texas has not been immune to these misperceptions and misinformation of liability exposure of educators (Adams-Valdez, 2005; Hull et al., 2005; Linares, 1997). In 2003, the Texas Legislature amended the education code to extend and broaden existing immunity protections for professional school employees (Flynt, 2005). The Texas Legislature adopted the Texas Education Code §22.0511 and §22.0512 as a way to attract and keep teachers in the teaching profession (Hull et al., 2005). Section 22.0512 of the Education Code now provides school professional employees immunity from any disciplinary proceedings for the "use of physical force against a student if it is justified under Section 9.62, Penal Code" (Texas Education Code, 2019, p. 185). Whether the expansion of immunity protections for Texas school districts and their employees is too broad is still uncertain (Buckley, 2017).

The objective of this literature review is to examine sovereign immunity and the call for more balance when providing immunity to educators (Buckley, 2017; Daniels & Martin, 2018; Hendrick, 2016; Phelan, 2011). The literature review examines immunity protections, due process rights of educators, and teacher tenure. Additionally, there is an overview of legal liability, tort law, tort claims act, tort reform, immunity protections, sovereign immunity, Texas teacher contractual rights, and appeals to the Texas Commissioner of Education. The literature review concludes with an overview of findings from recent studies involving sovereign immunity, adverse employment actions against educators, and student discipline disputes.

Tort Law

A tort involves a civil wrong where the victim files a lawsuit against another person to recover damages for injuries (Thorn, 2015). Injured parties bring tort lawsuits seeking compensation from wrongdoers, also known as tortfeasors, for damages. Tort laws compensate the victim rather than punishing the wrongdoer. Tort law centers on injuries caused by intentional, reckless, or careless actions of an individual (Thorn, 2015). Tort law cases occur in civil courts, as opposed to criminal courts (Walsh et al., 2018).

A tort lawsuit is brought by one person against another and typically include monetary damages (Walsh et al., 2018). A victim of a tort has several different options for damages against a tortfeasor, including compensatory damages, punitive or exemplary damages, or nominal damages (Thorn, 2015). Compensatory damages allow the victim to recover money damages for the actual loss, which may include medical expenses, lost wages, court expenses, and physical or mental injuries (Thorn, 2015). Punitive damages, also known as exemplary damages, are damages awarded to a victim that proves the tortfeasor acted recklessly and disregarded the safety of the victim (Raboin, 2016). The purpose of punitive damages is to prevent or discourage

others from that wrongful behavior in the future (Raboin, 2016). Nominal damages are awarded to victims when the damages are minimal. Courts award nominal damages when a victim has suffered nominal harm (Vacca & Boshier, 2003).

Tort law is created by the courts when a judge hands down a decision in a lawsuit (Smith, 2016). While legislatures are responsible for creating statutes, judges have shaped the boundaries of tort law when they make rulings on individual cases (Duncan & Turner, 2012). The collection of the various cases decided by judges create precedent for other courts to follow. These judge-made laws are known as common law. Common law differs from laws created by legislatures, which are known as statutes (Duncan & Turner, 2012).

The two purposes of tort law are corrective justice and deterrence (Buckley, 2017). Corrective justice, according to Buckley (2017), “focuses on correcting the wrong a particular tortfeasor committed against a particular victim” (p. 4). Corrective justice seeks to remedy the wrong by returning both parties to their positions before the wrongful conduct (Buckley, 2017). Buckley (2017) emphasized both parties are required to return both parties to the status quo because one party committed the injustice, and the other party suffered from it. Buckley clarified that corrective justice is meant to make the victim whole again by “exact[ing] a price roughly equal to the suffering experienced by the plaintiff due to the injustice committed by the defendant” (p. 10).

Tort law, as a deterrent, can prevent harm by forcing a tortfeasor to pay damages for the injuries they caused (Essex, 2012). When a court requires a tortfeasor to pay a victim of a tort monetary damages, these damages are a deterrent to others to avoid risky behaviors. Buckley (2017) stressed that courts only hold tortfeasors liable for wrongful actions that are foreseeable.

The purpose of torts is to deter wrongful behavior (Duncan & Turner, 2012). Thus, individuals should prevent foreseeable wrongdoings.

Tort law should encourage potential tortfeasors from causing injury to another by avoiding wrongful and negligent behavior that could cause harm to another (Buckley, 2017). However, legislatures and judges have removed the deterrent impact of tort law for the government and government employees with the implementation of sovereign immunity (Hendrick, 2016). Hendrick (2016) noted legislatures continue to provide sovereign immunity protections to protect governmental entities from large tort judgments in courts.

Negligence

Negligence is the most common type of tort (Buckley, 2017; Holben & Zirkel, 2011). According to Eckes et al. (2012), negligence is the tort that most concerns educators. Negligence is a “failure to do something that a reasonable person would do or something that a reasonable person would not do” (Eckes et al., 2012, p. 506). Negligence cases also focus on whether a reasonable person in that position would have anticipated the harm. Courts have held that school employees are not required to anticipate everything that could happen in the school setting (Eckes et al., 2012). In addition, courts recognize the inherent risk of accidents happening with children playing at school, so not every accident can be prevented.

If a victim in the school setting intends to sue the school district or an educator for negligence, the victim must prove the following four elements to prevail on their negligence claim: (1) that the district or the educators owe a duty to the injured student, (2) that the district or educator breached this duty by failing to exercise the appropriate standard of care, (3) that the negligent conduct was the proximate cause of the injury, and (4) that actual damages, such as

physical injuries, have occurred (Alexander & Alexander, 2019). Without proof of all four elements, the victim will not prevail on the negligence claim (Vacca & Bosher, 2003).

The law is clear that educators owe a duty to properly supervise their students, provide appropriate instruction, and adequately maintain the classroom (Thorn, 2015). The extent of a duty that the educator owes to a student depends on the age and maturity of the student (Walsh et al., 2018). Whether an educator owes a duty to a student will be determined on the facts and circumstances of each case (Alexander & Alexander, 2019).

Courts have determined that educators owe students an ordinary standard of care when supervising and disciplining students (Buckley, 2017). A breach of the duty of care happens when an educator fails to act reasonably under specific circumstances (Hendrick, 2016). The victim has to show that the tortfeasor's conduct caused the harm. Causation means the victim must show a causal link between the negligence and the harm. Finally, the victim must have evidence of an actual injury to win a negligence lawsuit (Buckley, 2017).

Immunity Protections for the Government

Throughout the history of the United States, immunity defenses have shielded the government and its employees from liability (Smith, 2016). Different categories of sovereign immunity describe the protections afforded to federal, state, and local governments and their employees (Hendrick, 2016; Phelan, 2011; Schaefer, 2013). Sovereign immunity is a blanket term used when referring to immunity protections for state and federal governments (Hendrick, 2016; Schaefer, 2013).

Sovereign immunity is “a complete barrier to suit, designed to save the government institution or [its] employees from the burdens of litigation” (Dougherty, 2004, p. 36). Sovereign immunity provides legal liability protections to the government (Hendrick, 2016). It protects the

government from lawsuits and liability (Walsh et al., 2018). The protections from sovereign immunity allow the government to function without the threat of liability that could lead to enormous damages and fees (Buckley, 2017; Daniels & Martin, 2018). Sovereign immunity limits the government's exposure to tort claims, which indirectly protects taxpayers from paying damages in lawsuits against the government (Blank, 2015).

Forgey (2018) described sovereign immunity as a tangled web and a firm foundation. Forgey regarded sovereign immunity as a web because “the intricacies associated with the threads of sovereign immunity - federal, state, constitutional, common law, statutory, inherent, derived, contract, and tort - work together to create a potentially sticky trap that will ensnare the unaware and unwise” (p. 637). Sovereign immunity stands for the bedrock principle that people must act in a way that upholds their interests (Forgey, 2018).

Courts, through judicial actions, have ruled that entities created by the state and federal government also qualify for immunity protections (Blank, 2015). Governmental immunity is the term used when applied to local governments, including cities, counties, and school districts (Hendrick, 2016). Official immunity protects government employees from personal liability (Blank, 2015).

Immunity protections vary from state to state based on state court decisions and state legislation (Maher et al., 2010). The varying degrees of immunity in each state make it difficult to ascertain when immunity may apply (Smith, 2016). All state legislatures have determined that school districts, cities, counties, and other arms of the state, need some form of immunity for some of their duties (Centner, 2007). States have adopted various constitutional provisions and statutes that include degrees of liability for the government (Maher et al., 2010).

Immunity protects the government at the federal, state, and local levels from lawsuits unless the government consents to the lawsuit (Forgey, 2018; Phelan, 2011; Schaefer, 2013). Stated another way, for the plaintiff to sue the government, the government must first grant the plaintiff permission to file a lawsuit. Forgey (2018) questioned whether sovereignty is still effective in modern society. The demand for fairness has led to tort claims acts that reverse immunity protections and command the government to be responsible for injuries in some instances (Centner, 2007). Legislatures and courts began to acknowledge absolute immunity for the government is unfair to victims injured by the negligence of the government and its employees (Forgey, 2018).

Blank (2015) affirmed numerous defenses and burdens arise when a plaintiff wants to sue a governmental entity or its employees. Research indicates courts of appeal have muddied immunity defenses for the government and its employees over the years. With blanket immunity protections, there is no incentive for the government or government employees to act in a manner that provides safe activities and services (Buckley, 2017). Yet, providing no immunity protections exposes the government to too much liability (Centner, 2007).

Centner (2007) determined that placing damages on innocent persons led to the abolishment of immunity in many circumstances. The awarding of damages can hold wrongdoers accountable for their actions. Even the prospect of damages may be enough to force wrongdoers to comply with the law. Congress and state legislatures have enacted legislation, including tort claims acts, to make the government responsible for negligent activities (Centner, 2007). Legislation can waive portions of immunity protections, or it can limit situations where entities are immune (Rich, 2017).

History of Sovereign Immunity

The doctrine of sovereign immunity began in Great Britain as part of English common law (Forgey, 2018). Sovereign immunity originated from the belief that “the king can do no wrong” (Phelan, 2011, p. 748). The principle of sovereign immunity began in an English court decision, *Russell v. Men of Devon* (1788), over 200 years ago. *Russell v. Men of Devon* (1788) involved a wagon owner who brought a lawsuit against Devon County employees responsible for maintaining the roads. The wagon owner maintained the disrepair of the bridge caused the wagon to break down (DeMitchell, 2006).

In *Russell v. Men of Devon* (1788), the court ruled in favor of Devon County since no law supported the wagon owner. The court reasoned that a decision in favor of the wagon owner would lead to other plaintiffs filing suits against the county, thereby placing a tremendous financial burden on the county’s residents. Therefore, the court concluded it was better for an individual to suffer an injury rather than inconveniencing the public (Vacca & Bosher, 2003).

English common law became the foundation of the American legal system during the founding of the country (Entrikin, 2018). In 1787, Alexander Hamilton defended the essential nature of state sovereign immunity in the Federalist Papers (Rich, 2017). Hamilton wrote in Federalist No. 81 that “it is the inherent nature of sovereignty not to be amenable to the suit of individuals without its consent” (Forgey, 2018, p. 487). Hamilton maintained sovereign immunity stands unless the state expressly waives it. He further wrote that sovereign immunity was protection enjoyed by every state in the Union (Forgey, 2018).

The United States Supreme Court first recognized the legal principle of sovereign immunity in *Cohens v. Virginia* (1821). Chief Justice John Marshall wrote in *Cohens v. Virginia* that the government must consent to any lawsuits brought against them. Sovereign immunity was

reaffirmed in 1869 when the Supreme Court again determined sovereign immunity “is a familiar doctrine of the common law, that the sovereign cannot be sued in his courts without his consent” (Jackson, 1988, p. 76).

Sovereign immunity protects governments by prohibiting plaintiffs from suing the government in the courts established by the government (Walsh et al., 2018). In *Kawananakoa v. Polyblank* (1907), the United States Supreme Court determined,

A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends. (p. 349)

Sovereign immunity also reduces the lawsuits in court, thereby saving the time and effort of judges to hear these cases (Centner, 2006). Moreover, sovereign immunity allows elected officials to make unfettered decisions without the fear of liability (Smith, 2016).

Sovereign immunity protections extend to government entities in the United States (Rich, 2017). It not only protects governmental agencies, but employees of governmental organizations also enjoy immunity protections (Walsh et al., 2018). Governmental entities are immune from tort and statutory cases except in instances when a statute waives sovereign immunity (Hendrick, 2016). However, the number of statutes waiving statutory immunity is limited (Walsh et al., 2018).

Opposition to Sovereign Immunity

Even though the government needs some protection from lawsuits, overly broad immunity protections are not always in the public's best interest (Simmons, 2013). Sovereign immunity leaves some victims with serious harms caused by the government with no redress for their damages (Buckley, 2017). Blank (2015) contended tradition is not enough to continue

sovereign immunity. Conflict over providing immunity protections stems from the tensions between fairness and economic soundness of the taxpayers' dollars (Buckley, 2017). The decisions to expand or eliminate immunity protections have consequences for governmental budgets and injured persons (Blank, 2015).

Chemerinsky (2001) vehemently opposed sovereign immunity because no one is above the law, not even the government. He questioned whether it is “better to spread the costs of injuries from illegal government actions among the entire citizenry than to make the wrong individual bear the entire loss” (p. 1217). Chemerinsky (2001) pointed out that the founding of the United States stems from the rejection of a monarchy rule; therefore, there is no justification for sovereign immunity under American law. Chemerinsky maintained that without damage awards, there is “no incentive for state compliance with the law” (p. 1215). Chemerinsky noted that damages are often necessary to hold wrongdoers accountable for their actions.

Chemerinsky (2001) is not alone in his arguments against sovereign immunity. Buckley (2017) stressed broad immunity protections take away meaningful access to the rights and remedies the law provides. DeLuccio (2010) recognized the important policy reasons to protect the government from litigation abuse. However, DeLuccio maintained there could not be a complete prohibition on routes to the courthouse, or else there will be no way to keep the state from abusing its immunity protections.

Texas Supreme Court Justice Hecht has openly discussed the policy-based arguments against sovereign immunity (DeLuccio, 2010). Justice Hecht cites his concern with the separation of powers since judges determine the State's exposure to liability, which could be millions of dollars (DeLuccio, 2010). He contended the political decisions of sovereign immunity should look beyond the potential for monetary liability against the state and consider

the political issues surrounding sovereign immunity (Simmons, 2013). In *Federal Signs v. Texas Southern University* (1997), Justice Hecht advocated for looking at what would serve the best interests of the state and its citizens.

DeLuccio (2010) pointed out no one wants to be responsible for eliminating sovereign immunity. Courts or legislatures do not want to determine the specific instances when immunity should and should not apply (Raboin, 2016). The courts call on the legislature to decide, and the legislature leaves it up to the courts (*Federal Signs v. Texas Southern University*, 1997). Legislators have created administrative dispute resolution processes rather than eliminate immunity (DeLuccio, 2010).

Buckley (2017) encouraged policymakers to consider the costs of immunity. He argued retention of personal liability for employees is necessary to achieve corrective justice. Allowing for some exposure for liability may deter negligent actions (Buckley, 2017). Justice Enoch, a Texas Supreme Court Justice, also called for the abolishment of sovereign immunity (DeLuccio, 2010). Enoch claimed governmental funding concerns could be satisfied through legislative appropriation (*Catalina Development, Inc. v. County of El Paso*, 2003).

As early as the 1920s, opponents of blanket sovereign immunity protections reasoned injured persons bore all the risks of negligent actions of the state and its employees under the doctrine (Buckley, 2017). Critics claimed immunity was an injustice, so state courts and legislatures began to alter or reject the common law doctrine of sovereignty (Nelson, 2009).

Tort Claims Acts

Congress recognized the need for governmental accountability for torts committed by federal officials and employees (Nelson, 2009). Subsequently, Congress passed the Federal Tort Claims Act (FTCA) in 1946, which waived federal immunity for lawsuits involving negligent

acts or omissions of governmental employees (Kim, 2014). Tort claims acts make the government liable in a lawsuit for torts of its employees in the same way a private individual is liable for negligence (Nelson, 2009). Under the FTCA, the federal government is liable for tort claims similar to a private individual under similar circumstances. Federal employees are also protected under state law, including a state's common law and statutory immunity provisions (Simmons, 2013). Therefore, if a state provides immunity to government employees and officials, state immunity may provide a defense for federal employees even with the passage of the FTCA (Hendrick, 2016).

States also began passing tort claims acts as a way to narrow the circumstances when lawsuits could be filed against the government (Masso, 2005). State tort claims acts waive portions of immunity (Centner, 2007). With a movement away from absolute sovereign immunity, states began passing statutes that limited state and local government liability for torts. Without sovereign immunity protections and state intervention, governments and their employees have exposure to liability for their negligent actions (Simmons, 2013).

Texas, like every other state, recognizes the government's inherent protection under sovereign immunity (Simmons, 2013). As early as 1847, the Texas Supreme Court provided immunity protections to the state. In *Hosner v. DeYoung* (1847), the court stated, "no State can be sued in her courts without her consent, and then only in the manner indicated by that consent" (p. 2). However, Texas followed the numerous states and began to narrow the immunity protections for the government with the passage of the Texas Tort Claims Act (Flynt, 2005)

The Texas legislature began narrowing situations when a government or its employees were immune from liability (Flynt, 2005). The Texas legislature first introduced the tort claims act bill in 1949 (Forgey, 2018). The bill, known as the State Tort Claims Act, waived immunity

and restored liability for the State of Texas, its agencies, and its employees for torts committed by the negligent or wrongful acts or omissions. However, many years passed before the Texas legislature enacted the tort claims act (Forgey, 2018).

During the legislative session in 1967, the House of Representatives passed a bill to waive immunity for the government, but the companion Senate bill died on the Senate floor with a tie vote (Shaunessy & Ranis, 2017). Finally, in 1969, the Texas Legislature passed the Texas Tort Claims Act (Daniels & Martin, 2018). Simmons (2013) noted the Texas Tort Claims Act (TTCA) provided a limited waiver of sovereign immunity in Texas.

The TTCA provided a blueprint for any civil lawsuit involving a governmental entity and a government employee (Batista & Shaunessy, 2003). The passage of TTCA became statutory protection for the government unless the victim could demonstrate one of the three exceptions applied (Shaunessy & Ranis, 2017). The TTCA waived immunity in three circumstances: (1) injury caused by an employee's use of a motor-driven vehicle; (2) injury caused by a condition or use of tangible personal or real property; and (3) claims arising from premises defects (Texas Civil Practice and Remedies Code, 2019).

The TTCA did not abolish governmental immunity completely (Skinner, 2010). For every immunity waiver granted by the Act, there was a much broader and encompassing restriction placed on top of it (Batista & Shaunessy, 2003). After the passage of the TTCA, governmental entities still enjoyed immunity in certain instances. The TTCA and court rulings shape the interpretation of immunity protections provided to Texas governmental entities, including school districts (Hull et al., 2005). There are few circumstances where an employee, and consequently the state, is held liable. The recent tort reform movement has led to even

greater protections for government entities and government employees over the past few decades (Nockleby, 2007).

With the passage of the TTCA, Texas courts will analyze whether an entity is immune from suit by looking at whether the entity enjoys common law immunity from suit (Forgey, 2018). If the entity does not have common law immunity from suit, the court will consider whether the legislature has provided immunity from suit under a statute. There are three ways for a government to waive its immunity: (1) waiver by statute, (2) waiver by contract, and (3) waiver by conduct (Texas Civil Practice and Remedies Code, 2019).

Tort Reform Movement

Tort reform is a controversial political issue (Roederer, 2008). In the past few decades, the tort reform movement has gained momentum in the legal and political realm (Nockleby, 2007). Advocates for tort reform argue that litigation is skyrocketing, and damages from lawsuits are out of control (Daniels & Martin, 2016). The need for tort reform trickles down throughout society, which leads to extensive protections for many groups, including educators (Nockleby, 2007).

Tort reform refers to proposed changes in the civil justice system that decrease the ability of victims to sue under tort law and limits the damages a victim receives (Roederer, 2008). Tort reform intends to reduce the number of tort lawsuits filed against defendants (Holben & Zirkel, 2017). Anderson (2007) noted tort reform includes limitations on liability, shorter statute of limitations, heightened proof standards, and restrictions on damages. Many states across the country have adopted tort reform legislation as a way to place limits on the ability to file claims and capping the award of damages (Roederer, 2008).

In his law review article, Logan (2015) discussed the impact that the judicial and legislative branches have on tort reform. Particularly, he advocated for judges and juries to determine case-by-case justice. Logan maintained judges and juries are the best way to guarantee justice for tort claims. Judges are more attuned to the needs of the individual state than Congress or the United States Supreme Court. Tort reform began after juries granted victims in civil lawsuits enormous, unjustifiable awards. Logan (2015) argued big business industries, such as insurance, manufacturing, pharmaceutical, and medical, continued to vilify the civil jury system under tort reform. Pro-tort reform advocates claim jurors are overly influenced by their emotions and biases, which leads to “a world of jackpot justice” (Logan, 2015, p. 904). Under a campaign of stifled innovation and defensive medical practices, to name a few, along with millions of dollars paid to the legislator’s campaigns, the tort reform movement successfully reshaped the civil justice system in the United States (Logan, 2015).

Logan (2015) asserted the challenge with tort reform is “figuring out how to weed out the unjustifiable awards while providing full compensation to the seriously injured and deterring unreasonably dangerous future conduct” (p. 906). One such tort lawsuit involved a multi-million dollar jury award against McDonald’s after a customer spilled hot coffee on himself. The media only reported the jury’s exorbitant award instead of the judge’s final decision that dramatically reduced the jury award against McDonald’s (Logan, 2015). These inaccurate portrayals of unreasonable juries convince citizens and lawmakers to support tort reform.

Legislative and Judicial Tort Reform

There are two types of tort reform: legislative and judicial (Logan, 2015). Judges and legislators both make the law, but they do not make it in the same way (Entrikin, 2018). The legislature creates statutory laws. Judges make laws through their decisions in courts, which is

called common law (EntriKin, 2018). The courts are supposed to interpret and enforce the rule of law enacted by the legislature. Courts declare what the law is through interpretation (EntriKin, 2018).

Chisolm v. Georgia (1793) was the case that led to sovereign immunity for states (Forgey, 2018). Before the ratification of the Constitution, the thirteen independent colonies had sovereign immunity (Centner, 2007). Once the federal courts implemented English laws, state courts also began incorporating sovereign immunity principles in their decisions (Rich, 2017). Just as in federal courts, state courts continue to hold that a plaintiff must obtain consent from the government before filing a lawsuit in a state-created court (Phelan, 2011).

Legislative tort reform is a transparent process since governors, legislators, lobbyists, study commissions, and others write the legislation (EntriKin, 2018). Legislative committee hearings vet proposed legislation by allowing anybody to testify for or against an issue. Staff working for legislators study potential legislation and attempt to explain the implications of such passage. Anderson (2007) argued elected officials have the opportunity to ask questions, voice objections, and offer any proposed changes. If the Senate and House of Representatives do not agree on certain legislation, more compromise must occur. Finally, the president or the governor has the right to veto legislation (Anderson, 2007).

Judicial tort reform is much less transparent and accessible (Raboin, 2016). Courts carry out the mandates of the legislature (Roederer, 2008). Thus, it is imperative courts pay attention to the legislature's intent of passing statutes (Raboin, 2016). Advanced warning about changes to the law based on a court decision is not as apparent as proposed legislation. Anderson (2007) warns that courts can dismiss a case without an opinion, which leaves no reasoning behind a

decision and little room to correct problems in the law. Even though certain interest groups keep track of outcomes, little to no public input is included in court outcomes (Anderson, 2007).

Common law is formed from published case law, which sets out the legal rights, duties, powers, prohibitions, and remedies. Common law is subordinate to statutory laws (Kim, 2014). Although courts look to the legislature to define when to waive immunity, sovereign immunity is a product of common law (Forgey, 2018).

Judges develop precedent when making decisions in a lawsuit (Kim, 2014). Common law is based on judicial decisions and is also known as judge-made law (Aktar, 2018). Stevens (2018) stated that precedent develops large areas of common law. Precedents are “past cases that provide judges with binding, authoritative reasons to decide their present case according to the precedent-decision by following that decision” (Stevens, 2018, p. 216).

Logan (2015) explained that the judiciary is in the best position to shape the civil justice system since judges oversee juries. Judges incrementally create the common law on a case-by-case basis by reflecting on the current needs of society. Entrikin (2018) argued common law is stable and predictable because of the time-tested advantages with a case-by-case analysis. The disadvantage of common law is that it moves at an extremely slow pace (Entrikin, 2018). Common law is very fact-specific and solves specific controversies in each lawsuit (Stevens, 2018).

Nelson (2009) analyzed federal court decisions to determine the percentage of tort lawsuits against the government dismissed at the beginning stages of a lawsuit. Nelson’s findings indicated the “judiciary is largely responsible for the government’s 74.1% success rate” when dismissing a lawsuit against the government for a tort during a pretrial motion to a federal court (p. 297). These findings indicate federal judges rule in favor of the government without the

plaintiff even arguing the facts of the case. The reliance on the judiciary in the application of the FTCA led to Nelson (2009) calling to amend the statutes to provide an outline of Congressional intent.

Phelan (2011) argued the founders of the United States did not design our democracy on the idea that judge-made law would govern Americans. Instead, as described by James Madison, the Constitution intentionally distributed power equally as a way to have checks and balances. Entrikin (2018) claimed elected officials should enact the laws that govern our nation. The separation of powers allows the legislature to formulate policies, and the courts will interpret the policies and statutes written by the legislature (Black, 2016). Yet, common law appears to remain supreme in the American legal system (Entrikin, 2018).

The question becomes whether judges will accurately rely on legislation in decision-making when creating common law (Logan, 2015). Logan advocated for law making through adjudication given judges are “better-informed, characterized by stronger limits on access to decision makers, and less influenced by moneyed entreaties” (p. 906). Logan further favored changes to tort laws made at the state level since judges have more awareness of the needs of that state, more so than Congress or the United States Supreme Court.

When a court is determining if immunity exists, a presumption in favor of immunity exists (*City of Galveston v. State*, 2007). The Texas Supreme Court has called for the legislature to set out clear and unambiguous language if there will be a waiver of immunity protections for the government (Forgey, 2018). In *Tooke v. City of Mexia* (2006), the court argued “to ensure that legislative control is not lightly disturbed, a waiver of immunity must be clear and unambiguous” (pp. 32-33). Courts will only waive immunity when the legislature expressly waives it under statutes.

Courts have made it clear they are not willing to eliminate sovereign immunity since this is a decision best left to the legislature (Forgey, 2018). The Texas Supreme Court has claimed the legislature is more suitable to address the policy conflicts over immunity protections (*Reata Construction Company v. City of Dallas*, 2006). Judges have emphasized they can only interpret laws passed by the legislative branch (Forgey, 2018). To that end, judges maintain they can only apply immunity if the legislature expressly writes it in a statute (Forgey, 2018). Thus, the legislature needs to provide direction for courts on the application of sovereign immunity (Kim, 2014).

Politics in Tort Reform

Carlson (2005) argued tort reform is a broad political campaign that leads to changing the laws on the books. Tort reform reallocates power between the legislature, courts, and the jury. Carlson (2005) maintained that only time would tell if House Bill 4 achieved a proper balance between the legislature, the courts, and the jury.

It has been 17 years since the enactment of House Bill 4. Tort reform stems from the political process (Roederer, 2008). Candidates running for the legislature pride themselves on being for tort reform or against it (Daniels & Martin, 2016). Political action committees, insurance companies, lobbyists, and tort reform associations fund political campaigns (Anderson, 2007).

The American Tort Reform Association's (ATRA) goal is not only to change the laws but also to change the way people view personal responsibility and civil litigation (Daniels & Martin, 2016). Daniels and Martin (2016) claimed ATRA's success comes from the perception and persuasion used to politicize tort reform by villainizing the legal system and lawsuits. These advocates of tort reform use the scare tactic that we all pay if juries award massive judgments

(Daniels & Martin, 2016). The tort reform movement uses the fear of raised insurance costs and the impact on livelihoods as the driving force to implement tort reform (Daniels & Martin, 2016; Roederer, 2008).

Texas Tort Reform Movement

Texas' first wave of the tort reform movement, which was in the 1970s, led to the legislature implementing damage caps on medical malpractice cases (Daniels & Martin, 2016). However, in 1988, the Texas Supreme Court struck down these caps as unconstitutional. Specifically, the Texas Constitution states “all courts shall be open, and every person for an injury done to him, in his lands, goods, person or reputation, shall have a remedy by due course of law” (Article I, Section 13, of the Texas Constitution).

Logan (2015) argued damage caps violate one of the most fundamental tenets of the civil justice system, where proof of the defendant’s liability leads to full compensation for the victim’s injuries caused by the defendant. There is no way to make a plaintiff whole again when legislatures adopt tort reform statutes implementing damage caps in lawsuits (Logan, 2015). In the mid-1980s, tort reform gained momentum as pro-tort reform public relations campaigns increased during this time (Daniels & Martin, 2016).

Tort reform in Texas began almost 40 years ago when the governor appointed a commission, headed by former University of Texas law professor W. Page Keeton, to study the crisis in medical malpractice insurance (Anderson, 2007). Almost every legislative session since has included legislation restricting tort liability. Every session since 1987, the legislature has built upon the tort reform by consistently demonstrating its desire to provide more liability protection for businesses, individuals, and other entities (Carlson, 2005; Chriss, 2005). In the mid-1990s, Texas and 18 other states passed tort reform legislation affecting medical malpractice

lawsuits and different rules of civil procedure, making it more difficult on claims by plaintiffs (Daniels & Martin, 2016). In 1995, George W. Bush ran for governor and won based on tort reform as one of his four priority issues in his administration (Anderson, 2007).

House Bill 4

In 2003, Texas passed the most sweeping tort reform legislation to date (Flynt, 2005). During the 78th Legislative Session, the Texas Legislature passed House Bill 4, thereby enacting broad tort reform legislation, which has been referred to as the Texas Tort Reform Act (Hull et al., 2005). House Bill 4 provided extensive changes to the Texas Civil Practice and Remedies Code. This legislation was one of the most sweeping statutes the Texas legislature ever adopted since the Reconstruction era (Carlson, 2005).

House Bill 4 significantly limited litigation and damages in lawsuits against defendants (Hull et al., 2005). Representative Joe Nixon, the author of House Bill 4, revealed the purpose of House Bill 4 was “to establish an equitable and efficient system of justice in Texas that provides meaningful remedies for those who have been wronged while protecting the rights of those who have done no wrong” (Carlson, 2005, p. 2). Governor Perry signed the 2003 legislation as a deterrent to plaintiffs' lawyers by placing damage caps on lawsuits and making plaintiff cases less appealing (Daniels & Martin, 2016).

Carlson (2005) claimed tort reform reallocates power to the legislature and redefines the role of the court and the jury. Carlson aptly termed tort reform in Texas in 2003 as *litigation reform* based on the many changes to civil litigation in general. Carlson argued this legislation was one of the most sweeping statutes the Texas legislature ever adopted since the Reconstruction era.

House Bill 4 reduced the discretion of judges and juries. House Bill 4 primarily consists of several liability-limiting or liability-eliminating provisions for many groups, including school employees (Carlson, 2005). House Bill 4 provided broad changes to the Texas Civil Practice and Remedies Code. House Bill 4 also provided more presuit obstacles to filing lawsuits and increased the risks to plaintiffs when filing a lawsuit (Chriss, 2005).

Several statutes enacted under House Bill 4 provide immunity protections for governmental workers, including Texas educators (Chriss, 2005; Flynt, 2005). During the 76th Texas Legislative session in 2003, the legislature responded to the call to protect educators by passing comprehensive tort reform (Chriss, 2005; Hull et al., 2005).

With the passage of House Bill 4, educators in Texas now have even broader immunity protections (Hull et al., 2005). With the passage of House Bill 4 in 2003, Texas educators now have immunity from adverse employment decisions or disciplinary proceedings when the educator uses force against a student (Texas Education Code, 2019). Educators can use the immunity defense in appeals of adverse employment decisions to the Texas Commissioner of Education (Smith, 2017). Zirkel and Clark (2008) found statutory immunity to be the defense educators used to prevail in lawsuits against them.

An addition to the Texas Education Code under House Bill 4 broadened the definition of a professional school employee of a school district (Chriss, 2005). Superintendents, school board members, substitute teachers, students in an educator preparation program, bus drivers, and individuals who contract with schools to deliver services were all added under the definition. Chriss (2005) maintained that every person in a school district, except for custodians, was given immunity with the new legislation.

Additionally, the legislature made it clear the new protections in the Education Code were a supplement to federal protections created by the Coverdell Teacher Protection Act of 2001 by Congress (Flynt, 2005; Texas Education Code, 2019). The legislature explicitly stated the new provisions in the Education Code broaden protections for educators by the federal government under the Coverdell Teacher Protection Act (Chriss, 2005). Presuit notice requirements were part of the Education Code, so ninety days advance notice must be given before filing a suit against an educator or a school district. Plaintiffs are also required to exhaust their administrative remedies before filing a lawsuit (Chriss, 2005).

The legislature added a provision that allows an educator to bring a counter lawsuit against a plaintiff to recover the attorney's fees of the defendant (Chriss, 2005; Hull et al., 2005). Unlike other areas of the law where a defendant must prove a lawsuit is filed in bad faith or for harassment purposes, educators only have to show they are entitled to immunity from liability to recover their attorney's fees (Chriss, 2005). Stated another way, if an educator could show that they were entitled to immunity from liability, the plaintiff would have to pay the attorney's fees of the defendant (Alexander & Alexander, 2019). These provisions, known as the loser pays rules, only favor educators since plaintiffs that win would not recover their attorney's fees from the defendant educator (Chriss, 2005). The loser pays provision would cause any plaintiff and plaintiff's attorneys to pause before filing suit (Hull et al., 2005).

Immunity in Education

Schools are surrounded by situations that could give rise to tort liability (Eckes et al., 2012). However, school districts also enjoy sovereign immunity protections (Essex, 2012). At the national level, the United States Congress enacted the Paul D. Coverdell Teacher Protection Act in 2001. Part of No Child Left Behind (NCLB), Paul D. Coverdell Teacher Protection Act,

created statutory immunity protections for school districts and their employees (Forgey, 2018). The legislative intent of Paul D. Coverdell Teacher Protection Act was to, “provide teachers, principals, and other school professionals the tools they need to undertake reasonable actions to maintain order, discipline, and an appropriate educational environment” (National School Boards Association [NSBA], 2004, para. 2).

Beyond the national level of protection, states also shield school districts from liability using statutory immunity (Zirkel, 2015). States vary in the protections provided to school districts (Maher et al., 2010). Maher et al. (2010) affirmed that state legislatures pass laws to provide additional immunity protections for educators. Educator lobby groups and publicized incidents encourage legislators to develop statutes as a way to protect educators from liability (Zirkel & Cox, 2015).

Maher et al. (2010) emphasized the diverse exceptions to immunity and liability for public school districts and their employees among states. According to Maher et al. (2010), state legislatures often amend provisions of the statutes relating to immunity based on “specific widely publicized incidents or, with lobbying from special interests, to counteract state court decisions that have established or abrogated common law immunity based on the facts of that particular case” (p. 245). Their findings indicated the rapidly changing court decisions relating to immunity lead to a patchwork of laws from the state legislatures.

Zirkel and Clark (2008) studied trends in litigation brought by students against school districts and their employees. Their findings indicated immunity was a robust defense in school litigation cases studied over 16 years. Immunity proved to be the basis for public educators prevailing in litigation against them (Zirkel & Clark, 2008).

Despite research demonstrating that school districts and educators win most lawsuits or other claims against them, there is a perception that teachers are always at risk of liability (Maher et al., 2010). School district's attorneys and education law professors tend to exaggerate the likelihood of a negligence lawsuit (Holben & Zirkel, 2011). However, Zirkel and Clark (2008) found courts historically have favored school district defendants over student plaintiffs. The authors concluded immunity often leads to a district-favorable outcome in most decisions. Further, not one of the classroom teachers in Zirkel and Clark's (2008) study were personally liable.

Texas Statutory Immunity

In 2003, the Texas Legislature amended the Education Code to provide statutory immunity protections for educators (Tex. Educ. Code §22.051). Statutory immunity under the Texas Education Code shields professional school employees from tort liability (Hull et al., 2005). Carman (2009) analyzed Texas appellate court decisions made prior to House Bill 4 to understand how the courts have interpreted immunity protections provided to educators under the Texas Education Code. None of the cases from Carman's study included the statutory immunity provisions created under House Bill 4. However, Carman's findings indicated that out of the 32 cases involving immunity under the Texas Education Code, 24 of the educators were immune in these cases.

Tort reform organizations, such as Common Good, and other groups such as teacher organization groups, the media, and insurance carriers, benefit from the perceptions and fears that educators are always on the brink of a lawsuit (Holben et al., 2009; Holben & Zirkel, 2017). Evidence presented to state legislatures indicated that "fear of litigation is one of the top three concerns among teachers nationwide" (Hull et al., 2005, p. 142). Because of educators'

perceptions and fears of liability and litigation, the Texas Legislature amended the Education Code to extend and broaden existing immunity for professional school employees as part of House Bill 4 in 2003 (Hull et al., 2005).

House Bill 4 (2003) created additional statutory protections for school professionals while also preserving the broad immunity protections already provided to educators at that time (Carlson, 2005). The Texas Education Code §22.0511 codified protections for educators. School districts have protection from tort liability unless a motor vehicle is involved (Walsh et al., 2018). House Bill 4 limited damages a plaintiff can recover from a governmental entity to a “maximum amount of \$100,000 for each person and \$300,000 for every single occurrence for injury to or destruction of property” (Texas Civil Practice and Remedies Code, 2019; Walsh et al., 2018).

House Bill 4 also expanded the definition of “professional school employees.” Under the Texas Education Code §22.051, a professional school employee includes:

Superintendents, principals, teachers, substitute teachers, supervisors, social workers, counselors, nurses, teacher’s aides, student teachers, bus drivers, school board members, teachers employed by a third-party that contracts with the school district, and anyone else whose employment requires certification and an exercise of discretion. (Chapter 22.

Subchapter B. Section 22.051)

By expanding the definition of a professional employee, the Texas legislature demonstrated to educators the importance of protecting them (Hull et al., 2005).

House Bill 4, also known as the Texas Tort Reform Act, also created statutory immunity provisions expanding and broadening immunity protections for educators (Flynt, 2005; Hull et al., 2005). Texas Education Code §22.0511 provides Immunity from Liability as follows:

- (a) A professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.
- (b) This section does not apply to the operation, use, or maintenance of any motor vehicle.
- (c) In addition to the immunity provided under this section and under other provisions of state law, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et seq.), as amended. Nothing in this subsection shall be construed to limit or abridge any immunity or protection afforded an individual under state law. For purposes of this subsection, "individual" includes a person who provides services to private schools, to the extent provided by federal law.
- (d) A school district may not by policy, contract, or administrative directive:
- (1) require a district employee to waive immunity from liability for an act for which the employee is immune from liability under this section; or
 - (2) require a district employee who acts in good faith to pay for or replace property belonging to a student or other person that is or was in the possession of the employee because of an act that is incident to or within the scope of the duties of the employee's position of employment. (Chapter 22. Subchapter B. Section 22.0511)

Texas Education Code §22.0512 provides professional employees immunity from disciplinary proceedings:

- (a) A professional employee of a school district may not be subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under Section 9.62, Penal Code.
- (b) In this section, "disciplinary proceeding" means:
- (1) an action brought by the school district employing a professional employee of a school district to discharge or suspend the employee or terminate or not renew the employee's term contract; or
 - (2) an action brought by the State Board for Educator Certification to enforce the educator's code of ethics adopted under Section 21.041(b)(8).
- (c) This section does not prohibit a school district from:
- (1) enforcing a policy relating to corporal punishment; or
 - (2) notwithstanding Subsection (a), bringing a disciplinary proceeding against a professional employee of the district who violates the district policy relating to corporal punishment. (Chapter 22. Subchapter B. Section 22.0512)

The Texas Education Code §22.0511 and §22.0512 provide educators numerous immunity defenses (Walsh et al., 2018). Texas educators can use an immunity defense for claims brought against them by a parent, student, or other stakeholders. Educators can use the statutory immunity provisions as a defense when a school district wants to nonrenew the employee's contract (Walsh et al., 2018).

Student Discipline

The new statutory provisions under House Bill 4 also curtailed some lawsuits against educators arising out of student disciplinary issues (Flynt, 2005). A study by Harris (2012) explored federal and state court cases across the United States involving student misconduct and

discipline issues. The findings indicated litigation involving misconduct and discipline has had a steady increase since 1999. Harris emphasized educators regularly deal with student misconduct and discipline problems that affect student learning as educators stop instruction to discipline students.

Texas educators have liability exposure at school because the use of discipline is necessary in the classroom environment (Harris, 2012). Texas law allows educators to use reasonable force to discipline a student (*Hogenson v. Williams*, 1976). As discussed in *Hogenson v. Williams*, educators may use force as long as it is reasonable and necessary to efficiently and effectively run their classrooms. The Hogenson test is one standard used to determine whether the educator reasonably believes the force used against a student was necessary (*Hogenson v. Williams*, 1976).

As part of the sweeping tort reform in 2003, the Texas Legislature provided additional immunity protections for educators when disciplining students (Hull et al., 2005). The adoption of the Texas Education Code §22.0152 provides immunity protection to a teacher who uses reasonable force against a student (Texas Education Code, 2019). It is important to point out that Texas educators are not immune from liability if they use excessive force in discipline (Hull et al., 2005).

With the passage of House Bill 4, a professional school employee is not liable for acts which “involve the exercise of judgment or discretion, except in circumstances where, in disciplining a student, the employee uses excessive force or his negligence results in bodily injury of the student” (Texas Education Code, 2019). A question arises whether discipline is excessive, thereby exposing the educator to liability, or reasonable, thereby providing the educator immunity from liability.

Statutory Protections

Texas Education Code section §22.0512 provides a professional employee immunity from “discipline, termination, or nonrenewal for the employee's use of physical force against a student to the extent justified under Texas Penal Code section 9.62” (Texas Penal Code, 2019, p. 1617). Section 22.0512 protects an educator who uses reasonable force from discipline by the school district and from the State Board of Educator Certification (Flynt, 2005). The Texas Penal Code §9.62 requires that the actor reasonably believe the force was necessary to maintain discipline (Texas Penal Code, 2019).

The Texas Penal Code and the Texas Education Code make it clear that a teacher is immune from disciplinary proceedings if the force used was justified by Section 9.62 (Texas Education Code, 2019; Texas Penal Code, 2019). Applying the Texas Education Code §22.0512 and the Texas Penal Code §9.62, the Texas Supreme Court determined a school district’s professional employee can use appropriate physical force against a student in limited circumstances (*Williams v. Spring ISD*, 2017). The use of nondeadly physical force is justified when used for a special purpose, as dictated by the Penal Code. A special purpose is the need to control, train, and educate children (*Williams v. Spring ISD*, 2017).

Under Texas Penal Code §9.62, a district cannot prohibit an educator from using reasonable force against a student unless there is a violation of a corporal punishment policy (Texas Penal Code, 2019). The Texas Penal Code §9.62 makes a clear distinction as to when the use of force is appropriate to use. For example, courts have determined the use of nondeadly physical force could be appropriate to enforce compliance or to punish a child (Walsh et al., 2018). A teacher’s reasonable force is governed by the Texas Education Code §22.0512 and the Texas Penal Code 9.62 (*Harper v. Alvarado ISD*, 2010). “An understanding of Texas Penal Code

§9.62 is essential to understanding Texas Education Code §22.0512” (*Harper*, p. 2). The Texas Penal Code §9.62 exempts certain conduct that would otherwise be criminal, such as assault. Assault can simply be reckless action. “A teacher who snatches a comic book from a student could theoretically be charged with assault but for Texas Penal Code §9.62” (*Harper*, p. 2). The Texas Penal Code §9.62 allows educators to use reasonable force in two circumstances (a) to enforce compliance with a proper command issued for the purpose of controlling, training, or educating the child, or (b) to punish the child for prohibited conduct.

Board Policy Cannot Limit Statutory Immunity

Before a district can discipline an educator for the use of force against a student, the district must determine whether the educator used corporal punishment or whether the educator attempted to control the student to further an educational purpose and to enforce a proper command to control, train, or educate the student as allowed by the Texas Penal Code §9.62. A district can discipline an educator who uses corporal punishment if it violates a district’s policy relating to disciplining a student. However, a district cannot discipline an educator if the use of force was used to control, train, or educate the student.

As discussed in *Lewis v. Houston ISD* (2012), *Papa v. Presidio ISD* (2006), and *Peters v. Dallas ISD* (2012), a district may not enact a policy or give employees directives that limit a professional employee, who is entrusted with the care, supervision, or administration of a child, from using nondeadly physical force that the employee reasonably believes is necessary to further the special purpose of education. However, the district can establish a corporal punishment policy.

If the force used is reasonable, immunity trumps the directive or policy. A district cannot adopt a policy or give directives that further limit a professional employee's use of force beyond

what is permitted under Texas Education Code §22.0512. A district cannot end an educator's contract for failing to follow a policy or a directive without first undergoing an analysis of an educator's statutory immunity protections under the Texas Education Code §22.0512.

A district cannot take disciplinary action against an educator who uses reasonable force when disciplining a student (Walsh et al., 2018). The school district has the burden to prove that the teacher's use of force is unreasonable (*Williams v. Spring ISD*, 2017). As long as the use of force is reasonable, the educator will enjoy immunity protections under the Texas Education Code (Walsh et al., 2018). The Texas Penal Code defines reasonableness as "a belief that would be held by an ordinary and prudent man in the same circumstances as the actor" (Texas Penal Code, 2019, p. 1617).

When a teacher uses force, a school district must view the force from the teacher's perspective (Alexander & Alexander, 2019). *Hogenson v. Williams* (1976) cited the following factors to determine whether the use of force is reasonable, according to the American Law Institute (1965):

- (a) the age, sex, and condition of the child,
- (b) the nature of his offense or conduct and his motives,
- (c) the influence of his example upon other students,
- (d) whether the force was reasonably necessary to compel obedience to a proper command,
and
- (e) whether the force was disproportionate to the offense, is unnecessarily degrading, or is likely to cause serious injury. (p. 459)

A teacher may use reasonable force that the teacher reasonably believes necessary (1) to enforce compliance with a proper command issued for the purpose of controlling, training or educating the child, or (2) to punish the child for prohibited conduct (*Williams v. Spring ISD*, 2017). A teacher can also use reasonable force to restrain a student. However, force or physical contact must be reasonable and proportionate to the activity or the offense (Alexander & Alexander, 2019).

A school district can use the reasonableness standard to determine whether the educator reasonably believed the actions were necessary, not whether the use of force is objectively necessary (*Papa v. Presidio ISD*, 2006). Under the reasonableness standard, a teacher has immunity if the teacher reasonably believed the force was necessary to further a special purpose, such as controlling the student, enforcing compliance with a proper command, or punishing the child for prohibited conduct. The reasonableness standard provides a high level of protection for a teacher because the acts of the employee must be viewed from the employee's perspective (*Harper v. Alvarado ISD*, 2010).

In Loco Parentis

Educators have a responsibility and duty to protect students from harm (Walsh et al., 2018). Because educators stand in the place of parents while students are at school, Texas has long provided teachers may use force in a similar manner as parents may use force against their children. Under the doctrine of *in loco parentis*, teachers have the same rights as parents to impose reasonable rules for children under their care and to enforce obedience to the rules using moderate restraint (*Williams v. Spring ISD*, 2017). *In loco parentis* describes the ability of a person to have authority to act in the place of a child's parent (Rumel, 2015). While a parent is concerned with the general welfare of a child, a teacher's concerns are limited to the special

purposes of controlling, training, and educating children (*Villareal v. Edinburg Consolidated Independent School District*, 2016).

Students spend more time with educators than with their parents (Osborne & Russo, 2011). As noted by Osborne and Russo (2011), compulsory attendance laws require parents to entrust their children to teachers for an extended time. Teachers have to discipline students regularly at school (Holben & Zirkel, 2011). As teachers stand in place of parents under *in loco parentis*, they have protection from allegations that they have improperly used force against children in a very similar manner as parents have protection from similar allegations (Walsh et al., 2018). In fact, the language in Texas Penal Code concerning the educator-student relationship is virtually identical to the wording concerning the parent-child relationship (Texas Penal Code, 2019).

However, Rumel (2013) emphasized that while at school, students have the right to be free from harm caused in the school setting or by school personnel. Newton (2019) noted the “rights of educators are not eliminated in favor of student safety and the comfort level of parents” (p. 31). Osborne and Russo (2011) expressed concern that immunity protections of the teacher often leave parents without a remedy if a teacher misuses their position of power and trust over a child. Because of the substantial educator immunity protections and *in loco parentis* protections, teachers must adhere to moral and ethical codes when students are under their care (Harris, 2012).

Texas Educators’ Ethics

The Texas Educators’ Code of Ethics (ECE), enacted in 1971, sets out standard practices and ethical conduct required for educators to safeguard academic freedom (Umpstead et al., 2013). Revisions to the ECE in 2010 required educators “to maintain appropriate professional

educator-student relationships and boundaries” (p. 212). The 2010 revisions protect the safety and welfare of students and school personnel, ensure educators are a moral fit and worthy to instruct Texas’ youth, and fairly and efficiently resolve educator disciplinary proceedings in the least expensive manner possible (Umpstead et al., 2013).

The State Board of Education (SBEC) in Texas enforces the ECE and oversees certifications and professional discipline of educators (Umpstead et al., 2013). SBEC, as well as local school districts, enforce the ECE. SBEC can sanction educators, which can include restriction, reprimand, suspension, surrender, or revocation of an educator’s certification (Texas Administrative Code, 2019). The seriousness of the violation, whether the violation was premeditated or intentional, any attempt by the educator to conceal the violation, prior misconduct, and determining whether a sanction could deter future violations are all considerations relating to the sanctioning of educators (Umpstead et al., 2013).

SBEC has broad authority to impose additional conditions or restrictions on educators to protect students, parents, or school officials. In a study by Umpstead et al. (2013) examining teacher discipline relating to ethical violations, their findings indicated Texas relies “extensively on state statutes and regulations and less on case law to identify types of inappropriate and unhealthy teacher behavior” (p. 224). SBEC holds a lot of power over educators with its ability to sanction or even revoke a teacher’s certification (Umpstead et al., 2013). Certifications are required for Texas teachers to earn tenure and all the protections tenure entails (Walsh et al., 2018).

Educator Tenure

Tenure laws provide educators protections and securities (Hoglund-Shen, 2017). Advocates claim tenure laws help recruit and attract educators to the teaching profession, as well

as motivate effective teachers to work in troubled schools (Robertson, 2015). Robertson (2015) claimed tenure provides “academic freedom for teachers to make decisions delegated to them by administrators, without fear of retaliation or being dismissed” (p. 465). Critics of teacher tenure argue ineffective and incompetent teachers continue instructing in classrooms because of tenure laws (Strom & Baxter, 2001). Strom and Baxter (2001) acknowledged that “tenure does not mean that a teacher cannot lose their job; rather, tenure provides due process when teachers are threatened with dismissal” (p. 297).

DeMitchell and Onosko (2016) cited the following reasons opponents argue for the abolishment of teacher tenure: (a) the time and money required to remove tenured teachers represent a waste of resources; (b) teachers become lax and complacent due to job protections; and (c) current laws provide protection for teachers, thereby eradicating the need for tenure. Opponents of teacher tenure laws argue that ineffective teachers in classrooms cause unequal access to education (Robertson, 2015). Tenure law varies significantly in every state (Strom & Baxter, 2001).

Tenure for teachers is a highly contentious and political issue (Robertson, 2015). Black (2016) recounted a recent stream of lawsuits challenging teacher tenure laws stemming from the legislature’s inability to reform tenure laws. After nine California students filed suit attacking teacher tenure laws, Black described the attack as the “war on teacher tenure” (p. 79). In the 2012 lawsuit against California, *Vergara v. State*, the students challenged teacher tenure statutes because of the perpetuated dysfunction students experience in high-poverty schools.

In *Vergara v. State*, the students argued teacher tenure laws denied their Constitutional right to education since a disproportionate number of grossly ineffective teachers were in predominantly minority or low-income schools (Hoglund-Shen, 2017; Robertson, 2015). The

trial court agreed with the students and ruled teacher tenure laws were unconstitutional. Further, the trial court determined teacher tenure statutes “impose a disproportionate burden on poor and minority students” (*Vergara v. State*, 2014, p. 4).

Even though the appellate court ultimately reversed the trial court’s determination that teacher tenure laws are unconstitutional in *Vergara v. State*, the lawsuit brought to light the conflict between teachers’ rights and students’ rights (Robertson, 2015). Upon the decision by the appellate court that teacher tenure statutes were constitutional, both advocates and opponents of teacher tenure called upon the California legislature to overhaul the teacher tenure statutes (Robertson, 2015). Many questioned whether the California legislature would take the appropriate steps to remedy the tenure conflict. Skeptics expressed concern over the deep pockets of teacher union groups in California persuading elected officials to uphold teacher tenure protections (Blume & Resmovits, 2016).

Since *Vergara v. State*, subsequent lawsuits in other states claimed teacher tenure laws undermine the fundamental, Constitutional rights of every student to learn from effective teachers and to have an equal opportunity to succeed in school (Hoglund-Shen, 2017). However, Robertson (2015) cautioned against an abrupt decision to strike down tenure laws given the political nature of tenure. In particular, Robertson warned against judges leading the educational reform charge given the differences in school districts and the independent decisions made by the various school boards. With school boards having local control over the decisions in their school districts, judges would struggle to rule on educational systems in a meaningful way without uniform, categorical standards defining the factors to represent teacher effectiveness for delivering a quality education (Robertson, 2015). In light of *Vergara v. State*, Robertson

advocated for an overall reformation of education rather than continuing to attack the politically charged issue of teacher tenure.

Tenure creates a property right for that educator (Robertson, 2015). The United States Supreme Court has determined that public education contracts create a property right in employment under the Fourteenth Amendment of the Constitution (Hoglund-Shen, 2017). Because tenure creates a constitutionally protected property right for teachers, policymakers cannot eliminate teacher tenure. Thus, various states have reformed teacher tenure instead of trying to eliminate it.

Hoglund-Shen (2017) reported that 41 states require certified teachers to wait three or more years before they are eligible to receive tenure. Some states have increased the probation period before a teacher is eligible for tenure. Michigan increased the probation period before awarding a teacher tenure from four to five years, and New Hampshire increased the probation period from three to five years. Hoglund-Shen found that some states had reformed their tenure statutes to make it easier to fire a teacher. For example, in Alabama, a teacher must appear before an administrative judge regarding a firing proceeding. Michigan implemented a statute requiring districts to fire tenured teachers who receive three consecutive years of ineffective or highly ineffective ratings (Hoglund-Shen, 2017).

Educator Due Process Rights

Without tenure, educators do not have a property right to their employment (Alexander & Alexander, 2019). DeMitchell and Onosko (2016) defined tenure as due process for public school educators. As noted by Essex (2012), a teacher must be granted due process under the law before being deprived of contractual rights, including life, liberty, or property. Any deprivation

of that property right triggers due process before the government can take away that educator's property (Walsh et al., 2018).

DeMitchell and Onosko (2016) claimed public school teachers work in a "fish-bowl environment with parents and community members having access throughout the year to many aspects of their daily work with children" (p. 620). Since educators have a much higher level of scrutiny than most employees, DeMitchell and Onosko advocated for treating public school teachers fairly in service of the public good. Teacher tenure protects educators against termination in instances when there are not any grounds for termination and creates an opportunity for the teacher to provide a defense (DeMitchell & Onosko, 2016).

Educators are entitled to the two forms of due process known as procedural due process and substantive due process (Adams-Valdez, 2005). Procedural due process is fundamental fairness, which "requires the government to implement fair laws in a fair manner if it infringes upon a person's life, liberty, or property interests" (DeMitchell & Onosko, 2016, p. 599). Procedural due process protections include fair notice, a fair hearing, and the opportunity to be heard (Alexander & Alexander, 2019). Fair notice and fair hearings require a full hearing that will reveal the relevant facts before depriving educators of their property rights (Alexander & Alexander, 2019). Procedural due process applies in the court system and in administrative tribunals, which includes school boards (Adams-Valdez, 2005).

An educator must have substantive due process before a district can deprive them of their life, liberty, or property (Alexander & Alexander, 2019). Notice, adequate time to prepare a defense, the right to present evidence, the right to call witnesses and cross-examine witnesses, disclosure of documents, the right to counsel, the right to a record of the proceedings, and an impartial decision maker are all substantive due process rights an educator is entitled to before a

district acts to deprive the educator of their property rights (Adams-Valdez, 2005). Substantive due process requires the school district to have a valid reason and objective before depriving an individual of liberty or property. A district must demonstrate a restriction on liberty or property as a legitimate public purpose (Adams-Valdez, 2005). Courts have consistently held that teacher tenure, meaning due process rights for teachers who are public employees, serves a public purpose (DeMitchell & Onosko, 2016; Robertson, 2015).

In *Cleveland Board of Education v. Loudermill* (1985), a security guard for the Cleveland Board of Education stated he had been convicted of a felony on his employment application. However, the security guard received a grand larceny conviction. The Board of Education terminated the public employee without providing him due process rights, such as the opportunity to challenge his dismissal and respond to the charge (*Cleveland Board of Education v. Loudermill*, 1985).

The Supreme Court determined *Loudermill*, a public employee, was guaranteed property rights requiring due process procedural safeguards under the U.S. Constitution (*Cleveland Board of Education v. Loudermill*, 1985). In its opinion, the Supreme Court concluded the public employee and the employer's interests "were served by pre-termination hearings to avoid disruption of the workplace and erroneous decision-making" (DeMitchell & Onosko, 2016, p. 599). Consequently, due process protects teachers from administrators who discriminate, act out of malice, or who have different ideological biases (DeMitchell & Onosko, 2016).

Teachers in Texas have due process protections under the Texas Education Code Chapter 21 (Texas Education Code, 2019). In 1995, during the 74th Texas Legislative session, the passage of Senate Bill 1 completely overhauled the Texas Education Code significantly impacting school districts and the day-to-day operations of schools (Williams, 1996). The intent

of Senate Bill 1 was to move decision making from the state to local school boards (Adams-Valdez, 2005). The goal of Senate Bill 1 was to create a streamlined process for school districts, but at the same time also providing Constitutional protections to educators (Adams-Valdez, 2005).

Senate Bill 1 significantly affected the Texas Education Code, the statutes that apply to the operation of schools in Texas (Adams-Valdez, 2005). The Texas Education Code defines the responsibilities and duties of the State Board of Education, the Texas Education Agency, school boards, and personnel (Walsh et al., 2018). Given the political nature of school boards, the Texas legislature wanted to provide as much fairness and protection as possible to educators (Adams-Valdez, 2005). Senate Bill 1 offered a fair process for educators in nonrenewals or termination hearings while providing an opportunity for districts to dismiss ineffective teachers (Williams, 1996).

One of the most substantial provisions added under Senate Bill 1 was due process protections for educators, including the right for an educator to appeal a school board decision that was arbitrary or capricious (Linares, 1997; Williams, 1996). Senate Bill 1 created certified hearing examiners to serve as the decision-makers and trier of fact relating to teacher contracts, which positively impacted educators (Tritico, 1997). To serve as a hearing examiner, an individual must have a Texas law license and a certification from the State of Texas. The Texas Legislature created certified hearing officers as a way to speed up the process of terminating educators, while also providing the educator additional due process rights (Tritico, 1997).

Chapter 21 Contracts

Senate Bill 1 led to the creation of Chapter 21 of the Texas Education Code, which relates to employment and teacher contracts (Adams-Valdez, 2005). Teacher tenure was a

significant component in Senate Bill 1 (House Research Organization, 1995). Senate Bill 1 also changed teacher certification requirements, including the implementation of more rigorous teacher preparation (Williams, 1996). In Texas, a school district and professional school employees have a contractual relationship under the Texas Education Code Chapter 21 (Walsh et al., 2018). Chapter 21 contracts create property rights and due process rights for professional employees (Adams-Valdez, 2005).

Chapter 21 contracts are a combination of “constitutional, statutory, administrative, contract, and judicial law” (Walsh et al., 2018, p. 212). These contracts specify the legal requirements a district must follow to terminate, renew, or nonrenew the contractual agreement between the employee and the district (Linares, 1997). Under a Chapter 21 contract, Texas teachers are public employees with a property right as a pure question of law for continued employment (Ramirez, 2014). Before a Texas school district can opt not to renew, or nonrenew, a Chapter 21 contract, there are specific school board policies a district must follow before ending a contractual relationship (Ramirez, 2014). Due process under Texas law means the employee has timely notice of the reasons for the dismissal, a fair hearing to present a defense, question any evidence against that employee, and the school district must offer sufficient evidence to establish good cause for the termination (Walsh et al., 2018).

Probationary, Term, and Continuing Contracts

The three types of contracts offered to certain employees of Texas public school districts are probationary, term, and continuing (Walsh et al., 2018). The Texas Education Code requires districts to provide a Chapter 21 contract to teachers, principals, supervisors, school counselors, nurses, and all other full-time professional employees required to hold an educator certification (Adams-Valdez, 2005). At a minimum, all teachers must have a probationary contract when

starting work in a school district (Tritico, 1997). Probationary contracts are for one school year and can last up to three years. After the completion of the probationary contract period, the district can terminate the educator or offer the educator a continuing or term contract (Walsh et al., 2018). A probationary contract provides the least protection of the three types of contracts for Texas educators (Tritico, 1997).

Educators must receive a term contract or a continuing contract at the end of the probationary period (Texas Education Code, 2019). Most school districts offer term contracts rather than continuing contracts at the end of a probationary contract (Tritico, 1997). A term contract has a specific beginning and ending date. Term contracts must be in writing and approved each year by the school board (Walsh et al., 2018). An educator must have had a probationary contract before a district can offer the educator a term contract (Tritico, 1997). Additionally, a teacher has a property interest in a term contract during the dates of the contract (Tritico, 1997). School districts, and in particular school boards, must take some action when the end of the term contract approaches (Ramirez, 2014).

Unlike a term contract that ends an educator's property rights at the end of a term, an educator's property rights continue under a continuing contract until the educator or the school district takes action to end the continuing contract (Tritico, 1997). Continuing contracts automatically continue from one year to the next without any board action. Thus, most school districts have discontinued continuing contracts (Tritico, 1997). Educators remain on a continuing contract until the educator "resigns, retires, is released from employment by the school district because of necessary reduction of personnel, is discharged, or returned to probationary status" (Tritico, 1997, p. 26). Continuing contracts provide educators a "property interest in continued employment with that district" (Tritico, 1997, p. 26).

If a school district opts to not renew or terminate an educator's Chapter 21 contract, the type of contract dictates the level of due process afforded to that educator (Tritico, 1997). A board can terminate a probationary contract at the end of the year as long as a board can demonstrate the termination is in the best interest of the district (Walsh et al., 2018). The board must provide written notice of the termination of the probationary contract within the time set under the Texas Education Code. The board's decision to terminate a probationary contract is final and not appealable by the educator (Tritico, 1997).

School boards can terminate a probationary contract mid-year for good cause, meaning the educator failed to meet the accepted standards of conduct for the teaching profession (Walsh et al., 2018). However, if the board moves to terminate a probationary contract in the middle of the year, the educator has some due process protections and a right to appeal that decision (Tritico, 1997). In particular, due process rights under a probationary contract allows an educator to request a hearing before the district moves forward with terminating the contract in the middle of the year (Walsh et al., 2018).

Term contracts and continuing contracts offer greater protection to educators before a district can move to end the contractual relationship (Tritico, 1997). Teachers with term contracts and continuing contracts are entitled to a hearing before termination (Tritico, 1997). At the end of a term contract, the board must either renew or nonrenew an educator's term contract (Texas Education Code, 2019). A renewal of a term contract simply requires a vote by the board to renew the contract for the following school year (Walsh et al., 2018).

If the board opts to not renew a term contract, the educator must receive due process before the board can take action (Walsh et al., 2018). An educator is entitled to notice of the board's intention to not renew the contract within the timeframe set out by the Texas Education

Code and the option to be heard by the board during a hearing (Tritico, 1997). The board has to follow the time restrictions under the Texas Education Code because a failure to provide timely notice of the nonrenewal requires the board to employ the educator in the same capacity the following year (Walsh et al., 2018).

Unlike a nonrenewal of a probationary contract, an educator can request a hearing before the board relating to the proposed nonrenewal before the board votes to not renew the term contract (Tritico, 1997). The school board has the option to sit as the trier of fact during the hearing, or the board can request a certified hearing examiner to act as the decision-maker on behalf of the district (Texas Education Code, 2019). Whether the school board or a certified hearing examiner hands down the decision relating to the nonrenewal, the teacher can appeal the decision of nonrenewal to the Texas Commissioner of Education (Tritico, 1997).

A board can discharge an educator working under a continuing contract for good cause (Tritico, 1997). The same notice requirements apply to continuing contracts as term contracts (Walsh et al., 2018). The educator has to have the opportunity to contest the discharge before the board can move forward with termination. Districts have the opportunity to terminate an educator's contract before the end of the term of the contract. However, a Chapter 21 contract cannot be terminated without good cause or due to a financial exigency that requires a reduction in personnel (Walsh et al., 2018).

The Texas Education Code defines good cause simply as “the failure to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts in Texas” (Tritico, 1997, p. 26). During a hearing, educators and districts argue the extent good cause exists to end the contractual relationship in each case (Tritico, 1997).

Similar to a probationary contract, the board may terminate a term contract in the middle of the year for good cause.

A termination of a Chapter 21 contract is a deprivation of a property interest; therefore, the board of trustees for each school district must define what constitutes good cause for termination in district policies (Linares, 1997). School districts have to follow the Texas Education Code requirements if the district determines to either end a Chapter 21 contract in the middle of the year or nonrenew the contract at the end (Walsh et al., 2018). In 1995, the Texas legislature enacted provisions in the Texas Education Code that mandate a full due process hearing according to the state's independent hearing process in the event of a Chapter 21 contract termination (Linares, 1997).

The new provisions under the Texas Education Code created in 1995 also allow educators the opportunity to compel witnesses to appear at the termination hearing and testify on their behalf (Adams-Valdez, 2005). Before these provisions, witnesses had to agree to appear and testify, which led to few witnesses showing up based on fear of retaliation from the school district (Tritico, 1997). Additionally, educators can take depositions and subpoena information before a termination hearing. The public cannot attend termination hearings, and the hearing officer follows the rules of evidence like a trial court. Educators also have the right to counsel during a termination hearing (Walsh et al., 2018).

Upon the conclusion of the hearing, the hearing officer has to issue a written recommendation within 45 days after the date the commissioner received the request for a hearing (Tritico, 1997). The recommendation must include findings of fact and conclusions of law (Ramirez, 2014). The hearing officer has the option to include a proposal for granting relief

ranging from the reinstatement of the educator, back pay, or employee benefits (Walsh et al., 2018). However, the hearing officer cannot propose recovery of attorneys' fees or other costs.

The board of trustees must then consider the hearing officer's recommendation at a board meeting (Walsh et al., 2018). After the board hears an oral argument from both the school district and the educator, the board can adopt, reject, or change the hearing examiner's conclusions of law or proposal for relief (Tritico, 1997). If the board changes or rejects the hearing officer's recommendation, the board must state in writing the reasons and the legal basis for that decision. School boards have many restrictions in the event the board wants to reject a finding of fact (Walsh et al., 2018).

The importance of teacher tenure is evident under Chapter 21 contracts (Ramirez, 2014). Educators with Chapter 21 contracts, whether a probationary, a continuing, or a term contract, were entitled to a hearing for any contract termination (Adams-Valdez, 2005). A teacher on a probationary contract does not require a hearing for a nonrenewal of a probationary contract (Adams-Valdez, 2005). Under the Texas Education Code §21.103, an educator cannot appeal a district's decision to terminate a probationary contract at the end of the contract year if, in the board's judgment, the best interests of the district will be served by terminating the employment (Texas Education Code, 2019).

Appeals to the Texas Commissioner of Education

An educator can appeal the board's decision to the Texas Commissioner of Education by filing a petition for review to the commissioner within 20 days of the board's decision (Smith, 2017). However, the board's decision to terminate a probationary contract under the Texas Education Code §21.103(a) is final and may not be appealed to the commissioner. The commissioner may rule on the appeal based on the review of the record from the school board

without any new evidence (Tritico, 1997). It is important to note that the commissioner may not replace his or her judgment for that of the school board unless the decision was arbitrary, capricious, unlawful, or not supported by substantial evidence (Alexander & Alexander, 2019).

The Texas Education Code authorized the Texas Commissioner of Education to overturn a district's termination of an employee (Smith, 2017). Before appealing a decision to the commissioner, educators must exhaust their administrative remedies provided by the school district for resolving a complaint (Smith, 2017). The exhaustion doctrine relies on "the fact that an agency can remedy a situation in different ways, often providing non-legal recourse" (Smith, 2017, p. 345).

The commissioner has the option to designate an administrative law judge to conduct any hearings under the Texas Education Code (Ramirez, 2014). Once the Texas Commissioner of Education rules on a contract nonrenewal, either the district or the employee may appeal the decision to the courts (Adams-Valdez, 2005). However, courts can only consider an appeal of a Texas Commissioner decision if there is a question of law (Walsh et al., 2018). Courts cannot hear appeals based on a question of the facts of the case.

The commissioner has strict timelines to respond to the petition for review (Ramirez, 2014). If the commissioner does not respond within the deadline the school board's decision is upheld. In the event the commissioner reverses the board's decision, the district must reinstate the educator with any back pay and employee benefits from the time of discharge or suspension (Walsh et al., 2018). The school district has the option to reinstate the teacher or pay the teacher one year's salary. The school district or the educator has the right to appeal the commissioner's decision to the district court (Walsh et al., 2018). The district court can only reverse the

commissioner's decision if the decision lacks substantial evidence or if the commissioner's conclusions of law were erroneous.

Empirical Studies of Educator Immunity Cases

There are two lines of empirical research. The first involves adverse employment actions against educators. The second area includes cases about educator conduct in student discipline.

Adverse Employment Actions

There is a gap in research relating to revocation or suspension of teaching certificates (Zirkel, 2015). Not only are the laws in each state diverse relating to the revocation or suspension of teaching certificates (Moore, 2016), but the case law continues to change the process of revocation or suspension of teaching certificates in all 50 states (Zirkel, 2015). In a recent study relating to the revocation of teacher's certifications, Zirkel (2015) found more teachers have their certificates revoked for criminal-like conduct than any other reason; the other reasons for revocation included performance issues and ethics violations.

Mayger and Zirkel (2014) studied outcomes of principal challenges to dismissal and other adverse employment actions. The researchers determined plaintiff principals seldom prevail in court cases challenging adverse employment actions. In fact, courts consistently ruled in favor of the defendant district at a ratio of 10:1. Interestingly, Mayger and Zirkel determined even principals with unblemished performance records lost their termination cases against the school district. The authors noted, however, that the courts deferred to the discretion of school districts.

Mayger and Zirkel (2014) found that when principals challenged their dismissals or received other adverse employment actions, the courts ruled in favor of the districts over the challenges of the principals 90% of the time. Mayger and Zirkel determined that courts' deference in support of the school district over the principal was consistent. Similarly, Ramirez

(2014) indicated educators are not guaranteed a favorable outcome if they file grievances or challenge employment actions.

Student Discipline Cases

Holben and Zirkel (2011) researched the increase nationally in student discipline cases over the past three decades. They identified student safety as the prevailing concern that drew this issue to the spotlight. In the flurry of news reports, media sources failed to analyze the actual holdings of student-initiated lawsuits. Instead, newspapers, television, and social media focused on alleged facts and claims. Holben and Zirkel (2011) argued the failure to report the ultimate outcome of student discipline lawsuits leads to a belief that courts cripple teachers from maintaining order and student safety in schools.

In a follow up study by Zirkel and Holben (2017), their findings indicated that the “ultimate relief obtained in 58% of the 77 cases ending in settlement or a conclusive ruling for the plaintiff was unavailable” (p. 215). The researchers determined one reason for the lack of a conclusive ruling was due to confidentiality clauses in the settlement agreement between the parties that prohibited the release of the settlement information. Zirkel and Holben (2017) maintained the inability to find the ultimate relief calls for a reconsideration of the success rates of plaintiffs in lawsuits against educators and school districts.

Flatt (2012) studied 125 cases in which administrators contested adverse employment actions against them that occurred from 1981 to 2010. School districts prevailed in 73% of the cases relating to an adverse employment action. The most prevalent defense used by administrators was the failure of the district to provide due process before the adverse employment action. Flatt determined “litigation can favor the administrator in such cases if the circumstances can be reasonably understood” (p. 255).

It is important to note that courts still require due process even if the administrator's behavior was outlandish (Flatt, 2012). Flatt's findings only included three cases involving an administrator's physical altercation with a student. Only one out of the three cases found in favor of the administrator based on evidence the contact with the student was reasonable (Flatt, 2012). In particular, the one prevailing administrator showed the physical altercation with a female student occurred while the administrator attempted to diffuse the situation so the court said the contact with the student was inadvertent.

Researchers indicated the courts, along with administrative hearing officers, go to great lengths to excuse the behavior of a teacher relating to student discipline (Harris, 2012; Mays, 2017; McDaniel, 2014). O'Neal (2013) found courts ruled in favor of districts when educators had received previous warnings from administrators about insubordinate behavior. Holben and Zirkel (2011) found educator defendants prevailed in 61% of the lawsuits against them when the lawsuit involved an intervention or nonintervention in a student fight. Additionally, the researchers found the estimated odds that a court would hold an educator liable for student injury occurring during a fight was less than one case in 2,000 (Holben & Zirkel, 2011).

Harris (2012) examined litigation involving student misconduct and discipline in schools. Similar to other studies, Harris found 73% of courts ruled in favor of school districts and school employees. In particular, Harris examined 79 cases directly related to student misconduct and discipline, and schools prevailed in 59 of the cases. Only three plaintiffs in the study's cases prevailed against the schools. Courts dismissed four of the cases, and 12 cases involved a ruling split between the school and the plaintiff suing the school (Harris, 2012).

Courts often focus on an immunity defense. Educators prevail using an immunity defense if they prove their actions were reasonable. Courts provided qualified immunity for educators in

45 (57%) of the 79 cases in Harris' (2012) study. Further, Harris determined the majority of court decisions supported the school's right to enforce discipline to maintain order in the educational environment.

O'Neal's (2013) study included 129 cases relating to adverse employment actions against educators for insubordination in the years from 1900 to 2011. The findings showed 93 courts favored the school board and only 36 courts favored employees. Of the 129 cases in O'Neal's study, only 11 dealt with classroom management or inappropriate discipline. In a particular case from 2005, the court upheld the decision of a school board to dismiss an experienced teacher who continued to hit students and to put her hands on students' faces inappropriately. The court reasoned the teacher should know how to deal with students in a more professional manner. The court emphasized the educator's continuous inappropriate classroom management and handling of discipline incidents, as well as the administration's continual warnings about her behavior. O'Neal determined the primary theme involving insubordination showed the courts' desire not to impede or replace the decision-making process of school boards. Notably, O'Neal found substantial documentation against an employee correlated with the reason for termination provided a stronger case in favor of the school district.

Hearing officers, in numerous cases, have ruled in favor of teachers because a teachers' behavior was necessary to maintain order in the classroom and to discipline inappropriate student behavior (Mays, 2017). In Mays' (2017) study, only two cases favored an educator over a school district. In one case, the hearing officer determined the evidence did not support a teacher's seven day suspension without pay, despite the teacher receiving warnings not to have physical contact with students and not to use profanity in front of students.

The second case in Mays' (2017) study where the hearing officer ruled in favor of the teacher involved the suspension of a 25-year veteran teacher for grabbing a fifth-grade student by the collar, screaming at him, dropping him to the floor, and isolating him from other students. The teacher claimed the student attempted to steal a money clip from the teacher's person. As the student walked away, the teacher grabbed the student by his shirt, reprimanded the student for attempting to steal, and directed the student to sit away from other students. The hearing officer found the teacher's version of the incident was more credible. The hearing officer determined the incident was necessary for the teacher to maintain order and discipline and to correct inappropriate behavior.

According to Mays (2017), a terminated teacher prevailed in a case before a hearing officer even though the teacher physically assaulted a student by placing his hands around the child's neck when the student refused to go to the office. The teacher left bruises on the student's arms and elbows and scratches on the student's neck. Interestingly, the hearing officer discounted another student's testimony that saw the teacher choke the student. The hearing officer's opinion pointed to the student's failure to follow directions to go to the office as causing the altercation, thereby allowing the teacher to stand *in loco parentis* while the student is in school. The hearing officer determined "a parent may very well reach for his own child in the same manner in order to obtain compliance with his instruction" and "it appears [the teacher's] lapse in judgment was provoked by the student's abject disrespect" (p. 15). The hearing officer reversed the teacher's termination and ordered a 15-day suspension instead. These cases highlight the difficulty teachers have in prevailing and the unique factors involved when they do prevail.

Summary

This chapter provided a comprehensive analysis and synthesis of the applicable literature. The next chapter describes the methodology used for a qualitative legal study to determine under what circumstances the ruling of statutory immunity shields educators from liability.

Chapter 3: Methodology

Without the ability to sue educators as a way to deter and correct wrongful behavior, the question arises whether additional immunity protections are too broad with protecting school districts and educators (Buckley, 2017). This study was designed to determine whether the immunity protections under the Texas Education Code are too broad or too narrow by assessing the extent to which statutory immunity currently shields educators from liability (Buckley, 2017; Daniels & Martin, 2016; Maher et al., 2010; Payne, 2012). Buckley (2017) called for research evaluating immunity defenses provided to educators and an assessment of the extent that immunity shields educators from liability. The purpose of this study was to describe how the Texas Commissioner of Education and Texas appellate courts have attempted to apply statutory immunity protections provided to Texas educators under the Texas Education Code §22.0511 and §22.0512.

The study was focused on answering the following research questions:

RQ1: What were the legal questions in cases decided by the Texas Commissioner of Education and Texas appellate courts where educators invoked statutory immunity protections?

RQ2: What were the decisions made by the Texas Commissioner of Education and Texas appellate courts in cases where educators invoked statutory immunity protections?

RQ3: What were the trends in the decisions made by the Texas Commissioner of Education and Texas appellate courts where educators invoked statutory immunity protections?

RQ4: What legal principles for Texas educators can be discovered from the decisions made by the Texas Commissioner of Education and Texas appellate courts where educators invoked statutory immunity protections?

This chapter describes the study's (a) research design and rationale, (b) instrumentation, (c) data collection, (d) data analysis, and (e) ethical considerations.

Research Design and Methods

This study used a legal realism approach to interpret law. Legal realists define the law as a “set of norms in force” (Guastini, 2015, p. 45). Legal realism supports the view that the law is a set of normative meanings assigned to legal texts through interpretation rather than the idea that the legal texts are the law. Interpreting the law as a set of norms in force requires “the identification of the norms actually applied by judges and other law-applying agencies” (Guastini, 2015, p. 53).

Determining a set of norms involves extracting and construing facts from legal texts. According to Guastini (2015), the norms in force in legal decisions are the set of norms applied from the past that can be “predictably applied in the future” (p. 45). Thus, this study aimed to interpret the set of norms applied in previous Texas Commissioner of Education decisions and Texas appellate cases where educators invoked statutory immunity protections in order to predict the application of norms in future decisions.

A study examining the Texas Commissioner of Education decisions and Texas state appellate cases was conducted to determine the extent statutory immunity protections currently shield educators from liability. This qualitative legal research study utilized a black letter law methodology, also known as doctrinal research (Lammasniemi, 2018). Black letter law methodology is “concerned with the formulation of legal doctrines through the analysis of legal rules” (Lammasniemi, 2018, p. 72). Consequently, the normative meanings of the facts were interpreted to gain an understanding of the principles applied in the cases.

Through the analysis of statutes, case law, law journals, and government reports, black letter law methodology was approached as legal research from the standpoint of a social scientist (Lammasniemi, 2018; Salehijam, 2018). Black letter law methodology focuses on determining what the law is on a particular point by utilizing legal reasoning, which is a “unique blend of deduction and induction” (Hutchinson & Duncan, 2012, p. 105). Because the focus of this study was to understand the statutory immunity protections provided to Texas educators under the Texas Education Code §22.0511 and §22.0512, the use of a content analysis study design was deemed appropriate. Content analysis provided the basis for a black letter law empirical methodology (Lammasniemi, 2018).

There was a need to determine the immunity protections awarded to Texas school districts and educators (Hendrick, 2016). The research, subsequently, analyzed historical public records, including state agency decisions and appellate court cases, to provide an understanding of the immunity protections awarded to Texas school districts and educators and to inform victims injured by these government actors (Hendrick, 2016). Reliable sources of data in qualitative research include historical research, such as research of public records (Merriam & Tisdell, 2016).

Studying historical court cases and state agency decisions through black letter law methodology served as a source of reform by characterizing unjust or misguided practices from the past (Borg, 1989; Lammasniemi, 2018). Merriam and Tisdell (2016) maintained public documents are easily accessible and contain information that would take a researcher significant time and effort to collect otherwise. Moreover, Hall and Wright (2008) asserted judicial opinions are “probably the best single resource of systematic historical data on the law” (p. 98).

The Texas Commissioner of Education decisions and Texas state appellate cases represented the cases in this research design. Primary sources of this study included legal texts, including court decisions, agency opinions, and statutes (Lammasniemi, 2018). The study focused on legal principles found in outcomes of the Texas Commissioner of Education decisions and Texas appellate cases (Hutchinson & Duncan, 2012). Analyzing state agency decisions and court cases using content analysis provided an understanding of immunity protections awarded to Texas school districts, educators, and victims injured by these government actors (Borg, 1989; Hendrick, 2016).

Data Collection

Decisions by the Texas Commissioner of Education and by Texas state appellate cases constituted the data for this study. I collected data using LexisNexis and Westlaw databases, computer-assisted online legal research databases (Dagley, 2012; Flatt, 2012; Lacefield, 2010; Newton, 2019). Using Zirkel's (2015) three-pronged process for data collection, I retrieved relevant Texas Commissioner decisions and case law with a (1) Boolean search of Texas Commissioner of Education decisions and Texas appellate cases in LexisNexis and Westlaw, (2) review of decisions issued by the Texas Commissioner of Education and reviewed as part of the Texas Association of School Boards (TASB) Legal Update, and (3) extract additional relevant citations in agency decisions and court cases initially determined to fit within the scope of the study.

The scope of the search included both published and unpublished Texas appellate cases and Texas Commissioner of Education decisions. Nelson (2009) acknowledged that not every court publishes its cases, and unpublished cases are not binding precedent. A preliminary search from September 1, 2003, through September 30, 2019, representing the effective date of Texas

Education Code §22.0511 and §22.0512 through the present occurred. The following terms in various combinations identified Texas Commissioner decisions and court cases in the LexisNexis and Westlaw databases: ("Texas education code" or "tex. educ. code" or "tex. educ.code" or "tex.educ. code" or "tex.educ.code" /5 22.051!).

The focus of this study was to understand the statutory immunity protections provided to Texas educators under the Texas Education Code §22.0511 and §22.0512. Therefore, the target population of cases only included decisions involving the Texas Education Code §22.0511 and §22.0512. I evaluated cases retrieved from LexisNexis and Westlaw and included only cases involving the Texas Education Code §22.0511 and §22.0512. Duplicate cases and cases not involving educators seeking statutory immunity protection were omitted from the findings of the search. Once the relevant cases were determined, I systematically briefed the data using a case briefing format as suggested by Statsky and Wernet (1995). Statsky and Wernet's (1995) briefing method provided a uniform analysis of the outcomes of the agency decisions and court cases to compare and understand patterns. The cases used for the analysis included the state agency decisions and Texas appellate cases. A search of the public records revealed 19 Texas Commissioner of Education decisions and 15 Texas appellate cases relevant to this study.

Data Analysis Methods

The analysis and interpretation began by reading each Texas Commissioner of Education decision and state appellate court case selected for the study. The initial review of the data uncovered the "overall sense of the whole" to "provide an initial framework for the development of the study's findings" (Bloomberg & Volpe, 2008, pp. 101-102). After an initial reading of the agency decisions and court cases, the Statsky and Wernet's (1995) case brief method was

utilized to help collate and organize the data by summarizing the following information in each Texas Commissioner of Education decision and state appellate court case:

- citation: describing where the case can be found, including the volume of the reporter, the year of the decision, and the page on which the case begins.
- key facts: state the facts that were important to the court and state agency in reaching the holding.
- issues: provide a specific reference to the questions of law before the court by making a specific reference to the rule of law considered for each issue.
- holdings: state the court's answers to the issues.
- reasoning: explain why the court determined each issue.
- disposition: state the order and procedural consequences as a result of the court and agency's holding. (p. 41)

Case briefing provided a process to synthesize voluminous data into more concise statements regarding key data from each court case and commissioner decision. As noted by Dagley (2012), case briefs are much like "interview transcripts or ethnographer's field notes, and represent a rich source of data about the topic being studied" (p. 71). Upon completion of Statsky and Wernet's (1995) briefing method of the the Texas Commissioner of Education decisions and Texas appellate cases, a system of coding was employed to interpret the results (Dagley, 2012; Flatt, 2012; Harris, 2012; Moore, 2016; Newton, 2019; O'Neal, 2013). Coding data is "the process of translating properties or attributes of the world (variables) into a form that is susceptible to systematic analysis" (Epstein & Martin, 2014, p. 95). The data analysis process in this black letter law methodology involved the practice of content analysis as applied in empirical legal research (Hall & Wright, 2008).

Content analysis can be used to study the law itself through the analysis of legal texts, such as judicial opinions, legislation, and other agency decisions (Hall & Wright, 2008; Salehijam, 2018). According to Hall and Wright (2008), content analysis has the “power to transform classic interpretative skills into recognizable and transferable social science knowledge” (p. 121). Content analysis is similar to court analysis performed by lawyers, but content analysis brings the rigor of social science to understand case law (Hall & Wright, 2008).

Content analysis allows the researcher to “sort out the interaction of multiple factors that bear on an outcome in the legal system” (Hall & Wright, 2008, p. 65). With content analysis, the scholar collects documents on a particular subject, and looks for patterns and draws inferences from these patterns (Salehijam, 2018). Black letter law researchers, using content analysis, can identify unnoticed patterns in decisions that traditional legal researchers might miss while analyzing data for the sole purpose of winning an argument (Lammasniemi, 2018; Salehijam, 2018). Hall and Wright (2008) noted an empirical study of the thinking and behavior of judges provides knowledge about what courts and state agencies do and why they do it. Particularly, themes and patterns in the data can develop an understanding of the statutory immunity protections provided to Texas educators.

The analysis of data included the use of memos and an open coding system to analyze the outcomes of the decisions by the Texas Commissioner of Education and Texas appellate courts to answer the research questions in the study (Dagley, 2012; Merriam & Tisdell, 2016). I used memos to note and highlight important observations, interpretations, reflections, comments, and conclusions in the court cases and agency decisions (Bloomberg & Volpe, 2008). Memos assisted with capturing new descriptors that emerged from the agency decisions and court cases and the development of coding schemes. Finally, memos assisted with recording my preliminary

findings, interpretations, and conclusions throughout the coding process (Bloomberg & Volpe, 2008).

Both deductive and inductive reasoning were used to code the collected data (Webley, 2010) within the secure computer assistive qualitative data analysis application known as Dedoose. Beginning with coding using deductive reasoning, I coded the data with a list of predetermined codes developed by Newton (2019). Newton (2019) focused on “legal cases related to the dismissal of elementary and secondary professionals for the cause of immorality” (p. 58). Given the similar nature between Newton’s study and this study, data were initially organized using Newton’s (2019) predetermined codes including (a) gender of the educator, (b) gender of the student, (c) educator’s position, (d) educator’s misconduct (e) elementary or secondary setting, (f) the initial action against the educator, and (g) if the decision was upheld.

Next, data were coded using inductive reasoning by open coding the data. Open coding allows for the creation of codes during the coding process (Webley, 2010). Khandkar (2013) defined open coding as labeling concepts and “defining and developing categories based on the properties and dimensions” of the data (p. 1). While coding the data, I looked for similarities and grouped them into categories based on their common properties (Dagley, 2012; Merriam & Tisdell, 2016). Qualitative research is a nonlinear process allowing the researcher to notice new things while open coding the data (Khandkar, 2013). Merriam and Tisdell (2016) noted that the use of open coding allows the researcher to develop concepts from the raw data and group the data into conceptual categories. Using open coding, categories that affected the findings included the following: (a) use of force, (b) prior incidents, (c) video footage, (d) type of contract, (e) action by the district, (f) apology, (g) written statements, (h) type of motion, (i) job type, (j)

procedural issue, (k) issue, (l) outcome, and (m) type of motion. Data were then disaggregated further to determine any categories, patterns, or themes (Merriam & Tisdell, 2016).

Analytical coding helped identify emergent themes in the data to answer the research questions in the study (Dagley, 2012; Newton, 2019). The final grouping of analytical codes became the categories for analysis (Dagley, 2012). Following Dagley's (2012) research design, I then analyzed the categories for emergent themes to answer the research questions of this study. The overarching themes that emerged in appeals when an educator sought statutory immunity protections under the Texas Education Code §22.0511 and §22.0512 are set out in Chapters 4 and 5.

Establishing Trustworthiness

Lincoln and Guba (1985) defined trustworthiness as the credibility, reliability, and validity of research findings and determines whether research is worthy of attention. Trustworthiness is contingent upon the methods used to collect, prepare, and report the findings from the study (Saldana & Omasta, 2017). Multiple methods provided reliability and validity in this study, including the use of public records, a reputable data source, the ability to duplicate the research procedure, triangulation, and peer debriefing. The data utilized in the study included public records, meaning the documents were accessible online to a reader (Epstein & Martin, 2014).

To ensure the authenticity and accuracy of the data in the study, I retrieved data from Westlaw and LexisNexis, two reputable computer-assisted legal research online databases. Other researchers have utilized these specific procedures and have addressed comparable issues from this study (Dagley, 2012; Flatt, 2012; Harris, 2012; Moore, 2016; Newton, 2019; O'Neal, 2013). The use of multiple databases represented triangulation (Shenton, 2004). Finally, as

recommended by Shenton (2004), I performed frequent debriefing sessions with the dissertation committee and a peer reviewer to ensure a dependable and accurate interpretation of the data. Debriefing sessions ensured the conclusions and theories were free of personal biases and assumptions.

Researcher's Role and Positionality

Patton (2015) asserted that the researcher plays a critical role in the analysis and analytical coding of data. In the process of analyzing the data, a researcher “draw[s] upon what we know to help us understand what we don’t know” (Corbin & Strauss, 2008, p. 75). My professional qualifications positioned me for conducting this legal analysis of the Texas Commissioner of Education decisions and Texas appellate cases where educators invoked immunity defenses.

As a licensed attorney and a member of the State Bar of Texas since 2002, I have represented governmental entities as well as parties suing governmental entities in litigation. I also served as a legislative assistant covering education in the Texas legislature before attending law school. Since 2016, I have served as a school district administrator in a Texas school district. As a school administrator, various employee issues arise where I provide guidance to administration. Consequently, I had to remain mindful and aware of the ways my beliefs and experiences could potentially influence my interpretation of the data (Saldana & Omasta, 2017).

Statsky and Wernet (1995) touted the use of codes as a mechanism to view data from another lens and remove researcher-based biases. Consequently, I developed data summary tables for use with coding and analysis of the data in the study as recommended by Clary and Lysaght (2010). Data summary tables organized codes and displayed themes from the Texas Commissioner of Education decisions and Texas appellate cases (Merriam & Tisdell,

2016). Data summary tables allowed me to evaluate the data based on identical criteria, make sense of the data, and formulate conclusions (Saldana & Omasta, 2017). The data summary tables assisted with the briefing, analyzing, and interpreting data as well as the assurance of trustworthiness.

Moreover, I used a reflection journal to record my personal thinking about the data and reviewed its contents with the codes to ensure that my thoughts were not interfering with the data's patterns and codes. A peer reviewer examined the codes and the underlying data. The peer reviewer challenged my assumptions and codes and suggested ways to reduce bias and ensure accuracy, or credibility, in the coding process.

Assumptions

1. The editors of LexisNexis and Westlaw have identified and accumulated all the Texas Commissioner of Education decisions and Texas appellate cases from September 1, 2003 through September 30, 2019, involving the Texas Education Code §22.0511 and §22.0512.

2. All Texas Commissioner of Education decisions and Texas appellate cases involving the Texas Education Code §22.0511 and §22.0512 are in accordance with local, state, and federal laws.

3. All Texas Commissioner of Education decisions and Texas appellate cases involving the Texas Education Code §22.0511 and §22.0512 provided sufficient data to answer the stated research questions.

Limitations

The agency decisions and court opinions are limited by what the commissioners and the judges choose to include in the opinions and do not always include the full nature or context of the decision.

Delimitations

1. Case brief analysis was limited to decisions involving the Texas Education Code §22.0511 and §22.0512 drawn from the Texas Commissioner of Education decisions and the opinions of the Texas appellate courts listed in the LexisNexis and Westlaw databases from September 1, 2003, through September 30, 2019.

2. Principles for school districts and educators were based solely on the patterns, themes, and trends appearing in the Texas Commissioner of Education decisions and Texas appellate cases through legal commentaries.

3. This study only encompassed state appellate court cases. The study did not include federal court cases.

Summary

This chapter described the methodology for this qualitative legal study to determine under what circumstances the ruling of statutory immunity shields educators from liability. The next chapter will present the data derived from the Texas Commissioner of Education decisions where educators invoked statutory immunity protections.

Chapter 4: Texas Commissioner of Education Decisions

The purpose of this study was to describe how the Texas Commissioner of Education and Texas appellate courts have attempted to apply statutory immunity protections provided to educators under the Texas Education Code §22.0511 and §22.0512. This chapter will present the data derived from the Texas Commissioner of Education decisions where educators invoked statutory immunity protections. First the presentation of the data appears. Second, the results of the data analysis of the Texas Commissioner of Education decisions are presented. Third, as the research questions pertain to the commissioner's decisions, they are answered later in the chapter. Finally, the chapter ends with a summary.

Presentation of Data

Since the adoption of the Texas Education Code §22.0511 and §22.0512 on September 1, 2003, there have been 19 Texas Commissioner of Education decisions that ruled on an educator's statutory immunity protection. Data were extracted and condensed from the 19 Commissioner decisions using Statsky and Wernet's (1995) case briefing method. The outline of the commissioner decisions analysis includes the following: citation, key facts, issues, holdings, reasoning, and final disposition. The decisions are presented chronologically. Each case is presented in the order of the following components: (a) key facts, (b) issues, (c) holding, (d) reasoning, and (e) disposition. Conclusions derived from the case analysis are presented in Chapter 6.

Case of Lake v. Dripping Springs Independent School District (2006)

Laura Lake was a teacher's aide under an at-will contract at a high school in Dripping Springs ISD. Lake contended that she used force against an 18-year-old DAEP male student after Lake and the student got into a disagreement in the library over the work that the student was

supposed to complete. Lake maintained the student approached her and stood very close to her. When Lake allegedly confronted the student and asked him to move, the student refused. Lake claimed that she crossed her arms in front of her body and pushed passed the student. The student, on the other hand, argued Lake approached him and told him he was supposed to be reading a chapter in his book, not doing actual work. The student alleged Lake grabbed his papers and told him to get out of her way. The student said he moved into the cubicle where he was working and told her she could go around him. The student said Lake then pushed his chest with both of her hands and yelled at him to get out of her way. The student claimed he fell into the cubicle causing the chair to turn upside. The student admitted he yelled at Lake, “what’s your problem?” (p. 4). After the student fell and his head on the overturned chair Lake said, “See that’s what you get” (p. 4).

Lake later argued the student lacked credibility since he was assigned to an alternative education placement classroom indicating he had behavior problems. The principal asked Lake three times whether the student touched her, and each time Lake said no. Lake admitted to the assistant principal that she lost it on the student and shoved him. She told the assistant principal she was arguing with the student about doing his work, and she said she went to the student’s desk to get his paper. After the incident, the superintendent directed Lake two times to have no further contact with the student. However, Lake disobeyed the directives and apologized to the student. Lake changed her testimony during the hearing to the school board and indicated the student stepped forward and knocked her back with his shoulders.

The issue involved whether Lake reasonably believed force was necessary against the student. The commissioner held that Lake did not reasonably believe her use of force was necessary and her actions were not reasonable. Because Lake’s insubordination was not

protected conduct under the Texas Education Code §22.0512, Dripping Spring ISD's decision to terminate Lake's at-will employment was upheld.

The commissioner's reasoning was that Lake directly disobeyed the superintendent's directive to have no further contact with the student. Lake's insubordination was sufficient to justify the termination of Lake's at-will employment. Moreover, Lake's admission that she lost it during the incident, along with the subsequent apology to the student, did not support Lake's argument that her use of force was necessary. Lake would not have a need to apologize if the use of force against the student was necessary. The student obeyed Lake's command by moving into the cubicle, and Lake saw that the student obeyed her command when he moved. Earlier in the day, Lake warned another aide a confrontation may occur with the student that day indicating Lake might have planned the confrontation with the student. There was no offense by the student since he moved out of Lake's way, so the force used was disproportionate. Even though the risk of injury to an 18 year-old male student was minimal, Lake's force was excessive and degrading. For the final disposition, the commissioner denied Lake's appeal.

Case of Papa v. Presidio Independent School District (2006)

Samuel Papa believed a 14 year-old male student was going to deface Papa's personal high school yearbook with a paperclip. Papa grabbed the student's hands and twisted them behind the student's back. Papa pushed the student against the wall and removed the paperclip from the student's hand. While forcing the student out of the classroom, Papa forced the student against the classroom door. Papa did not slam the student into a wall or throw him out of a door. Instead, Papa opened the door and pushed him out of the classroom. The student was not injured but reported some soreness in his arm. The district terminated Papa's contract for the use of excessive force and for violating the district's corporal punishment policy.

The first issue involved whether Papa's physical force against the student was allowable under state law. The second issue involved whether Papa reasonably believed the force was necessary to control, train, or educate the student. The third issue was whether Papa was wrongly terminated in violation of the Texas Education Code §22.0512. The commissioner held Papa's actions and use of restraint was reasonable, and he was entitled to immunity under the Texas Education Code §22.0512. Presidio ISD erroneously terminated Papa's contract.

The commissioner's reasoning was that Papa's use of force was justified under the Texas Penal Code §9.62. The physical force, which Papa considered reasonable at the time, was used for the special purpose of controlling the student. The student, a high school freshman, was attempting to vandalize Papa's personal high school yearbook. The student's actions showed disrespect of Papa. Other students would have been encouraged to act with similar disrespect if Papa did not stop the student from defacing the yearbook. The finding by the board that the student was scratching the yearbook is irrelevant. Papa believed the student was attempting to vandalize the yearbook and the attempt was enough to determine the actions were reasonable. The commissioner focused on whether Papa's actions were reasonable from Papa's perspective. Even though the school district argued the level and duration of the restraint by Papa was unreasonable, the standard is whether Papa had a reasonable belief that the level and duration was necessary.

The commissioner noted that the force and restraint achieved the goal of preventing the student from defacing the yearbook and quickly removing the student from the classroom. The commissioner acknowledged that use of most physical restraints are degrading, but none of Papa's actions was designed to degrade the student. Finally, there was no finding of any likelihood of serious injury from the restraint used. Therefore, the commissioner determined the

restraint of the student was reasonable when viewed from Papa's perspective. Papa was immune from discipline for his actions against the student. Moreover, Papa was not acting to discipline the student but was instead controlling the student to prevent property damage. There was no violation of the district's corporal punishment policy.

There was not substantial evidence that the level of restraint was unreasonable from Papa's perspective or that there was an unreasonable restraint duration since the events happened very quickly. The restraint by Papa was not unnecessarily degrading or likely to cause serious injury. Papa's actions were purposeful to protect the yearbook, confiscate the paperclip, and remove the student from the classroom. It was reasonable for Papa to believe the student would not comply with a verbal command, and a verbal command was not the only reasonable method to deal with the situation. Papa was justified in using physical force without giving a verbal command. For the final disposition, the commissioner granted Papa's appeal. Presidio ISD had to reinstate Papa and pay him back pay and benefits since the commissioner deemed the use of force reasonable. As an alternative to the reinstatement, the district could pay Papa the equivalent of one year of compensation.

Case of Johnson v. Kenedy Independent School District (2008)

Johnson was a middle school principal in Kenedy ISD. The school board did not renew Johnson's term contract based on an incident on the tennis courts after school. A sixth-grade student, who considered Johnson to be a friend, playfully poked Johnson in the stomach. The student tapped Johnson's chin with his tennis racket, knocking Johnson's new expensive sunglasses askew. Johnson, who previously had Special Forces training, responded by placing the student in a chokehold and stomping on the student's feet with his boot heels. The student's foot was red and swollen from Johnson stomping on it. After the incident, Johnson called the

student's mother and admitted to stomping on the student's foot "really, really hard" (p. 2). Johnson also admitted he did not mean to stomp on the student's foot, but he was having a bad week. The district placed Johnson on administrative leave, during which time he violated directives not to contact district employees or come on school property. Johnson contacted two employees on seven occasions and came to the central administration office without permission. Additionally, the week of the incident, Johnson led a prayer over the intercom system during the week of benchmark testing which violated district policy.

The first issue was whether Johnson had immunity from disciplinary action because his use of force was privileged under the Texas Education Code §22.0512. The second issue was whether the board considered Johnson's most recent evaluation even though it was not in the record. The commissioner held that Johnson was not entitled to immunity under the Texas Education Code §22.0512 because he did not reasonably believe the degree of force used against the student was necessary. The board considered the most recent evaluation even though it was not in the record.

The commissioner's reasoning was that Johnson admitted to the mother that he stomped on the student's foot and that he did not mean to do it. Johnson's admission to the mother demonstrated he did not reasonably believe the force was necessary to maintain discipline of the student. The behavior presented a danger of physical harm to the student, so Johnson was not entitled to immunity under the Texas Education Code §22.0512. Johnson failed to rebut the representation by the board that they considered his most recent evaluation. Therefore, the commissioner concluded the board considered the most recent evaluation without this evidence in the record. Regardless of the decision relating to the evaluation, one incident of misconduct is enough to support several grounds for nonrenewal. There were multiple reasons to support the

nonrenewal of Johnson's contract including misconduct not involving the student. Particularly, Johnson was insubordinate for failing to follow directives to refrain from contacting district employees and not to come on school property. Johnson also violated district policy when he prayed over the intercom system. For the final disposition, the commissioner denied Johnson's appeal and the board's decision was upheld.

Case of Earthly v. Fort Bend Independent School District (2009)

The district did not renew Earthly's term contract after he allegedly used force against a student. Earthly, a middle school teacher, intervened when a high school student swung his fist at another student in the hallway. Once Earthly intervened, the high school student became verbally and physically aggressive towards Earthly. The student pushed Earthly down the hall and out of view of the video camera. Earthly eventually restrained the student, and two administrators instructed Earthly to release the student. It took Earthly 27 seconds to release the student. Earthly said he did not hear the administrators' directive to release the student, but they claimed Earthly ignored their directives. The independent hearing officer determined no good cause existed to terminate Earthly. The school board disagreed. They changed two of the hearing examiner's findings of fact relating to the credibility of witnesses and terminated Earthly's contract.

The first issue was whether the hearing examiner applied the wrong standard relating to good cause for a term contract. The second issue was whether Earthly was immune from discipline under the Texas Education Code §22.0512. The third issue was whether an administrator's directive or a district policy can override an educator's right to use reasonable force under Section 22.0512. The commissioner said the board could not reweigh the evidence, so the board had no authority to change the findings of fact. The district failed to establish good cause for the termination since Earthly had immunity under the Texas Education Code §22.0512.

A district cannot prohibit a professional employee from using force that is justified under the Texas Penal Code 9.62 except when an employee violates a corporal punishment policy.

The commissioner's reasoning was that the district failed to prove Earthly used unjustified force. The independent hearing determined that six of the 11 eyewitnesses' statements were not credible. A reasonable finder of fact could have come to this conclusion. Eyewitness statements do not always indicate what happened in a situation because eyewitnesses can get the facts wrong. Even though the video footage was of poor quality, it still supported Earthly's testimony. The independent examiner said there was not any evidence in the record disproving Earthly's statement that he did not hear the administrators tell him to release the student. Administrators saying Earthly heard their directives to release the student is not sufficient evidence. The video tape showed Earthly release the student 27 seconds after the administrators approached him. This district's evidence was insufficient to demonstrate insubordination.

When the wrong definition of good cause is used, the commissioner must apply the correct definition in the findings of the case. The evidence in the findings of fact proved Earthly's actions were justified. With the application of the proper definition of good cause for a term contract, there was no good cause for the district to terminate Earthly. The hearing examiner used the wrong burden of proof, but the district waived this objection when it failed to raise this argument at the local level. For the final disposition, the commissioner overturned the board's decision to not renew Earthly's contract. The commissioner reinstated Earthly and gave him back pay and benefits. In the alternative, the district could pay Earthly one year's compensation.

Case of Harper v. Alvarado Independent School District (2010)

Harper was a middle school teacher in Alvarado ISD. The district terminated her term contract after she placed her hands on an eighth-grade student's face and turned her head to redirect her attention to reading materials on Harper's desktop computer. There were no signs of injury to the student, and no medical professional diagnosed the student with an injury. An independent hearing examiner found Harper's actions were immune from liability under the Texas Education Code §22.0512. Even though the independent hearing examiner recommended that the board renew Harper's contract, the board voted not to renew her contract based on her use of corporal punishment and the violation of the district's policy relating to disciplining students. Harper argued she was not disciplining the student. Harper maintained she was attempting to control the student to further an educational purpose and to enforce a proper command issued to control, train, or educate the student. Harper appealed the board's decision to the commissioner.

The issue involved whether the district ended Harpers' term contract improperly because she had statutory immunity protection under the Texas Education Code §22.0512. The commissioner's reasoning for overturning the board's decisions was Harper believed her actions were reasonable to maintain discipline of the student. Even though other teachers or administrators may have viewed Harper's actions as unreasonable, Harper still had immunity since the actions were reasonable from Harper's perspective. Reasonableness must be viewed from the perspective of Harper, and she reasonably believed the force use was necessary to control the student. Harper was not disciplining or punishing the student. She was attempting to control the student to further an educational purpose and to force a proper command to control, train, and educate the student.

The evidence showed Harper did not use excessive force in this situation, so the district could not discipline her based on the use of force. The district cannot pass a policy that limits the immunity granted under the Texas Education Code §22.0512. Since Harper did not impose corporal punishment on the student, the district should have applied the standards of the Texas Penal Code 9.62 and the Texas Education Code §22.0512 to determine if Harper's actions were protected by the statutory immunity granted by law. Harper's use of force was reasonably necessary to control the student, so she had immunity for her use of force. For the final disposition, the commissioner granted Harper's appeal and required the district to reinstate her contract and to pay back pay and benefits. In the alternative, the board could pay Harper one year's salary.

Case of Flores v. Houston Independent School District (2012)

Roberto Flores worked in Houston ISD during the 2006-2007 school year as a teacher, and he was an alternative certification intern under a probationary contract. Flores taught in an elementary school behavior services class. The school board voted to terminate Flores' contract for the failure to follow policies and administrative directives concerning discipline. The policies and directives Flores violated included the failure to call for assistance before using force and failing to follow directions in the training manual on how to administer force against students. Flores appealed the decision to terminate his contract under the Texas Education Code §22.0512. The district argued the Texas Education Code §21.103(a) prohibits the appeal of a probationary contract. After the vote to terminate his contract, Flores filed a grievance complaining of the recommendation to terminate his contract. Houston ISD argued Flores should have filed a second grievance regarding the actual termination of his contract. The issue before the commissioner

was whether the Texas Education Code §22.0512 prohibited the district from disciplining Flores for the use of force against a student.

The commissioner held that district failed to determine whether Flores' use of force was justified and protected under the Texas Education Code §22.0512. The commissioner remanded the case back to the district to determine if Flores' actions were reasonable and protected under statutory immunity. The commissioner's reasoning was a district cannot terminate a probationary contract for the use of force against a student if it is justified under the Texas Penal Code §9.62. The school board failed to consider the Texas Education Code §22.0512 when ruling on the termination of Flores' contract. A contract cannot be terminated if it is related to the use of force without properly analyzing any protections provided to an educator under the Texas Code §22.0512.

Educators under a probationary contract are entitled to statutory immunity protection for use of force that is justified against a student. Moreover, a school district cannot adopt a policy or give a directive that limits a professional employee's use of force under the Texas Education Code §22.0512. The commissioner acknowledged training provided by an educator impacts whether an educator reasonably believes force was necessary. The commissioner also concluded Flores did not have to file a second grievance concerning the termination of his contract in order to exhaust his local administrative remedies. For the final disposition, Flores' appeal was remanded to Houston ISD with instructions to consider whether the use of force by Flores was protected under the Texas Education Code §22.0512.

Case of Lewis v. Houston Independent School District (2012)

Claude Lewis was a teacher's aide in Houston ISD employed under an at-will contract. On April 12, 2007, Lewis went to a life skills classroom to eat his lunch even though he was he

was not assigned to this classroom. During his lunch, an 11 year-old male with Down's syndrome took another student's work out of the folder and ripped it up. This student, who had a history of acting out, was a special education student with a Behavior Intervention Plan. Lewis knew the student's propensity to act out, but Lewis did not know about the Behavior Intervention Plan. Despite a teacher's aide verbal command to the student to stop, the student continued to destroy the schoolwork. Lewis grabbed the student's arm and twisted it. When the student attempted to get away, there was a popping sound indicating the student's arm was broken. Lewis then released the student. After the student ran under the table, Lewis drug him out from under it. The issue was whether Houston ISD terminated Lewis' at-will contract in violation of the Texas Education Code §22.0512.

The commissioner held that the district properly terminated Lewis because his use of force was not protected under the Texas Education Code §22.0512. The commissioner's reasoning was the student was 11 years-old and in the special education setting. Even though the student's intent was to destroy the schoolwork, the student had already destroyed the work when Lewis intervened. The student posed no danger to himself, others, or any significant danger to the property. Thus, Lewis' actions were not necessary. Lewis did not reasonably believe the force was necessary to further the child's education or to maintain discipline in the classroom. Lewis' force used was disproportionate, unnecessarily degrading, and likely to cause serious injury. Twisting an arm behind a person's back is a threat to inflict serious pain, if not even break an arm. The force used by Lewis was not reasonable and not privileged. The commissioner determined the district failed to provide substantial evidence that Lewis failed to contact the school nurse, render appropriate first aid, or follow the student's Behavior Intervention Plan. For the final disposition, the commissioner denied Lewis' appeal.

Case of Black v. Hart Independent School District (2012)

Dana Black was a physical education teacher and a coach at an elementary school in Hart ISD under a term contract for the 2011-2012 school year. On September 21, 2011, a parent complained that Black grabbed her child's arm. Black met with the principal of the school about the complaint. Black signed documentation confirming the reasons she had the meeting with her principal, which included discussions about the principal's concerns and future actions. On February 6, 2012, Black taught hockey to 24 first-grade students in the gym. Black repeatedly instructed the students not to cross a line in the gym. Black admitted she used her hand to force down the heads of approximately 14 students to show them the line they were not supposed to cross in a hockey game. At the time of the February 2012 incident, a new principal supervised Black. On February 10, the new principal and the superintendent met with Black about the complaint relating to the incident in the gym. The superintendent asked Black three times if the previous principal talked to her in September 2011, and Black denied having knowledge of a conversation with a different principal in September. When the superintendent indicated to Black the incident involved Black grabbing a student's arm, Black indicated no conference took place. When the superintendent referenced the date of the conference and told Black there was signed documentation, she did not admit to the incident or the conference.

The district moved forward with the nonrenewal of Black's contract because of her untruthfulness in this situation. The board voted not to renew Black's contract due to the failure to fulfill duties and responsibilities, insubordination, failure to meet standards of professional conduct, and misrepresentation of facts to a supervisor. Additionally, Black was a smoker, and she violated board policy, state law, and federal law when she smoked in a storage room on campus. The district included these policy and statutory violations as additional reasons for

nonrenewal. Black admitted to the board that she was a smoker. She often smelled of smoke during the school year, and she would carry an aerosol spray can of something similar to Glade or Febreze with her. Administration found a smoke filtering machine with ashes in it in the gym storeroom, and Black admitted to be the only employee with access to this room. When Black removed her personal belongings out of the storeroom, she removed the smoke filtering machine.

Black appealed to the commissioner asserting statutory immunity protection for her use of force with the first-graders. In her appeal, Black did not contest the board's findings that Black lied to the administration or about smoking on district property. Black contended the nonrenewal of her contract stemmed from the February 6, 2012, incident where she pushed the students' head down to show them the line they should not cross. The issue involved was whether Black was protected by statutory immunity under the Texas Education Code §22.0512.

The commissioner held the board had substantial evidence to terminate Black's contract. The commissioner's reasoning was that Black did not contest the board's findings regarding smoking and being untruthful to the administration in the appeal. Thus, Black waived her right to contest these issues. The commissioner upheld the board's decision to terminate Black for smoking on campus and for her untruthfulness. Even if Black did not waive her argument about smoking on campus and being untruthful to the administration, the commissioner noted there was substantial evidence to terminate Black. Black said she believed the superintendent and the principal were asking about a meeting with another principal. She claimed she did not lie, but instead she was mistaken. The record contains substantial evidence that Black was not truthful to the superintendent and the principal regarding the prior incident wherein Black grabbed a student's arm in September 2011 since Black's signature appeared on the documentation.

Black said in her rebuttal testimony she believed the superintendent and principal were asking whether she had spoken to another principal about her physical contact with students. The commissioner emphasized the superintendent's report was specific and created at or near the time of the meeting with Black. Additionally, Black signed the document in the previous school year about an incident where she grabbed a student's arm. The evidence was enough for the board to determine Black was not truthful in the interview with the superintendent and principal. According to the commissioner, lying to a supervisor is a serious matter and a reason for nonrenewal. There was substantial evidence that Black violated board policy when she failed to provide accurate and truthful answers to the administration. There was substantial evidence that Black violated board policy and the law when she smoked on campus. Black admitted she was a smoker, she smelled of smoke during the year, and she carried an aerosol spray can with her. She also admitted to the board that she secured the gym storeroom with her personal lock where administration had found a smoke filtering machine. No one else had access to a key to that storeroom, and Black removed the smoke filtering machine when she removed the rest of her personal belongings from that room.

Black only appealed the decision that there was not reasonable use of force against first-grade students in her physical education class. The commissioner did not rule on whether Black was entitled to statutory immunity under the Texas Education Code because there was substantial evidence supporting nonrenewal for smoking on campus and lying to the administration. Thus, the commissioner did not reach a decision regarding the Texas Education Code §22.0512. For the final disposition, the commissioner dismissed Black's appeal for a failure to exhaust administrative remedies, or in the alternative, on the basis there was substantial evidence to support the decision not to renew her contract.

Case of Almeyda v. Alief Independent School District (2012)

David Almeyda worked in Alief ISD under a probationary contract in 2008–2009 and 2009–2010. On May 5, 2009, after a student attacked Almeyda, he used reasonable force to defend himself. On August 26, 2009, Alief ISD’s school board proposed termination of Almeyda’s probationary contract because of the May 5 incident. The board determined the use of force by Almeyda was reasonable, and Almeyda had immunity from discipline for the May 5 incident under the Texas Education Code §22.0512. On February 26, 2010, the district notified Almeyda his contract would be recommended for termination at the end of the contract. The board voted on March 24, 2010 to terminate the probationary contract at the end of the year. The reason for termination did not include the May 5, 2009 incident where Almeyda used force against the student. Almeyda argued an email string among the administration proved his termination stemmed from the May 5 incident.

Almeyda argued his termination was not allowed because of the Texas Education Code §22.0512. Alief ISD maintained Almeyda’s contract was not appealable under the Texas Education Code §21.103(a), which allows a board to terminate a probationary contract if it is in the best interest of the district. The board did not provide findings of fact or conclusions of law that indicated their reasoning for terminating Almeyda’s probationary contract. The standard of review for a school board is much lower for decisions relating to probationary contracts. The issue involved whether Alief ISD terminated Almeyda’s probationary contract based on his use of force against a student on May 5, 2009.

The commissioner held that the board could have concluded it was in the best interest to terminate Almeyda’s contract. The commissioner’s reasoning was it is difficult on appeal to determine a school board’s motive for terminating a contract without findings of fact and

conclusions of law. The commissioner acknowledged the board's reasons for ending Almeyda's contract were weak since they only relied on Almeyda's testimony about an anonymous and unjustified complaint against him. However, there were not any findings of fact for Almeyda to prevail on his appeal. The commissioner discussed the conflict between the Texas Education Code §22.0512 and the Texas Education Code §21.103(a). Since the Texas Education Code §22.0512 is more recent than the Texas Education Code §21.103(a), a school district cannot terminate a probationary contract at the end of the contract term for use of force against a student if it is justified under the Texas Penal Code §9.62.

The district inadvertently turned over an email string to Almeyda in a public information act request that contained advice from the district's attorney regarding the termination of Almeyda. The commissioner determined Almeyda could not use the email string as evidence since it was protected by attorney-client privilege. Even though an attorney did not write the email it reflected the attorney's advice. Even if the email string was admitted as evidence, the outcome by the commissioner would not have changed. For the final disposition, the commissioner denied Almeyda's appeal.

Case of Peters v. Dallas Independent School District (2012)

Adrian Peters was an assistant principal under a term contract in Dallas ISD for the 2010–2011 and 2011–2012 school years. S.M. was a 15-year-old freshman at the high school who was two months pregnant. In December 2011, S.M. requested to leave her classroom several times to go to the restroom. When the teacher denied her request, S.M. walked out of the class and said she had to go to the nurse's office. S.M.'s teacher instructed her not to leave, but S.M. left anyway. Peters stopped S.M. in the hallway and detained her by grabbing her wrist. S.M. told Peters she needed to go to the nurse, and Peters did not ask her why. Instead, he ordered her

to go back to the classroom and to apologize to her teacher. When S.M. disregarded the order to return to class, Peters began to use a loud, aggressive, threatening, and unprofessional tone with S.M. Peters grabbed S.M. by her arm and began pulling on her clothes while she struggled to get away. S.M. used profanity as she yelled at Peters and told him to leave her alone. Peters then forcefully pinned S.M.'s arm behind her back and pushed her across the hallway, which led to her head and body hitting the lockers. Peters' use of restraint was extremely aggressive, and he pushed S.M.'s arm up her back. Witnesses described the position of her arm as being awkward and looking like a chicken wing. S.M. notified Peters that she was pregnant and repeatedly requested that he let her go, but he continued to restrain her. S.M. told Peters he was going to break her arm.

A counselor in the school intervened in the struggle because he was concerned for S.M.'s safety after he saw Peters chase S.M. to the other side of the hall and pin her face against the lockers while pressing her arm behind her. The counselor was able to calm S.M. down, but Peters still refused to let S.M. go. S.M. continued to tell Peters she was pregnant, and he responded that he did not care. Peters threatened to throw S.M. on the floor. Three other teachers observed the incident and were concerned for the safety of the student. In particular, they were concerned Peters would break her arm, and they were concerned for S.M.'s unborn child. The witnesses all testified that Peters' restraint was inappropriate, unreasonable, and unnecessary. An independent hearing examiner, after hearing the evidence related to the incident between Peters and S.M., made a written recommendation to the school district to terminate Peters' contract. The independent hearing examiner, after using the Hogenson factors, concluded Peters was physically and verbally abusive of S.M. The school board convened to consider the

recommendation of the independent hearing examiner. Peters and his attorney's requested the hearing occur in closed session.

While in closed session, a board member incorrectly made a motion to adopt the independent hearing examiner's recommendation to terminate Peters' contract. The board voted unanimously to terminate the contract. Procedurally, the vote should have been in open session. However, the vote occurred in front of Peters and his attorney, and the attorney did not object to the vote occurring in closed session. The issue involved whether Peters was entitled to statutory immunity protection under the Texas Education Code §22.0512. The commissioner held that Peters was not entitled to immunity under the Texas Education Code §22.0512 and the district had good cause to terminate his term contract. The commissioner's reasoning was that Peters did not reasonably believe the force used was necessary against the student. For the final disposition, the commissioner denied in part and dismissed in part Peters' appeal.

Case of Allen v. Jacksboro Independent School District (2013)

Sarah Allen was a special education teacher with a term contract in the 2012–2013 school year. One of her students, with mental abilities considerably lower than his age, would act up at times in class. Once the student calmed down, Allen would lead the student to the restroom and close the door. No one could see what was happening in the restroom. Allen testified she would hold the student's hand while in the bathroom to comfort the child. Allen also directed her aide to use the same technique with this student if the student disrupted the class. The Admission Review and Dismissal committee did not have this technique listed as an acceptable use with the student. Jacksboro ISD moved not to renew Allen's contract. The reasons for nonrenewal included Allen improperly disciplining a special education student in the restroom where no one could observe her actions, using a technique not approved by the ARD committee, failure to

follow directives, and insubordination. Allen argued her use of force against this special education student was protected under the Texas Education Code §22.0512. The board maintained it voted not to renew Allen's contract because she took the student into a restroom, not for her use of force in holding the student's hand while walking the child to the restroom.

Jacksboro ISD argued Allen did not raise the §22.0512 defense until her closing statement before the school board. However, a board cannot prohibit an educator from raising the issue of statutory immunity in closing arguments. Texas Education Code §22.0512 prohibits discipline proceedings if the use of force is justified, it does not create an affirmative defense. When Allen notified the school board during the hearing in her closing statement she had statutory immunity protection, it was enough to provide notice of her argument for immunity. Notice of nonrenewal has to be specific enough to notify the educator of the reasons for nonrenewal. While the commissioner maintained the notice was too broad, Allen failed to request a more specific statement of the claims against her. Because Allen failed to object to any of the evidence in the record, all the issues were tried by consent.

The issue involved whether Allen had statutory immunity under the Texas Education Code §22.0512 for holding a student's hand. The commissioner held Allen may hold the student's hand to direct and comfort the student, but she was not immune for punishing the student. Allen improperly punished the student in a room without any windows where no one could see her actions. The punishment techniques Allen used were not approved by the ARD committee. The commissioner's reasoning was that no law says a teacher cannot touch a student. A teacher can direct and comfort a student by holding the student's hand. Allen had statutory immunity for holding the student's hand. The problem was the punishment issued by Allen. The commissioner redacted several portions of the record, so some of the findings were inconclusive.

With regard to the punishment against the special education student, the commissioner determined there were three serious problems with the punishment used by Allen. One reason was not clear in the record due to the redactions. The commissioner determined Allen's punishment was inappropriate because she should not be alone in a room without any windows where no one can observe her and the ARD committee did not approve the technique. For the final disposition, the commissioner denied Allen's appeal due to the type of punishment Allen used.

Case of Moreno v. Donna Independent School District (2013)

Silverstre Moreno was a sixth-grade teacher in Donna ISD. On April 4, 2010, Moreno used force in disciplining a student who persistently disobeyed in class. Moreno told the student his behavior was not acceptable, and the student began to yell and scream. Moreno told the student six times to stop his behavior. Moreno, a skilled boxer, hit the student with a left hook to the side of the student's torso. The district placed Moreno on leave with pay for hitting the student, but Moreno argued the district did not have authority to suspend him. The day after the incident, Moreno filed an incident report claiming his actions were appropriate to enforce compliance with the proper command to maintain discipline in this classroom under the Texas Education Code §22.0512.

The first issue involved was whether the district had the authority to suspend Moreno with pay. The second issue involved whether the district prohibited Moreno from presenting one of his grievances against an individual. The third issue involved whether the assistant superintendent over human resources violated the Code of Ethics and Standard Practices for Texas Educators. The commissioner held Moreno was not entitled to statutory immunity under the Texas Education Code §22.0512 because he did not have an objectively reasonable belief

that force was necessary in this instance. Moreover, the commissioner did not have jurisdiction to hear violations of educator ethics violations, contract complaints without monetary harm, violations of the Texas Penal Code, violations of the Texas Code of Criminal Procedure, or violations of state or state constitutions.

The commissioner's reasoning was that he only has jurisdiction over violations of contracts that cause monetary harm. Since the district suspended Moreno with pay, there was no monetary harm. Moreno did not show how his suspension with pay violated any state laws of his contract. The State Board of Educator Certification, not the Texas Commissioner of Education, has jurisdiction over educator's ethics violations. With regard to any immunity claims, in order for an educator to have immunity for the use of force, the educator must believe the actions were reasonable and the employee's belief must be objectively reasonable. The commissioner, applying the Hogenson factors, determined Moreno's actions were not reasonable in this instance. Punching a student was not necessary to enforce a command. Moreno did not have a reasonable belief that punching the student was necessary in this instance.

Moreno only raised the issue of self-defense in his appeal to the commissioner. His claim of self-defense was not included in the incident report, which Moreno wrote the day after the incident. Even if Moreno had made a claim for self-defense in his incident report, the board could have concluded that an unarmed sixth grader was not a threat to a grown man with boxing's experience. The commissioner noted that an educator's use of force is not prohibited when responding to a verbal provocation, but the force must be reasonable. For the final disposition, the commissioner denied in part and dismissed in part Moreno's appeal.

Case of Olabisi v. Aldine Independent School District (2014)

Juliet Olabisi, a teacher with a term contract in Aldine ISD, grabbed a student's arm and pulled her out of line. Olabisi denied she grabbed or pulled the student. The student, along with other students who witnessed the incident, claimed Olabisi did grab the student. Since Olabisi maintained the incident did not occur, she provided no explanation for the incident. Olabisi's actions did not harm the student. Olabisi claimed the administration was biased against her, but she did not provide substantial evidence to prove any biases. Information regarding the details of the student were redacted from the record. Prior to this incident, administrators counseled Olabisi in writing to model appropriate behavior. In one of the prior incidents, Olabisi used a method of redirecting a student to be quiet by putting her fingers on the student's mouth and cheek. The other incident involved Olabisi pushing a student out of class.

The first issue was whether Olabisi was entitled to statutory immunity protection under the Texas Education Code §22.0512. The second issue was whether good cause existed to terminate Olabisi's contract. The commissioner upheld the school board's decision to terminate Olabisi. The commissioner's reasoning was Olabisi did grab and pull the student even though she denied this allegation. The commissioner noted the factfinder of the case concluded that Olabisi did grab and pull the student. The factfinder, in this instance the independent hearing examiner, is the sole judge of the witness's credibility. A reasonable factfinder could have determined Olabisi grabbed and pulled the student out of line without justification.

In order to have statutory immunity protection under the Texas Education Code §22.0512, an educator has to reasonably believe the use of force is necessary. Olabisi did not provide any explanation for her use of force since she claimed she never grabbed the student. Without a reasonable belief, Olabisi's use of force could not be protected by statutory immunity.

Since Olabisi did not have statutory immunity, the commissioner determined whether her actions constituted good cause to terminate her term contract. The factfinder determined that the incident did not constitute physical violence or rise to the level of physical or mental mistreatment, neglect or abuse. Even though Olabisi did not harm the student, she did not model appropriate behavior, failed to create an atmosphere of mutual respect, and failed to exhibit an appropriate manner of dealing with others. There was no violation of the Code of Ethics and Standard Practices for Texas Educators in this case. Olabisi violated board policies requiring teachers to present a strong professional image and create an atmosphere where mutual respect is evident. Grabbing and pulling a student without justification is not professional and shows a lack of mutual respect.

Olabisi violated the policy regarding teacher conduct. The two prior incidents that led to the district directing Olabisi to model appropriate behavior were not the same as the incident that led to the termination of her contract. However, both of the prior incidents were about improper contact with students. Olabisi failed to follow the directives of the district, which can be good cause to terminate the term contract. Finally, even though Olabisi argued the district administrators terminated her contract because of their bias against her there was no evidence that an administrator's bias led to Olabisi pulling the student out of line. Grabbing and pulling a student out of line without justification violated repeated written directives, so there was good cause to terminate Olabisi's contract. For the final disposition, the commissioner denied Olabisi's appeal.

Case of Lee v. Dallas Independent School District (2016)

Caroline Lee was a third-grade science teacher in Dallas ISD. The district proposed the termination of her contract for removing an eight year-old student from her classroom. The

district alleged she was dragging, pulling, and pushing an elementary student outside of the classroom into the hallway. A subcommittee in Dallas ISD rejected many of the independent hearing examiner's findings of fact, and the district moved forward with terminating the contract. In Lee's appeal to the commissioner, she argued Dallas ISD improperly changed one of the findings of fact, the findings of fact do not support its decision, the district improperly rejected numerous findings of fact, and the district improperly changed conclusions of law.

The issue was whether Dallas ISD properly changed the recommendation of the independent hearing examiner. The commissioner held there was not good cause to support the termination of Lee's contract. The commissioner's reasoning was that the subcommittee in Dallas ISD wrongfully changed the independent hearing examiner's findings of fact and conclusions of law. The commissioner emphasized a school board or its subcommittee cannot change a finding of fact supported by substantial evidence. Under the Texas Education Code, any rejection or change to a finding of fact or a conclusion of law must be in writing and include a legal basis for the change. The commissioner determined the subcommittee wrongfully rejected and changed the independent hearing examiner's conclusions of law. The subcommittee failed to invalidate the conclusions of law, and the board failed to provide a legal basis for any of the changes. The commissioner noted that, even if the independent hearing examiner's findings of fact and conclusions of law had been properly changed, Lee would have been protected under the Texas Education Code §22.0512 because of her use of reasonable force to control students. For the final disposition, the commissioner granted Lee's appeal. The district had to either reinstate Lee with back pay or pay one year's salary from the date of reinstatement.

Case of Villarreal v. Edinburg Consolidated Independent School District (2016)

A second-grade male student threw a female student onto the ground and was about to hit her when Villarreal grabbed the student and restrained him by bending his wrist. In a prior incident in 2012, Villarreal improperly used force against a student. Since Villarreal used improper force in 2012, the district gave Villarreal a written directive not to use force again against a student. Edinburg Consolidated ISD terminated Villarreal's contract since Villarreal had been reprimanded for improperly using physical force several years before. The district concluded Villarreal used improper force previously, so he could not have had a reasonable belief that the current use of force was proper.

The issue involved whether Villarreal had statutory immunity protection under the Texas Education Code §22.0512 for the use of physical force. The commissioner held Villarreal's use of force in this situation was privileged under the Texas Education Code §22.0512. The district could not use Villarreal's use of force as a basis for terminating his contract. The district's decision to terminate Villarreal's contract was overturned. The district had to reinstate Villarreal and pay back pay and unemployment benefits. The district had the option to pay one year's salary from the date he would have been reinstated instead of reinstating him.

The commissioner's reasoning was the Texas Education Code §22.0512 is a remedial statute, and it must be construed liberally. It is not an affirmative defense, so the school district must prove that an employee's use of force is unreasonable. The employee does not have to prove the use of force was reasonable. Additionally, a district policy cannot set a different standard than the Texas Education Code §22.0512. An administrator's belief the force used by Villarreal was improper does not prove the force used was excessive. Each incident must be judged independently using the Hogenson factors. Even though Villarreal used improper force in

the past, this does not prove that Villarreal used improper force in the most recent incident. There is little similarity between the most recent use of force and the previous use of force.

The factfinder failed to apply the appropriate standards to terminate Villarreal's contract for the improper use of physical force in this case. The factfinder did not apply the standards set out as the Hogenson factors, as identified in American Law Institute (1965), to determine whether Villarreal had an objectively reasonable belief force was necessary in the most recent incident. Because Villarreal used reasonable force, a district cannot take disciplinary action against him. Even if other teachers on the campus had not used physical force with students, this does not prove Villarreal's use of force was unreasonable in this specific instance. Other teachers who taught the same students without any problems did not prove these teachers were confronted with the same situation as Villarreal. Showing that other incidents were handled better does not prove Villarreal handled this situation unreasonably. For the final disposition, the commissioner granted Villarreal's appeal. The decision to terminate his term contract was overturned.

Case of Williams v. Spring Independent School District (2017)

Ranti Adio Williams was a middle school special education teacher under a term contract during the 2016–2017 school year. On January 26, 2017, Williams intervened when she walked up on two students, a male and a female, fighting on the floor of a classroom. Williams did not observe what led to the students being on the ground. When one of the students got up and walked past her, Williams grabbed his wrist with both of her hands to keep him from leaving so she could find out what happened. The student struggled to get away from Williams, but she continued to hold his wrist for more than a minute. The student did not have any injuries, redness, or bruising on his wrists afterwards.

The day after the incident, Williams wrote a statement saying that she was working in a seventh-grade classroom with another teacher where she observed a male student struggling with a female student. Williams wrote she interacted immediately because she deemed the situation a matter of safety. Williams' statement indicated she remained seated as she reached out to grab the boy to keep him from leaving, and she asked him what happened. The male student refused to answer. The other teacher in the room removed the male student from the classroom, and the female student told Williams he had punched her in order to take her candy bar. Video footage of the incident shows Williams speaking calmly to the student to get him to stop and listen to her questions. The video shows the student struggling to get away from Williams. On April 17, 2017, Spring ISD notified Williams of the intent to propose nonrenewal of her term contract.

At the hearing on nonrenewal of Williams' contract, two administrators testified that the force she used was not reasonable to keep a student from walking away. Williams testified that she stopped the student to find out what happened. The other teacher in the room testified at the hearing that it is a teacher's duty to investigate what happened and to determine if there is a safety issue when an altercation occurs in class. The other testified that it is reasonable to expect an answer from a student when asking what happened in order for the teacher to determine if a disciplinary referral is necessary. The other teacher said Williams' tone was appropriate and that the student refused to listen to Williams. He also testified that a teacher questioning a child to find out what happened is not disciplining a child.

In 2011, the district reprimanded Williams for inappropriate verbal interaction with the student. The reprimand reminded Williams that teachers and students are expected to be mutually respectful of each other. Spring ISD used this reprimand to assert Williams had a pattern of failing to comply with the standards of professional conduct. The board voted not to

renew Williams' contract, and Williams appealed to the commissioner. The issue involved whether Williams had statutory immunity protection under the Texas Education Code §22.0512. The commissioner held Williams' use of force was privileged and protected under the Texas Education Code §22.0512 so her actions cannot be used as the basis not to renew her term contract. The district reinstated Williams with back pay and employment benefits from the time of nonrenewal. Instead of reinstating Williams, the district had the option to pay one year's salary with back pay and employment benefits from the reinstatement date.

The commissioner's reasoning was that the Texas Education Code §22.0512 has to be construed liberally, and the district had the burden to prove Williams' use of force was not reasonable. Whether the force was reasonable must be viewed from Williams' subjective belief, not from other educators' perspectives. The video footage, along with testimony from the other teacher in the room, led to the determination that Williams' actions were justified. Williams was entitled to statutory immunity for using force by holding the student's wrist to keep him from leaving the room. Williams repeatedly asked the student to stop and listen to her. A reasonable, ordinary, and prudent educator would have stopped the student from leaving the scene of an incident where safety concerns existed to find out what had occurred. Williams asking the student what occurred was a reasonable and legitimate request. Even though the student stopped, the evidence indicated he refused to answer any of Williams' questions. It was reasonable for Williams to hold the rest of the students for approximately 56 seconds in order to find out what happened. For the final disposition, the commissioner granted Williams' appeal, and the school board's decision not to renew her term contract was overturned.

Case of Gracia v. Brownsville Independent School District (2018)

Roselee Gracia was a paraprofessional in Brownsville ISD for over 20 years. The district terminated Gracia based on her use of force against a prekindergarten student on three separate occasions over nine days. Hallway cameras captured all three incidents. In the first incident, Gracia led the class down a hallway and one of the girls stopped at the water fountain. The student walked up to the little girl and told her to get back in line. Gracia took the little girl's hand and hit the student on the shoulder with the girl's hand. When administration questioned Gracia about the incident, she said she made the children shake hands as friends. The second incident occurred when the student stopped in a hall to look into a window of a classroom. Gracia grabbed the student by his arm and pulled him forcefully back into the line. When other children stopped to look in the window, Gracia guided these children back in the line by gently placing her hand on their backs.

The third incident involved several students running down the hall, but Gracia only punished the same student previously singled out. This student ran down the hall with his arms out like a bird or an airplane. Gracia waited for the student to reach her and confronted him. Gracia grabbed the student's face and moved closer to him. The video footage shows that once Gracia stood up and backed away, the student looked dejected as he hung his head. The student told his parents he did not want to return to school, and he complained that his face hurt. Gracia treated this student differently than other children, and she was more forceful with the student than the other children who had the same or similar behavior. The district placed Gracia on administrative leave while the police department performed the investigation. The school district terminated Gracia because it was in the best interest of the district and the students.

The issue involved whether Gracia was entitled to statutory immunity under the Texas Education Code §22.0512. The commissioner held the use of force by Gracia was not reasonable, and the district's decision to terminate Gracia was supported by substantial evidence. The commissioner's reasoning was that the student was in prekindergarten and his behaviors were consistent with the behavior of prekindergarten students coming to school for the first time. For instance, running in the hall, peering into windows, and leaving the line is not serious or unexpected for prekindergarten students. Additionally, Gracia treated other students who were running in the hallway, getting out of line, and looking in classrooms differently and much gentler than the one student.

The use of one student's hand to hit another student is unnecessarily degrading and disproportionate to the offense. The student was not fighting with the little girl but was attempting to help her. Gracia set a bad example and modeled the use of physical force between students by using the student's hand to hit the other student. In the second incident, Gracia yanked the student's arm to pull him out of the window. Gracia's reaction was disproportionate to the offense and completely different than how she gently guided the other students back into line. Many of the students were running down the hall, but Gracia waited for the student and only stopped him. Even though the video footage only showed the student's actions, Gracia's negative effect on the student was clear from the video. Before the interaction with Gracia, the student appeared happy and played as most prekindergarten students do. As soon as Gracia grabbed the student's face and scolded him, the student appeared sullen and dejected. Gracia's forcefulness was disproportionate to the student's offense, unnecessarily degrading, and caused enough pain that the student did not want to return to school. Even though the force did not cause

serious injury, it did cause an emotional injury that could be detrimental to the student's future attitude about school.

Using the Hogenson factors, the commissioner determined the force was unreasonable in all three incidents. Gracia argued her force was reasonable under the Texas Education Code §22.0512. In the first incident, she claimed she was trying to make the students be friends. However, the video footage contradicted her testimony by showing Gracia using the girl's hand to hit the student. In the second incident, Gracia claimed the student resisted and failed to comply with her redirection. Again, the video footage contradicted Garcia's claim. With the third incident, Gracia testified she did not touch the student. Even though it was not clear from the video whether she touched the student or not, the student's reaction to what occurred differed from Gracia's testimony. The parents also reported the student said his face hurt and that he did not want to return to school, both of which are further circumstantial evidence that the force was not reasonable. In all three incidents, Gracia treated the student differently than the other students in the class. For the final disposition, the commissioner denied Gracia's appeal.

Case of Doggett v. Seguin Independent School District (2019)

Theresa Doggett worked as a teacher at an alternative education program school in Seguin ISD. The incident that led to the proposed termination of Doggett's term contract involved a sixth-grade female who was 11 years-old and weighed 100 pounds. Five students sat around a horseshoe-shaped table with Doggett working on a project using newspaper and glue. While working on their project, Doggett made the comment to the students that none of her family had ever been incarcerated. The students later testified Doggett's statement made them upset since some of the students had family incarcerated, including the father of the student involved in the incident. Doggett knew the student was emotional about her father's

incarceration and any statement could serve to escalate a situation with this student. Based on video footage, the student did not act angrily towards Doggett but instead directed her emotions to the glue in the paper in front of her.

The principal characterized the student pouring glue on newspaper as a minor infraction. Doggett got up from her chair, grabbed the newspaper away from the student, and smeared glue on the student. Doggett testified she took the newspaper away because she was concerned about the male student sitting next to the student in question. The student then grabbed the paper back from Doggett's and started rubbing it on Doggett's shirt. Doggett claimed she pushed the paper back to the student who got glue in the student's hair.

The issue involved whether substantial evidence supported Seguin ISD's decision to terminate Doggett's term contract. The commissioner held that it was not reasonable for Doggett to smear glue on a student for pouring excessive amounts of glue onto a piece of paper. The commissioner's reasoning was that Doggett, an adult teacher, should never have shoved a paper covered with glue at a student's face. These actions were disproportionate and unnecessarily degrading to the student's offense of pouring glue on paper. Doggett's actions were completely unprofessional. There was substantial evidence that Doggett reached out, grabbed the newspaper from the student, and shoved it onto the student's shirt and face while pushing her backwards. Substantial evidence proved Doggett purposefully smeared glue on the student. Additionally, the size disparity between Doggett and the student was substantial. This use of force by Doggett was unreasonable and not protected by the Texas Education Code §22.0512. For the final disposition, the commissioner denied Doggett's appeal.

Case of Zarsky v. Southside Independent School District (2019)

Paul Zarsky was a middle school librarian in Southside ISD under a term contract for the 2018–2019 school year. On December 3, 2018, Zarsky was assigned to monitor the seventh-grade hallway. Three eighth-grade male students came into the seventh-grade hallway to get into the in-school suspension classroom. These students were not assigned to in-school suspension, and the school prohibits eighth-grade students from being in the seventh-grade hallway. Zarsky told the eighth-grade boys several times to leave, but they ignored him and continued walking towards the in-school suspension classroom. Zarsky blocked the students from entering into the classroom. However, when someone opened the door to the in-school suspension classroom, the boys tried to push their way into the room. Zarsky actively began to move the students away from the entrance to the in-school suspension classroom and pushed them back down the hall towards the eighth-grade hallway. It was only a short distance between the seventh-grade hallway and the in-school suspension classroom.

One of the students began to curse at Zarsky, so Zarsky pushed the student down the hall towards the office. The student then ran off and the other two students disappeared as well. The whole incident from the time the students entered the seventh-grade hallway to the time they ran off was 26 seconds. It took seven seconds for Zarsky to direct the one student towards the office. No students or bystanders were injured, and Zarsky's actions were unlikely to cause serious injury. Zarsky's actions were intended to direct the three eighth-grade students away from the in-school suspension room, out of the seventh-grade hallway, and towards the office. He did not hit or slap the three boys, and he did not lose self-control during the incident. Zarsky's responsibilities as a hall monitor included giving directives to students who were not in places they were not supposed to be. Zarsky was concerned the three students were trying to start a

fight, so he acted to avert what he reasonably believed to be a dangerous situation. Zarsky promptly reported the incident to the administration. The district maintained Zarsky's statement to his supervisor concerning the incident misrepresented the facts. After the incident, the district opted not to renew Zarsky's contract based on this incident.

The issues involved were whether Zarsky was entitled to statutory immunity protection under the Texas Education Code §22.0512 for his use of force. The commissioner held Zarsky's use of force was privileged and protected under the Texas Education Code §22.0512. The commissioner's reasoning was that Zarsky was entitled to statutory immunity because the force he used was reasonable. Zarsky was a hall monitor, and hall monitors should direct students to leave prohibited areas. Zarsky used proper commands directing the students to leave the area. He was entitled to use reasonable force in order to enforce his commands to leave that seventh-grade hallway. The district had to prove Zarsky's use of force was not reasonable. It was not enough for the district to argue there was a different or even better way to handle this specific situation. Zarsky used force to push eighth-grade students away from the in-school suspension classroom in order to prevent a fight. The three boys were approximately 13- or 14 years-old, and the video showed they appeared to be of average size. The force used by Zarsky was necessary to get the students to comply with his directive to leave the seventh-grade hallway.

Zarsky's concern that the three boys would start a fight was not unreasonable since fights occur at that middle school. Additionally, one of the students had a history of disruptive behavior. The students ignored the verbal directive to leave the area, and Zarsky used force in order to prevent a fight. The three students violated the rules to stay out of the seventh-grade hallway. If Zarsky had not enforced these rules there would have been a disruption. By disregarding the directive by Zarsky to leave the area and by cursing at him, the three students

set a bad example for the other students in that public space. Zarsky moved the students a short distance in order to move them away from the door of the in-school suspension classroom and out of the seventh-grade hallway. Once the student cursed at Zarsky, he pushed the student a short distance down the main hallway toward the office. The actions by Zarsky removed the three students from an area off limits to them. Zarsky did not use force until the three students refused to listen to Zarsky's directives to leave. The commissioner determined the use of force was not disproportionate even though the students did not appreciate being touched, the "student's own actions in violating rules led to [Zarsky's] actions" (*Zarsky v. Southside ISD*, 2019, p. 13).

Zarsky was protected by the Texas Education Code §22.0512. His force against the students was not disproportionate. Zarsky did not hurt the students and he quickly resolved the incident by removing them with minimal force to prevent a fight. The actions by Zarsky were not unnecessarily degrading even though the students did not appreciate being touched. Zarsky used force against the students after they violated the rules. The district claimed that Zarsky misrepresented facts to his supervisor. It is not a misrepresentation of facts when an educator conveys their legitimate interpretation of the situation to a supervisor. Zarsky did not misrepresent the facts of this incident, but instead conveyed the facts as he interpreted them. For the final disposition, the commissioner granted Zarky's appeal. The district had to reinstate Zarsky with back pay and employment benefits. Alternatively, the district could pay Zarsky one year's salary from the date Zarsky would have been reinstated.

Data Analysis

After completing the case brief method, the 19 commissioner decisions were analyzed and then compared to find similarities and differences. Of the 19 decisions by the Texas

Commissioner of Education in the sample of cases, the commissioner denied 11 appeals (58%), granted seven appeals (37%), and remanded one appeal (5%) back to the district. Stated another way, the commissioner ruled in favor of the district in 11 appeals, ruled in favor of the educator in seven appeals, and sent one appeal back to the district for more information. Table 1 highlights all the commissioner decisions in the sample in terms of the appeals granted or denied when an educator invokes statutory immunity protection.

Table 1*Texas Commissioner of Education Decisions*

	Name of Case	Role	Gender	Student Gender	Outcome
2006	Lake v. Dripping Springs ISD	Aide	Female	Male	Upheld
2006	Papa v. Presidio ISD	Teacher	Male	Male	Reversed
2008	Johnson v. Kenedy ISD	Principal	Male	Unknown	Upheld
2009	Earthly v. Fort Bend ISD	Teacher	Male	Male	Reversed
2010	Harper v. Alvarado ISD	Teacher	Female	Female	Reversed
2012	Almeyda v. Alief ISD	Teacher	Male	Unknown	Upheld
2012	Black v. Hart ISD	Teacher	Female	Both	Upheld
2012	Flores v. Houston ISD	Teacher	Male	Unknown	Remand
2012	Lewis v. Houston ISD	Aide	Male	Male	Upheld
2012	Peters v. Dallas ISD	Asst. Principal	Male	Female	Upheld
2013	Moreno v. Donna ISD	Teacher	Male	Male	Upheld
2013	Allen v. Jacksboro ISD	Teacher	Female	Male	Upheld
2014	Olabisi v. Aldine ISD	Teacher	Female	Unknown	Upheld
2016	Villarreal v. Edinburg ISD	Teacher	Male	Male	Reversed
2016	Lee v Dallas ISD	Teacher	Female	Unknown	Reversed
2017	Williams v. Spring ISD	Teacher	Female	Male	Reversed
2018	Gracia v. Brownsville ISD	Aide	Female	Male	Upheld
2019	Doggett v. Seguin ISD	Teacher	Female	Female	Upheld
2019	Zarsky v. Southside ISD	Librarian	Male	Male	Reversed

All 19 commissioner decisions addressed the Texas Education Code §22.0512 that relates to immunity from disciplinary proceedings for professional employees. Not one educator sought protection under the Texas Education Code §22.0511 in an appeal to the commissioner. Thirteen (69%) of the educators were classroom teachers, three (16%) were educational aides, one (5%) was a librarian, one (5%) was an assistant principal, and one (5%) was a principal. Of the 19 commissioner decisions, educators that sought immunity protection included nine (47%) educators at the secondary level, six (32%) educators at the elementary level, and the school level for four (21%) educators was unknown.

Ten (53%) males and nine (47%) females appealed decisions to the commissioner. The decisions involved ten (53%) male students, three (16%) female students, one (5%) case had both male and female students, and the gender of the students in five (26%) of the cases was unknown. The sample included 14 term contracts (74%), three at-will contracts (16%), and two probationary contracts (10%). The action by the district to end the contractual relationship with each educator varied in the decisions. The commissioner heard 14 appeals (74%) regarding the termination of a contract. There were four (21%) nonrenewal decisions, and one grievance appeal (5%).

All 19 commissioner cases addressed the educator's use of force and the statutory immunity protection given to educators under the Texas Education Code §22.0512. The statutory wording of the Texas Education Code §22.0512 requires the commissioner to determine whether the use of force by an educator was privileged. If the use of force was privileged, the district is prohibited from subjecting an educator to disciplinary proceedings for the use of physical force against a student to the extent that the force is justified under the Texas Penal Code §9.62. The Texas Education Code §22.0512 defines a disciplinary proceeding as an action brought by the

school district employing a professional employee of a school district to discharge or suspend the employee or terminate or not renew the employee's term contract. The commissioner determined seven (37%) out of the 19 educators had statutory immunity protection under the Texas Education Code §22.0512.

Research Question 1

The first research question was what were the legal questions in cases decided by the Texas Commissioner of Education where educators invoked statutory immunity protections? The analysis focused on answering what the legal questions were in cases decided by the commissioner where educators invoked statutory immunity protections. The commissioner considered various legal issues when determining whether an educator had immunity protection under the Texas Education Code §22.0512. Eight categories emerged involving the legal questions consistently addressed by the commissioner when determining whether an educator had statutory immunity, including: (a) administering corporal punishment, (b) the reasonableness standard, (c) the Hogenson test, (d) board policy and administrative directives cannot prohibit the use of force, (e) insubordination, (f) the conflict between the Texas Education Code §§22.0512 and 21.103, (g) *in loco parentis*, and (h) changes to findings of fact and conclusions of law.

Administering Corporal Punishment. In two of the 19 decisions, the commissioner distinguished corporal punishment from privileged use of force (i.e., Harper and Papa). Educators use corporal punishment to discipline students. Privileged use of force is used to “control the student to further an educational purpose and to enforce a proper command issued to control, train, or educate the student” (Texas Education Code, 2019). A district must first determine if the educator was administering corporal punishment or if the educator’s use of force is privileged under the Texas Education Code §22.0512 and the Texas Penal Code §9.62. In

Harper v. Alvarado Independent School District (2010) and *Papa v. Presidio ISD* (2006), the districts terminated the educators for violations of a corporal punishment policy. The districts punished the educators for using corporal punishment without analyzing if the use of force was to control, train, or educate the student. Since the districts failed to determine whether the educator had statutory immunity under the Texas Education Code §22.0512 and the Texas Penal Code §9.62, the commissioner overturned the terminations of Harper and Papa. The commissioner determined the educators did not use corporal punishment. Harper and Papa used force to control as student. Thus, the educators had statutory immunity protection for their use of force.

Reasonableness Standard. In five of the 19 decisions, the commissioner discussed the reasonableness standard to determine if the educator had a reasonable belief the use of force was necessary. The cases included Gracia, Harper, Lake, Papa, and Peters. In *Papa v. Presidio ISD* (2006), Papa believed the student was attempting to vandalize Papa's yearbook. The commissioner decided the attempt to vandalize Papa's property was enough to determine that the actions were reasonable from Papa's point of view. Papa had a reasonable belief his force was necessary to further an educational purpose and to enforce a proper command issued to control the student.

In *Harper v. Alvarado ISD* (2010), the board voted to terminate Harper after she placed her hands on an eighth-grade student's face to turn the student towards the reading materials on Harper's computer. Harper argued she reasonably believed the force she used to turn the student's head was necessary to control the student for his educational needs. The commissioner agreed Harper had a reasonable belief her force was necessary in this instance. The commissioner determined the educators did not have a reasonable belief their force was

necessary in three of the five decisions that used the reasonableness standard for analysis. In *Lake v. Dripping Springs ISD* (2006), the commissioner found that Lake's force against a student was not reasonable since Lake admitted to an assistant principal that "she lost it" with the student (p. 11). According to the commissioner, Lake's own admission that she lost it on the student proved she did not reasonably believe force was necessary.

In the *Peters v. Dallas ISD* (2016), Peters used an extremely aggressive restraint against S.M., a freshman who was two months pregnant. Peters did not reasonably believe the force used was necessary. Peters did not "have a reasonable belief that it was necessary to continue a very physical struggle with a pregnant girl to keep her from walking away" (p. 18). The commissioner upheld the district's decision to terminate Peters' contract. In *Gracia v. Brownsville Independent School District* (2018), the commissioner determined Garcia's use of force against a prekindergarten student in three separate incidents was not reasonable. Particularly, it was not reasonable for Gracia to use one child's hand to hit another student, to single out one prekindergarten student when other students were doing the same thing, or forcefully jerk the student away from a window when there was no imminent danger to the student or others. Moreover, the commissioner believed a simple command to stop running would have been effective.

The Hogenson Test. In eight of the 19 decisions, the commissioner discussed the Hogenson test to determine whether the educator's use of force was reasonable (i.e., Doggett, Gracia, Lewis, Papa, Peters, Villarreal, Williams, and Zarsky). As fully described in Chapter 2, the Hogenson test is a standard that can be used to determine if an educator's use of force was reasonable. In *Doggett v. Seguin ISD* (2019), Doggett grabbed paper covered in glue away from a student and shoved it in the student's face and onto the student's shirt. The student was eleven

years-old and weighed 100 pounds, and Doggett was “a very large adult female of much greater weight” (p. 8). With the significant size disparity between Doggett and the student, the commissioner determined the use of force by Doggett was unreasonable and not protected by the Texas Education Code §22.0512.

In *Lewis v. Houston ISD* (2012), Lewis grabbed and twisted an 11 year-old special education student’s arm until it made a popping sound. Lewis also dragged the student out from under a table. When the commissioner analyzed Lewis’ appeal, he emphasized the Hogenson test factors of age, size, special education setting, likelihood that other students influenced by the student’s misbehavior, and potential harm. Particularly, the others students were unlikely influenced by the misbehavior since the student often misbehaved in a similar manner. Additionally, the student’s destruction was complete when Lewis intervened, so the student posed no danger to himself, others, or any property. Since the commissioner determined Lewis’ actions were not reasonable, Lewis was not protected under the Texas Education Code §22.0512.

In *Williams v. Spring ISD* (2017), Williams, a middle school special education teacher, intervened when she walked up on two students, a male and a female, fighting on the floor of a classroom. When the male student got up and walked past her, Williams grabbed his wrist with both of her hands to keep him from leaving so she could question him about what happened. In determining whether Williams’ use of force was reasonable, the commissioner emphasized that Williams used minimal force to obtain compliance with a legitimate request, she spoke calmly to the student, she was not unnecessarily degrading, and she did not apply force in a manner that would likely cause injury. Thus, Williams was entitled to immunity based on the Hogenson test.

In *Zarsky v. Southside ISD* (2019), Zarsky actively moved three eighth-grade students away from the seventh-grade hallway and towards the eighth-grade hallway. Zarsky assumed the

three students were trying to enter the in-school suspension classroom to start a fight. Using the Hogenson test, the commissioner noted all three eighth-grade boys were of average size for children that age, Zarsky's actions were unlikely to cause serious injury, Zarsky did not "hit or slap the eighth-grade students," and his actions were "directed to moving the students away from the in-school suspension room" and towards the office (p. 4). The commissioner also mentioned that Zarsky did not lose his self-control during the incident. Accordingly, the commissioner determined that Zarsky reasonably believed he needed to avert a dangerous situation, so he had statutory immunity.

In *Papa v. Presidio ISD* (2006), the commissioner determined Papa's removal of the paperclip from the student's hand and use of force to remove the student from the classroom met the Hogenson test. The commissioner determined a 14 year-old male freshman attempting to vandalize Papa's high school yearbook was a sign of disrespect. The student's actions would affect other students and encourage other actions of disrespect. The commissioner noted that the force and restraint achieved the goal of preventing the student from defacing the yearbook and quickly removing the student from the classroom. Papa's actions were not designed to degrade the student, and there was no finding of any likelihood of serious injury from the restraint used. Therefore, Papa's actions were reasonable, and he was entitled to statutory immunity under the Texas Education Code §22.0512.

In the *Peters v. Dallas ISD* (2016) decision, Peters shoved a 15 year-old pregnant student against the lockers and forced her arm behind her back like a chicken wing to the point that it almost broke the student's arm. The commissioner pointed out the female student was 4'11" and weighed 160 pounds. Peters used force against the pregnant student for the offense of leaving the classroom without permission. While the student did set a bad example for other students, some

force was necessary to compel the student to obey Peters' commands. However, the use of force was significant and included twisting the child's arm behind her back. The force used was not proportionate to the offense in this situation. Because the student was pregnant was of particular concern to the commissioner. The commissioner stressed the force used by Peters risked harming both the girl and her unborn child. Even after the student notified Peters she was pregnant, he responded that he did not care. The commissioner, using the Hogenson test, found the use of force by Peters was not reasonable.

In *Gracia v. Brownsville Independent School District (2018)*, Gracia singled out one prekindergarten student to punish on three separate occasions. The commissioner viewed the situation from Gracia's perspective and determined that the actions against a prekindergarten student for running in the hall, stopping to look into a classroom window, and leaving the line was not serious nor unexpected behavior from a prekindergarten student. The commissioner also noted other students were acting the same way, but Gracia only punished the one student. Even though Gracia's use of force did not cause serious physical injury, the commissioner expressed concern that the force caused emotional injury that could be detrimental to the student's future attitude about school. The commissioner determined Gracia's use of force was not reasonable.

In the *Villarreal v. Edinburg Consolidated ISD (2016)* case, Villarreal saw a second-grade male student throw a female student onto the ground as he was about to hit her. Villarreal grabbed the student and restrained him by bending his wrist and applying pressure. The commissioner noted the district did not make a decision using the Hogenson test or "another valid standard to conclude that Villarreal did not have an objectively reasonable belief that force was necessary" (p. 2). The commissioner clarified that the Hogenson test is not the only acceptable standard to use when determining whether the use of force is reasonable, but some

standard must be used. As noted in the decision, while the Hogenson test is “a good and useful list of factors to consider,” it is not “an exclusive list applicable to all circumstances” (p. 8). The district’s failure to use any standard to determine if the use of force was reasonable led the commissioner to overturn the termination of Villarreal’s contract. The district only relied on the practice and policy violations instead of providing evidence that Villarreal’s actions were unreasonable. Thus, the commissioner determined Villarreal had immunity protection for his use of force.

Board Policy and Administrative Directives. Six of the 19 commissioner decisions explained that if a teacher is using reasonable force to restrain a student, a district cannot take disciplinary action against that teacher because the force violated an administrator’s command or district policy (i.e., Flores, Lewis, Olabisi, Peters, Papa, Villarreal). In the *Villarreal v. Edinburg Consolidated ISD* (2016), the commissioner drew the distinction between a policy that limits the use of force versus other policies in the district (*Villarreal v. Edinburg Consolidated ISD*, 2016). In most instances, a district usually can take action against an educator for violating district policy. However, a district cannot take action against an educator for violating a policy relating to the use of force if the educator’s actions are protected under the Texas Education Code §22.0512 (*Villarreal v. Edinburg Consolidated ISD*, 2016). Additionally, a district cannot write a policy that states an employee can only use force to protect a person from physical injury.

In *Villarreal v. Edinburg Consolidated ISD* (2016), the commissioner made clear a district cannot write a directive to an educator prohibiting the use of force protected by the Texas Education Code §22.0512. Villarreal used force improperly against a student in a prior incident in 2012, and the administration gave Villarreal a written directive not to use force against a student in the future. The directive stated that a violation of the directive, meaning the use of

force in disciplining a student, would lead to the recommendation of termination of Villarreal's contract. The commissioner noted the 2012 reprimand "sheds little light on the issue of whether [Villarreal] used unreasonable force in the instances in question in the present case" (p. 10). The "standard concerning the use of force is objective" and the "incident is to be viewed from the teacher's perspective" when determining whether the force used was reasonable (p. 6). A district must analyze the reasonableness each time an educator uses force. The commissioner granted Villarreal's appeal since the district never determined whether the use of force was reasonable from Villarreal's perspective. Instead, the district terminated Villarreal's contract because of a prior directive not to use force in the future.

In *Flores v. Houston ISD* (2012), the school board voted to terminate Flores' contract for the failure to follow policies and administration directives concerning discipline. The district claimed Flores failed to call for assistance before using force and failed to follow a training manual's directions on how to handle the administration of force. The commissioner found that the violations of policies and directives were closely connected with the issue of whether Flores properly used force. Since the district did not analyze if Flores was entitled to protection under the Texas Education Code §22.0512, the commissioner remanded *Flores v. Houston ISD* (2012) back to the district to determine if Flores was entitled to statutory immunity.

Insubordination. In *Earthly, Johnson, and Lake*, the commissioner analyzed the educators' insubordination. In *Earthly v. Fort Bend ISD* (2009), a student tried to initiate a fight and Earthly tried to restrain that student. When Earthly refused to follow a directive from an administrator to disengage from restraining the student, the district claimed Earthly was insubordinate. The commissioner disagreed. Even though Earthly violated an administrator's command to disengage with the student Earthly had statutory immunity protection. The

commissioner again emphasized that a district cannot prohibit an educator from using force that is justified under the Texas Penal Code 9.62. The Texas Education Code §22.0512 prohibits administrators from giving an educator a directive not to use justified force against a student. The commissioner held Earthly was not insubordinate. Thus, Earthly's use of force was reasonable and justified under the Texas Education Code §22.0512, and he was entitled to statutory immunity.

In both *Johnson v. Kenedy Independent School District* (2008) and *Lake v. Dripping Springs Independent School District* (2006), the commissioner agreed that a district could use an insubordination claim against an educator for failure to follow directives not related to the use of force. In *Johnson v. Kenedy Independent School District* (2008), the district placed Johnson on administrative leave while investigating an incident where Johnson placed a student in a chokehold and stomped on the student's foot on the tennis courts after school. The district directed Johnson not to contact district employees or to come onto school property while on leave. Johnson disregarded these directives when he contacted two employees on seven occasions and came to the central administration office without permission. The commissioner agreed Johnson was insubordinate and upheld the nonrenewal of Johnson's contract.

In *Lake v. Dripping Springs ISD* (2006), Lake used force against an 18 year-old DAEP male student based on a disagreement in the library over the work that the student was supposed to complete. After the incident, the superintendent directed Lake two times to have no further contact with the student. Lake disobeyed the directives and apologized to the student. The commissioner determined Lake was insubordinate for failing to follow the directives of the superintendent. Thus, the commissioner upheld the termination of Lake's at-will employment.

Conflict Between the Texas Education Code §22.0512 and §21.103. *Almeyda v. Alief ISD* (2012) and *Flores v. Houston ISD* (2012) exposed a conflict between the Texas Education Code §21.103(a) and the Texas Education Code §22.0512. A conflict arises when a school district terminates a probationary contract at the end of the contract for the use of force against a student that is justified under the Texas Penal Code §9.62. Under the Texas Education Code §21.103(a) the board's decision to terminate a probationary contract is final and may not be appealed to the commissioner. The Texas Education Code §22.0512 states that a district is prohibited from terminating an educator for the use of physical force against a student that is justified. The commissioner held that school districts cannot terminate a probationary contract if the educator is entitled to immunity under the Texas Education Code §22.0512 (*Almeyda v. Alief ISD*, 2012; *Flores v. Houston ISD*, 2012). As explained in *Flores v. Houston ISD* (2012), the Texas Education Code §22.0512 is a more specific provision and a more recent provision. The commissioner determined immunity protection provided under the Texas Education Code §22.0512 prevails over the right for a school board to terminate a probationary contract that is in the best interest of the district. Therefore, a school district cannot terminate a probationary contract at the end of a contract period for the use of force if it is justified under the Texas Penal Code §9.62.

In Loco Parentis. In the commissioner addressed *in loco parentis* in two of the 19 decisions. In *Villarreal v. Edinburg Consolidated ISD* (2016) and in *Zarsky v. Southside ISD* (2019), the commissioner stated educators may use force against a student in a similar manner as parents are allowed to use force. The commissioner emphasized, “as teachers stand in the place of parents, they are protected from allegations that they have improperly used force against children in a very similar manner as parents are protected from equivalent allegations”

(Villarreal, p. 6; Zarsky, 2019, p. 8). The commissioner determined Villarreal and Zarsky were acting *in loco parentis* and entitled to protection from allegations that they used improper force against a student.

Changes to Findings of Fact and Conclusions of Law. The sample revealed several issues that arise when a board makes changes to an independent hearing examiner's findings of facts and conclusions of law. In *Lee v. Dallas ISD* (2016), an independent hearing examiner determined there was no good cause to terminate Lee's contract. However, a subcommittee in Dallas ISD rejected several of the independent hearing examiner's findings of fact and moved forward with terminating Lee's contract. The commissioner determined the subcommittee wrongfully rejected and changed the independent hearing examiner's conclusions of law and Lee prevailed in her appeal. Similarly, in *Earthly v. Fort Bend ISD* (2009), the independent hearing examiner recommended that the school board not move forward with terminating the contract. The board also disregarded the independent hearing examiner's recommendation and moved forward to terminate the contract. In the school board's decision, the board changed two of the hearing examiner's findings of fact relating to the credibility of witnesses. On appeal, the commissioner ruled in favor of Earthly and Lee.

Synopsis of Research Question 1. The legal questions consistently addressed by the commissioner when determining whether an educator had statutory immunity included: (a) administering corporal punishment, (b) the reasonableness standard, (c) the Hogenson test, (d) board policy and administrative directives cannot prohibit the use of force, (e) insubordination, (f) the conflict between the Texas Education Code §22.0512 and §21.103, (g) *in loco parentis*, and (h) changes to findings of fact and conclusions of law. All the legal questions centered on the Texas Education Code §22.0512 and involved an educator's use of force against a student. The

three themes that emerged from legal questions answered by the commissioner were the reasonable use of force, classroom management and daily duties of educators, and due process.

A determination as to whether the educator's used force that was reasonable was a key legal question addressed by the commissioner. Whether the commissioner used the Hogenson test or some other reasonableness standard, the legal question addressed was whether the educator used reasonable force. When a district considers whether an educator's use of force against a student is justified, the district must determine whether the educator has statutory immunity protection under the Texas Education Code §22.0512 and the Texas Penal Code §9.62. The commissioner consistently made decisions as to whether the educator had a reasonable belief force was necessary to further an educational purpose and to enforce a proper command issued to control the student. A majority of the decisions used the Hogenson test to determine whether the use of force was reasonable. In particular, a significant size disparity between the educator and the student, the amount of force used, and whether the student's action could injure or harm another person were determining factors by the commissioner when ruling on the educator's use of force.

The theme of classroom management and daily duties of educators emerged in the legal decisions after the commissioner made clear that educators have rights similar to parents under *in loco parentis*. Even more, the commissioner determined statutory immunity would trump other provisions of the Texas Education Code. According to the commissioner, administration cannot give directives or claim an employee was insubordinate to overcome an educator's immunity protection provided under the Texas Education Code §22.0512. Also, a district cannot write a policy prohibiting an educator from using reasonable force protected under the Texas Education

Code §22.0512. Finally, a district must distinguish between its policies relating to corporal punishment versus the statutory immunity protection for the educator's use of force.

The theme of due process emerged based on the rulings in favor of educators over school districts when school boards attempted to make changes to findings and conclusions of an independent hearing examiner. The commissioner consistently found in favor of an educator when a school board attempted to make changes to the evidence an independent hearing examiner determined had weight. Effectively, the commissioner determined that school boards lack the authority to reweigh the evidence or judge the credibility of the witnesses simply because they disagreed with the findings from the independent hearing examiner.

Research Question 2

The second research question was what were the decisions made by the Texas Commissioner of Education in cases where educators invoked statutory immunity protections? The analysis focused on answering what decisions the commissioner made when educators invoked statutory immunity protections. The commissioner made a broad range of decisions when determining whether an educator had immunity protection under the Texas Education Code §22.0512. Six categories emerged involving the decisions consistently addressed by the commissioner when determining whether an educator had statutory immunity including: (a) extensive protections for educators, (b) practices and opinions of others are irrelevant, (c) public policy justifications, (d) prior incidents, (e) misrepresentations, and (f) admissions and apologies.

Extensive Protections for Educators. The commissioner consistently stated that the Texas Education Code §22.0512 is a remedial statute and is to be given the most comprehensive and liberal construction possible (i.e., Doggett, Lewis, Peters). As noted in *Earthly v. Fort Bend ISD* (2009) and *Doggett v. Seguin Independent School District* (2019), statutory immunity is not

an affirmative defense that the teacher must prove, so the school district has the burden to prove the educator's use of force is unreasonable. In *Lewis v. Houston ISD* (2012), the school district argued statutory immunity only applies to a student's teacher, coach, or school administrator. The commissioner corrected this interpretation and stated that the Texas Education Code §22.0512 provides extensive protections for all teachers, coaches, aides, and administrators. The commissioner suggested that if the district's narrow interpretation was correct, then a teacher whose student engages in a fight with a student from a different class would only have immunity for the use of force against a student from that teacher's class.

Interestingly, the commissioner noted that a school district could adopt a policy that teachers and others are only entrusted with the care, supervision, and administration of the students that are on their class rosters. Such a policy would mean that teachers and others only stand *in loco parentis* to the students on their class rosters and have no authority over other students. Moreover, the district could adopt other policies with specific circumstances when teachers and others are allowed to correct students. However, in the absence of such a policy that makes clear that teachers, coaches, and teachers' aides have no responsibility for care, supervision, or administration of a student, educators correcting any student's behavior will be covered under the Texas Education Code §22.0512.

Practices and Opinions of Other Educators are Irrelevant. Whether the acts of an educator are reasonable must be viewed from the educator's perspective. The commissioner has made it clear that how other educators on campus would handle a similar situation is irrelevant when determining whether the force used was reasonable. As discussed in *Villarreal v. Edinburg Consolidated ISD* (2016), the opinions of administrators or other educators on how a situation should have been handled is not evidence that can be used when determining whether use of

force is reasonable. Differences in handling situations does not determine unreasonable behavior, but instead just proves the incidents were handled differently. Witness statements by administrators do not prove whether an educator used force that was reasonable. The commissioner consistently explained that whether the educator used reasonable force is a question that has to be viewed from the educator's perspective.

The commissioner noted in *Villarreal v. Edinburg Consolidated ISD* (2016) that witnesses who indicated Villarreal's force was unreasonable was not the right standard for determining Villarreal's reasonableness in his use of force. The commissioner disregarded the district's argument that an educator's force was unreasonable because no other teachers on the same campus had used physical force during that school year. It is irrelevant that another educator could have used a different method instead of force. A district must view an incident from the educator's perspective.

In *Williams v. Spring ISD* (2017), Williams, a middle school special education teacher, intervened when she walked up on two students, a male and a female, fighting on the floor of a classroom. The commissioner again emphasized whether the force was reasonable must be viewed from Williams' subjective belief not from other educators' perspectives. The video footage, along with testimony from the other teacher in the room during the incident, led to the determination that Williams' actions were justified. Williams was entitled to immunity for holding the student's wrist to keep him from leaving the room.

In *Earthly v. Fort Bend ISD* (2009), Earthly intervened when a high school student swung his fist at another high school student. The independent hearing determined that six of the 11 witness statements were not credible. The commissioner established that eyewitness statements do not always indicate what happened in a situation because eyewitnesses can get the facts

wrong. Likewise, in *Zarsky v. Southside ISD* (2019), the commissioner commented that witnesses' statements do not prove that the witness got the facts correct or that the situation happened as the witnesses believed.

Public Policy Justifications. Seven of the 19 commissioner decisions emphasized the public policy reasons for allowing educators to use reasonable force when they stand in the place of educators during the school day (i.e., Gracia, Harper, Papa, Peters, Villarreal, Williams, Zarsky). The commissioner consistently discussed the need for broad immunity protection for educators, so they have the necessary support to enable them to efficiently discharge their responsibilities. For example, in *Zarsky v. Southside ISD* (2019), if the district's decision to terminate Zarsky was upheld, "Texas teachers would have to carefully think whether they should intervene to prevent or stop fights" (p. 15). Zarsky's actions were justified since he used force to enforce compliance with instructional commands. The students had violated school rules and ignored Zarsky's repeated directives to leave the area. Zarsky was "conscientiously doing his job. He intervened to prevent a fight. He did not lose control of himself or the situation. No one was hurt and no danger of likely serious injury occurred" (p. 15). The commissioner contended "this is precisely the type of activity protected by the Texas Education Code §22.0512" (p. 15).

Prior Incidents. The commissioner analyzed five decisions where an educator was disciplined previously for their behavior (i.e., Black, Olabisi, Peters, Villarreal, Williams). In *Black v. Hart ISD* (2012), parents complained that Black used force against students in 2011 and in 2012. Even though the use of force by Black was similar in the two incidents, the commissioner found numerous other grounds to uphold the nonrenewal of Black's contract. In *Olabisi v. Aldine Independent School District* (2014), Olabisi grabbed a student's arm and pulled her out of line. Prior to this incident, the district counseled Olabisi in writing on two separate

occasions to model appropriate behavior. Olabisi used a method of redirecting a student to be quiet by putting her fingers on the student's mouth and cheek. The other incident involved Olabisi pushing a student out of the classroom. According to the commissioner, the two prior incidents were not the same as the incident that led to the termination of her contract (*Olabisi v. Aldine ISD*, 2014). However, both of the prior incidents were about improper contact with students, so the commissioner upheld the district's decision to terminate Olabisi's contract.

Peters v. Dallas ISD (2012) involved an assistant principal who used too much force against S.M., a student who was two months pregnant. Before the incident with S.M., Peters confronted teachers in an unprofessional manner on two separate occasions. The commissioner noted the response from the district on the two incidents was sparse but could not be ignored. The commissioner held the three incidents collectively constituted good cause to terminate Peters' contract.

In *Villarreal v. Edinburg Consolidated ISD* (2016), Villarreal saw a second-grade male student throw a female student onto the ground as he was about to hit her. Villarreal grabbed the student and restrained him by bending his wrist and applying pressure to his wrists. The district relied on a prior reprimand against Villarreal for the improper use of physical force when determining whether to terminate his contract. According to the commissioner, even if someone believed Villarreal used improper force previously, this did not prove that Villarreal used improper force in the current situation. The commissioner determined there was little similarity between the recent use of force and the previous use of force. Therefore, the commissioner overturned the decision to terminate Villarreal.

In *Williams v. Spring ISD* (2017), Williams intervened when she walked up on two students, a male and a female, fighting on the floor of a classroom. In 2011, Williams received a

memorandum following an inappropriate verbal interaction with the student. The memorandum reminded Williams that students and teachers are expected to be respectful of each other. The district argued the incident in 2011 and the current incident in 2017 show a pattern of the failure to comply with the standards of professional conduct. According to the commissioner, “two dissimilar incidents in six years is hardly evidence of a pattern” (p. 15). Because Williams was entitled to immunity for the 2017 incident, nothing directly or indirectly related to it could provide good cause to support the decision not to renew her contract. The commissioner emphasized that when an educator is entitled to immunity, the district cannot take disciplinary action against them for a violation of policy, rules, or directives.

Misrepresentations by Educators. Two commissioner decisions dealt with an allegation by the school district that an educator made misrepresentations to an administrator (i.e., Zarsky, Black). These two decisions had different outcomes. In *Zarsky v. Southside ISD* (2019), Zarsky’s use of force to push three eighth-grade students down the hall to prevent a fight was protected under Texas Education Code §22.0512. The commissioner determined Zarsky did not misrepresent the facts of the incident. “Facts are not misrepresented when a legitimate interpretation of the situation is conveyed to a supervisor. While various legitimate interpretations can be given of the incident, [Zarsky] did not misrepresent the facts” (p. 15). Because there was not a misrepresentation of the facts, Zarsky won the appeal to the commissioner.

In *Black v. Hart Independent School District* (2012), the district maintained Black lied to the superintendent and the principal when she denied having a meeting in 2011 with the previous principal regarding a complaint that she grabbed the arm of a student. Black signed documentation confirming the reason she had the meeting with her principal in 2011. Black

received another parent complaint in 2012 for forcing first grade students' heads down in PE class. Even after the superintendent and the principal told Black there was a document from the 2011 meeting with Black's signature, Black still refused to acknowledge that meeting. The record contained substantial evidence that Black was not truthful to the superintendent and the principal regarding the prior incident based on the documentation in 2011. The commissioner determined the specificity of the 2012 superintendent's report created at or near the time of the meeting with Black, along with the document that Black signed for the 2011 incident, was enough evidence for the board to determine Black was not truthful in the interview with the superintendent and principal. The commissioner noted "lying to a supervisor is a serious matter" (p. 12).

Admissions and Apologies. Two decisions involved an educator admitting their use of force might have been excessive as soon as it occurred (i.e., Johnson and Lake). These educators apologized for the extent of force used. In *Johnson v. Kenedy ISD* (2008), Johnson placed a student in a chokehold and stomped on the student's feet with his boot heels. After the incident, Johnson called the student's mother and admitted to stomping on the student's foot "really, really hard" (p. 2). Johnson also admitted he did not mean to stomp on the student's foot, but he was having a bad week. The commissioner determined Johnson's admission to the mother demonstrated he did not reasonably believe the force was necessary to maintain discipline of the student. Johnson was not entitled to immunity under the Texas Education Code §22.0512.

The commissioner came to the same conclusion in *Lake v. Dripping Springs ISD* (2006). Lake was a teacher's aide under an at-will contract at a high school in Dripping Springs ISD. Lake contended that she used force against an 18 year-old DAEP male student after she had a disagreement with the student over the schoolwork he was supposed to complete. After the

incident, Lake admitted to an assistant principal that she lost it on the student and shoved him. Lake also sought out the student the next day and apologized to him, which violated a directive from the superintendent not to have contact with the student. The commissioner found that Lake's admission that she "lost it" during the incident, along with the subsequent apology to the student, did not support the argument that Lake believed the force was necessary (p. 4). Lake would not have needed to apologize if the use of force against the student was necessary.

Synopsis of Research Question 2. The decisions consistently determined by the commissioner when determining whether an educator had statutory immunity included: (a) extensive protections for educators, (b) practices and opinions of bystanders are irrelevant, (c) public policy justifications, (d) prior incidents, (e) misrepresentations, and (f) admissions and apologies. There were three themes that emerged from the decisions made by the commissioner when an educator sought protection under the Texas Education Code §22.0512. The themes that emerged were that the educator's viewpoint was the only one considered for statutory immunity protection, justification for protecting educators, and repeat violations by an educator led to decisions in favor of districts.

The first theme, which appears in cases most often, was the fact that the commissioner only considered the viewpoint of the educator when determining whether that educator had statutory immunity protection. It was irrelevant that an administrator or fellow educator would have handled a situation differently. Eyewitness testimony rarely affected the decision to provide statutory immunity to an educator for the use of force. When an educator apologized, the commissioner deemed the educator could not have been using reasonable force. The commissioner emphasized the educators were acting in an emotional state when they apologized

for their use of force. The commissioner deemed an apology as proof that the educator did not believe the use of force was reasonable.

Educator dishonesty about their actions affected the commissioner's determination as to whether an educator had statutory immunity protection. In *Zarsky v. Southside ISD* (2019), the educator's recollection of facts of the incident differed from the administration. The administration claimed Zarsky lied to the administration. However, the commissioner deemed the educator was representing the facts from his viewpoint. On the other hand, in *Black v. Hart ISD* (2012), the educator denied she signed a previous write up in the district. Since the write up had the educator's signature, the commissioner deemed the denial to be a lie and noted that lying to a supervisor is a serious offense.

The second theme that emerged in the decisions by the commissioner was the justification for the protection of educators. More than one decision addressed the public policy reasons for protecting teachers as they educate students. The commissioner emphasized the need to provide educators the necessary support as they teach students. Teachers are similar to parents in that they have the right to prescribe reasonable rules for the "government of children under their charge, and to enforce, by moderate restraint or correction, obedience to such rules" (*Williams v. Spring ISD*, 2017, p. 8). In *Zarsky v. Southside ISD* (2019), the most recent commissioner decision in the sample, the commissioner noted that Zarsky's actions represent the need for statutory immunity. In particular, the commissioner noted that Zarsky was conscientiously doing his job when he intervened to prevent a fight. If Zarsky's termination were to stand, as noted by the commissioner, "Texas teachers would have to carefully think whether they should intervene to prevent or stop fights" (p. 15).

The third theme was that prior incidents did not always lead to a determination that the educator's use of force was unreasonable. The commissioner considered the length of time and the similarities between the prior incident and the current incident. A prior incident did not automatically lead to the commissioner ruling in favor of the district. The commissioner determined that six years between incidents did not indicate a pattern of misbehavior. Each use of force has to be analyzed from the educator's own viewpoint before looking for patterns and similarities. Moreover, a verbal reprimand from a prior incident did not carry the same weight as a signed written documentation of a prior event.

Research Question 3

The third research question was what were the trends in the decisions made by the Texas Commissioner of Education where educators invoked statutory immunity protections? The analysis focused on answering what the trends were in cases decided by the commissioner where educators invoked statutory immunity protections. Nine categories emerged involving the trends that emerged as the commissioner determined whether an educator had statutory immunity, including: (a) type of cases appealed to commissioner, (b) the year the commissioner decided cases relating to statutory immunity, (c) the role of the educator, (d) the gender of the educator, (e) the gender of the student, (f) the types of contracts and the action by the district to end that contractual relationship with the educator, (g) video footage of the incident, (h) the commissioner of education that made the decision, (i) the administrative law judge assigned to the case, and (j) prior incidents by the educator.

Types of Cases Appealed to the Commissioner. All 19 commissioner decisions involved an educator's protection under the Texas Education Code §22.0512. Not one decision included an analysis of the Texas Education Code §22.0511. The Texas Education Code

§22.0511 provides educator's immunity from liability. The Texas Education Code §22.0512 provides educator immunity from disciplinary proceedings for professional employees, including the use of justified physical force against a student. The commissioner had to determine in these cases whether the educator had statutory immunity for the use of force against a student.

Year of Commissioner Decisions. The first case heard by the commissioner involving an educator invoking statutory immunity protection was *Lake v. Dripping Springs ISD* (2006). In 2008, 2009, 2010, 2014, 2017, and 2018, the commissioner heard one case per year involving the Texas Education Code §22.0512. In 2006, 2013, 2016, and 2019, the commissioner heard two cases per year regarding statutory immunity. The commissioner heard three cases in 2012 relating to the Texas Education Code §22.0512, which was the most in one year.

Role of the Educators. Classroom teachers made up the majority of educators who appealed cases to the Texas Commissioner of Education. Out of 13 appeals by classroom teachers, the teachers prevailed in six (46%) cases, the school district prevailed in six (46%) cases, and one (8%) appeal was remanded back to the district. Out of three appeals by teacher's aides, the school district prevailed in all three cases (100%). The school district prevailed in the one (100%) appeal by a principal. The school district prevailed in the one (100%) appeal by an assistant principal. In the one (100%) appeal by a librarian, the librarian prevailed.

Grade Level. Six of the 19 commissioner decisions occurred at the elementary level. In elementary level appeals, school districts prevailed in four (67%) cases and educators prevailed in two (33%) cases. Nine of the 19 commissioner decisions occurred at the secondary level. School districts prevailed in four (44%) cases at the secondary level, and educators prevailed in five (56%) cases at the secondary level. The grade levels were unknown in four of the 19 appeals

to the commissioner. When the grade level was unknown, the school district prevailed in four (75%) cases and one (25%) case was remanded back to the district.

Gender of Educator. Nine females appealed a decision to the Texas Commissioner of Education. In cases where a female educator appealed, the commissioner ruled in favor of the district in six (67%) decisions and in favor of the female educator in three (33%) decisions. Ten males appealed decisions to the Texas Commissioner. In these cases, the district prevailed against a male educator in five (50%) decisions, the male educator prevailed in four (40%) decisions, and one (10%) appeal by a male was remanded back to the district.

Gender of Student. Three out of the 19 appeals to the commissioner involved female students. The educator prevailed in one (33%) case and the district prevailed in two (67%) of cases where the student was a female. Ten out of 19 appeals involved male students. In cases involving male students, educators prevailed in five (50%) decisions and school districts prevailed in five (50%) decisions. In five of the appeals, the gender of the student was unknown. One appeal involved both male and female students.

Type of Contract and Action by District. The majority of the educators who appealed cases to the commissioner had term contracts. In this study, the commissioner heard appeals relating to a school board's decision relating to 14 term contracts, two probationary contracts, three at-will contracts, and one grievance. Out of the 14 appeals where an educator had a term contract, the commissioner ruled in favor of school districts in seven (50%) of the appeals and in favor of educators in seven (50%) of the appeals. Two educators with probationary contracts appealed decisions, and the commissioner ruled in favor of the school district in one (50%) decision and remanded one (50%) decision back to the district. Three educators appealed

decisions relating to their at-will contracts, and the school districts prevailed in all three (100%) of these decisions.

Of the 19 decisions appealed to the commissioner, one case was an appeal of a grievance and the commissioner ruled in favor of the district. In four of the decisions appealed to the commissioner, the school district voted to not renew an educator's contract. Out of the nonrenewal cases, three (75%) school districts prevailed and one (25%) educator prevailed. In fourteen out of the 19 appeals to the commissioner, the school districts had terminated the educators' contracts. Out of the 14 terminations, the commissioner ruled in favor of the school district in seven (50%) cases, in favor of the educator in six (43%) cases, and one (7%) was remanded back to the district.

Video Footage. Five of the 19 commissioner appeals had video footage relating to the incident in question. In cases where the incident was captured on video, two (40%) school districts prevailed on appeal (i.e., Doggett, Gracia) and three (60%) educators prevailed (i.e., Earthly, Williams, Zarsky). Gracia was the only educator with an at-will contract where video footage captured the use of force. Doggett, Earthly, Williams, and Zarsky had term contracts. When there was video footage showing an educator's use of force, the districts terminated contracts in four out of the five cases (i.e., Doggett, Earthly, Gracia, Williams). The district did not renew Zarsky's contract.

Texas Commissioner of Education. Since the passage of the Texas Education Code §22.0512, the following commissioners of education and their designees have heard appeals where an educator invoked statutory immunity: Robert Scott heard seven appeals; Michael Williams heard five appeals; Mike Morath has heard five appeals; Todd Webster, the Chief Deputy Commissioner of Education heard one appeal; and William Wilson, Designee of the

commissioner, heard one appeal. In the appeals heard by Robert Scott, the school district prevailed in three (43%) cases, educators prevailed in three (43%) cases, and one (14%) case was remanded back to the district for more information. All five (100%) of the appeals heard by Michael Williams were in favor of the district. In the appeals heard by Mike Morath, two (40%) districts prevailed and three (60%) educators prevailed. The one appeal heard by Todd Webster was in favor of the school district, and the one appeal heard by William Wilson was in favor of the educator.

Administrative Law Judge Assigned to the Case. Four individuals have served as an administrative law judge where an educator invoked statutory immunity protections. Christopher Maska served as the administrative law judge in 13 of 19 appeals. Maska ruled in favor of the district in seven (54%) of the appeals, in favor of the educators in five (38%) of the appeals and remanded one (8%) appeal back to the district for more information. Joan Howard Allen served as the administrative law judge in two appeals, and both appeals were in favor of the district. Merle Dover was the administrative law judge in three appeals. Dover ruled in favor of the district in two (67%) appeals and in favor of the educator in one (33%) appeal. Sandy Lowe served as the administrative law judge in one appeal, and she ruled in favor of the educator.

Prior Incidents by the Educator. In cases where there was a previous reprimand or other disciplinary action against the educator, the school district prevailed in 71% of those appeals (i.e., Black, Allen, Peters, Gracia, Olabisi). The educator prevailed in 29% of the appeals when there was a prior incident against the educators (i.e., Villarreal, Williams). In both cases where an educator prevailed, the prior incidents occurred four and six years before the current incident. Even more, the current incident was not of a similar nature to the current incident.

Therefore, the commissioner determined the time between incidents and the lack of similarity did not show a pattern of misbehavior, so he ruled in favor of Villarreal and Williams.

Synopsis of Research Question 3. The trends consistent in the commissioner decisions when determining whether an educator had statutory immunity, included: (a) type of cases appealed to commissioner, (b) the year the commissioner decided cases relating to statutory immunity, (c) the role of the educator, (d) the gender of the educator, (e) the gender of the student, (f) the types of contracts and the action by the district to end that contractual relationship with the educator, (g) video footage of the incident, (h) the commissioner of education that made the decision, (i) the administrative law judge assigned to the case, and (j) prior incidents by the educator. There were five themes that emerged from the trends in the commissioner decisions, including appeals only involved use of force cases, educators with tenure were the only ones who successfully appealed decisions for their use of force, gender was only a significant factor in the outcome when there was a male teacher and a female student, educators at the elementary level are at higher risk of losing an appeal to the commissioner than educators at the secondary level, and video footage capturing an employee using force led to outcomes favoring both the district and educators in appeals to the commissioner.

The most prevalent theme that emerged was that all appeals to the commissioner involved an educator's use of force and the Texas Education Code §22.0512. The second theme that emerged was that tenure matters. The type of contract an educator had significantly impacted the outcome of decisions by the commissioner. Educators with term contracts prevailed in 50% of their cases. Educators with an at-will contract or a probationary contract did not win one appeal. The third theme that emerged from the data indicated that the gender was only a

significant factor in the outcome when there was a male teacher and a female student. The commissioner did not rule in favor of males over females.

The fourth theme that emerged was educators at the elementary level are at higher risk of losing an appeal to the commissioner than educators at the secondary level. The commissioner ruled for the district in cases involving use of force against an elementary student more than a high school student based on the size of the student and the educator. The fifth theme that emerged was that when video footage captured an employee using force, the outcomes favored both sides in appeals to the commissioner. Video footage gave districts a false sense of success to terminate an educator. Even though video footage of the educator using force had little impact on the outcome of an appeal, districts with video footage of an incident were more inclined to move forward with terminating a contract even though the burden of proof is lower not to renew an educator's contract.

Research Question 4

The fourth research question was what were the legal principles in cases decided by the Texas Commissioner of Education where educators invoked statutory immunity protections? The legal principles deemed from the commissioner decisions will be discussed in Chapter 6 after the presentation of data from the Texas appellate court cases in Chapter 5. This research question will be an analysis of the legal principles from the commissioner opinions and the Texas appellate court cases.

Summary

This chapter presented a wide variety of legal issues, decisions, trends, and themes derived from the Texas Commissioner of Education decisions where educators invoked statutory immunity protections under the Texas Education Code §22.0512. The next chapter will present

the data derived from the Texas appellate court cases where an educator invoked statutory immunity protections.

Chapter 5: Texas Appellate Court Cases

The purpose of this study was to describe how the Texas Commissioner of Education and Texas state appellate courts have attempted to apply the statutory immunity protections provided to educators. This chapter will present the data derived from the Texas appellate court cases where educators invoked statutory immunity protections under the Texas Education Code §22.0511 and §22.0512. First, the presentation of the data appears. Second, the results of the data analysis of the Texas appellate court cases are presented. Third, as the research questions pertain to the appellate court's decisions, they are answered later in the chapter. Finally, the chapter ends with a summary.

Presentation of the Data

Since the adoption of the Texas Education Code §22.0511 and §22.0512 on September 1, 2003, there have been 15 Texas appellate courts that ruled on an educator's statutory immunity protection. Data were extracted and condensed from the 15 Texas appellate court cases using Statsky and Wernet's (1995) case briefing method. The outline of the commissioner decisions analysis includes the following: citation, key facts, issues, holdings, reasoning, and final disposition. The decisions are presented chronologically. Each case is presented in the order of the following components: (a) key facts, (b) issues, (c) holding, (d) reasoning, and (e) disposition. Conclusions derived from the case analysis are presented in Chapter 6.

Case of Lane v. Young (2007)

Superintendent Brad Lane appealed the trial court's denial of his motion for summary judgment based on immunity. Three plaintiffs sued Lane for defamation and malicious prosecution, and a fourth plaintiff sued Lane for civil conspiracy and tortious interference with her employment. The underlying lawsuit related to a \$50,000 gift for a memorial scholarship in

honor of the school board president's son. The question arose regarding a trust agreement for the funds to be transferred to the board president's personal account to hold the money in trust for the scholarship. There is no written record from the board to transfer the funds from the district to a personal account. The meeting minutes reflect the board accepting the gift in December 2001. Recordings of this meeting, along with meetings for a six-month period, were missing.

At the time the board accepted the gift, Lane was not the superintendent. Lane read about the gift in the minutes from the December board meeting. In May of 2002, there was a deposit of a \$50,000 scholarship check into the district's account and that money was transferred to a private account at the same bank. An audit for the school district flagged the transfer since the "transfer was made without the appropriate written documentation" (p. 5). The district business manager, also one of the plaintiffs in the lawsuit, approved the transfer based on the previous superintendent's approval. A board member asked Lane to investigate after four board members said they never approved a transfer of funds to a private account. Lane performed the investigation and determined there was no board approval to transfer the funds to a private account. Lane discovered the funds originated from a family foundation, so Lane questioned the deposit and subsequent transfer. Legal counsel advised Lane that once the district received the funds, the board would have to vote to approve the transfer.

The board instructed Lane to contact law enforcement, but the record indicated that Lane did not contact the sheriff individually. The district attorney requested information about the transfer of funds, but Lane refused to comply without a subpoena. Lane suggested to the board that the business manager should be terminated or allowed to resign, and the business manager opted to resign. The bank subsequently terminated the employee who made the transfer after the employee responded to questions from Lane during his investigation into the incident. The issue

was whether the investigation done by Lane falls under his duties as a superintendent, thereby entitled him to immunity under the Texas Education Code §22.0511.

The court of appeals held Lane's decision to conduct an investigation, along with the investigation itself, were within the scope of Lane's duties as superintendent and involved the exercise of judgement and discretion. The court's reasoning was that Lane performed the investigation as part of his duties of the daily administration of the district, and Lane's actions were in furtherance of the district's business. As the administrative manager of the district, the board delegated authority to Lane to oversee the day-to-day duties of the district. Overseeing fund transfers and the bank's handling of the funds are part of the superintendent's duties. The investigation and questioning of employees and bank employees involved the exercise of discretionary acts. The law does not define how to investigate and how to do an investigation, so Lane could exercise discretion and judgment relating to the investigation. Lane used personal deliberation, decisions, and judgment during the investigation, all of which are discretionary acts. Even if the board did not authorize the investigation, Lane could have instigated the investigation as part of his statutory duties as the superintendent. For the final disposition, the appellate court reversed the trial court's denial of Lane's summary judgment. The court rendered a judgment in favor of Lane and the plaintiffs took nothing under the judgment.

Case of Ward v. Theret (2009)

In January 2006, McKinney ISD hired Michaela Ward as a high school social studies teacher and staff cheerleading sponsor in McKinney ISD under a probationary contract. Linda Theret was the principal at the high school. The lawsuit involves decisions by Ward to punish several members of the varsity cheerleading squad. The cheerleaders were known for their disrespect of authority, including teachers and other school officials, and their failure to follow

school rules. Violations by the cheerleaders included underage drinking at off-campus parties, violating of dress code, and showing up to school dances under the influence of alcohol. One particular incident involved photographs of some of the cheerleaders in their cheer uniforms in sexually suggestive poses. Ward and the other school officials disagreed on how to discipline the cheerleaders. The disagreement led to the school district not renewing Ward's contract. In September 2007, Ward sued the district, Theret, and other school officials for breach of contract, wrongful termination, and defamation. Theret answered the lawsuit in October, and she filed a plea to the jurisdiction arguing the lawsuit was barred under the Texas Education Code §22.0511. Theret also requested attorneys' fees under §22.0517.

On November 8, 2007, Ward amended her lawsuit to include an interference with contract claim and a denial of due process. On November 16, 2007, Ward filed a nonsuit of all of her claims against all the defendants. On November 20, 2007, the court entered an order to nonsuit all of Ward's claims. Prior to Ward filing the nonsuit, the trial court entered a memorandum decision on November 12, 2007, wherein the court awarded Theret \$14,071 in attorney's fees and costs based on Theret's statutory immunity. On December 10, 2007, the trial court held a hearing regarding the award of attorney's fees to Theret, and the court entered a final order on the lawsuit on December 11, 2007. The order upheld the attorney's fees for Ward and dismissed the claims by Ward with prejudice.

The first issue was whether the trial court erred in granting Theret's plea to the jurisdiction. The second issue was whether the trial court erred in awarding Theret attorney's fees. The appellate court upheld determined Theret's plea to the jurisdiction was moot since Ward dismissed her claims against all defendants. The only live issue pending before the appellate court was the award of Theret's attorney's fees. The appellate court's reasoning was

that a plaintiff has the right to nonsuit claims for relief any time during litigation. A nonsuit extinguishes any claims the moment a party files the motion or the party makes an oral argument to nonsuit the claims in court. In this instance, Ward's nonsuit of claims against the defendants, including Theret, was effective as of November 16, 2007. Courts can only determine cases where an actual controversy exists. Once Ward filed her notice of nonsuit with the court, Theret's plea to the jurisdiction was moot. The appellate court overruled Ward's first issue.

Ward argued Theret was not entitled to attorney's fees under the Texas Education Code §22.0517. Ward claimed that her nonsuit of all claims extinguished Theret's right to recover attorney's fees. The appellate court looked at the plain and common meaning of the Texas Education Code §22.0517 to determine if Theret should receive attorney's fees. Ward claimed Theret never proved she had statutory immunity so she should not receive attorneys' fees. The appellate court disagreed noting Theret did have statutory immunity based on the plain language of the Texas Education Code §22.0511. Particularly, the Texas legislature intended for professional school employees to have protection from personal liability and the ability to recover expenses if they were required to defend a lawsuit under the Texas Education Code §22.0511 and §22.0512. Even though Ward nonsuited the claims against Theret, the appellate court awarded Theret attorney's fees under the Texas Education Code §22.0517 since she had to defend the liability lawsuit before it was nonsuited by Ward. For the final disposition, the appellate court affirmed the trials court's decision to award attorney's fees to Theret. Ward's appeal regarding the plea to the jurisdiction was moot based on Ward's notice of nonsuit of all claims against the defendants, including Theret.

Case of Robinson v Brannon (2010)

Adrian Robinson was a teacher at Alief ISD during the 2004 – 2005 school year. Robinson had a relationship with Lynette Freeman, who was also an Alief employee. Robinson claimed Freeman and Dwight Brannon, a human resources employee, began a campaign to tarnish Robinson's reputation. Particularly, Robinson alleged the defendants circulated an email to other Alief employees about Robinson's sexual preferences saying that Robinson had the AIDS virus. Robinson maintained Freeman made harassing phone calls and sent threatening texts to him. Robinson claimed Brannon conducted an improper personnel investigation and placed Robinson on leave for receiving preferential treatment from his supervisor. The campaign by Freeman and Brannon allegedly caused Robinson a stress-related medical disorder, whereby he had to resign. Brannon and Freeman also resigned from the district.

Robinson filed a lawsuit in February 2007 against Alief ISD and the superintendent for a denial of equal rights, freedom of speech, and due process violations under the Texas Constitution. Robinson also sued Brannon and Freeman for tort claims including civil conspiracy, intentional infliction of emotional distress, tortious interference with prospective and existing business relationships, invasion of privacy and public disclosure of private facts. All of the defendants filed motions with the court to dismiss the case. The school district and the superintendent filed pleas to the jurisdiction, and the trial court granted these motions. Brannon and Freeman filed motions for summary judgment asserting statutory immunity protection. The trial court also granted the summary judgment motions for Brannon and Freeman. Freeman and Brannon filed a motion for attorney's fees under the Texas Education Code §22.0517, but the trial court denied the attorneys' fees. Robinson appealed the trial court's summary judgment in favor of Brannon and Freeman, and Brannon and Freeman filed cross-appeals for their attorneys'

fees. The first issue was whether the trial court erred in granting Brannon and Freeman's summary judgment. The second issue was whether the trial court erred in denying Brannon and Freeman attorneys' fees under the Texas Education Code §22.0517. The appellate court held the summary judgment in favor of Brannon and Freeman was proper, and Brannon could recover attorney's fees for his claims related to statutory immunity. However, the appellate court denied Freeman's request for attorney's fees.

Robinson argued Brannon and Freeman were acting outside the scope of their employment and that they acted with bad faith by conducting the personnel investigation, placing Robinson on administrative leave, and sending harassing emails and making harassing phone calls. The appellate court disagreed. The reasoning given by the court was that the educators were acting within the scope of their employment and were entitled to statutory immunity protection. According to the court, even though Brannon and Freeman did not have prior approval to complete the investigation, this does not mean their actions were outside the scope of their employment. The summary judgment evidence established that Brannon's investigation and placing Robinson on leave were within the scope of his employment as director of human resources and risk management. Brannon had performed investigations on several employee issues and participated in pretermination hearings as the director of human resources. Thus, Brannon acted within the scope of his employment when he investigated and suspended Robinson. Even more, the appellate court determined that the acts were within Brannon's duties so even if he did not follow Alief ISD's policy, this would not impact immunity protections under the Education Code. Statutory immunity applied for Brannon's actions.

The appellate court agreed with Robinson that the two defendants did not have statutory immunity from the acts of electronic harassment, but the court ruled that Brannon had immunity

for his investigation and suspension of Robinson. The appellate court determined Robinson failed to produce any evidence that Brannon or Robinson were the source of the emails and phone calls. Robinson had no evidence that Brannon or Robinson participated or made the harassing phone calls, sent text messages, or sent the emails. Instead, Robinson merely speculated that they were involved, but speculation is not enough to overcome the summary judgment in favor of Brannon and Freeman.

The court noted that Brannon and Freeman failed to affirmatively plead for attorney's fees under the Texas Education Code §22.0517. However, the Texas Education Code §22.0517 clearly orders the payment of attorney fees if the professional employee is found to be immune from liability. Brannon was entitled to attorney's fees for the costs to prove his immunity related to the individual acts of investigating and suspending Robinson. Brannon was not entitled to attorney's fees relating to his defenses of exhaustion of administrative remedies and the no evidence of acts of electronic harassment. Freeman was not entitled to any attorneys' fees since she was found not to have statutory immunity for the alleged acts of harassment. For the final disposition, the appellate court upheld the trial court's summary judgment in favor of Brannon and Freeman. The appellate court granted Brannon attorney's fees for statutory immunity and denied attorney's fees for Freeman.

Case of Gonzalez v. Grimm (2011, 2015)

Ione Grimm was the principal at a middle school in El Paso ISD, and Gary Gonzalez's child was a student at Grimm's school. Gonzalez called Grimm and recited Grimm's social security number to her. Gonzalez asked Grimm how it made her feel knowing he had her social security number. Gonzalez further asked Grimm if she knew what he could do with her social security number. Grimm's supervisor advised her to report this incident to the police.

Subsequently, the district attorney filed criminal charges against Gonzalez for harassment using a telephone that likely harassed, annoyed, alarmed, abused, tormented, or embarrassed Grimm. Even though a *capias* was issued to arrest Gonzalez, the prosecutor subsequently dismissed the charges.

Gonzalez filed a lawsuit against Grimm for malicious prosecution. Grimm responded to the lawsuit by asserting the affirmative defenses including (1) statutory immunity under the Texas Education Code §22.0511, (2) common law official immunity since the actions were in the course and scope of her duties as a principal, and (3) immunity under the Paul D. Coverdell Teacher Protection Act of 2001. Grimm also requested attorney's fees under the Texas Education Code §22.0517. The trial court granted Grimm's summary judgment motion, but the court did not grant Grimm attorney's fees. Gonzalez appealed the trial court judgment for summary judgment in favor of Grimm, and Grimm filed a cross-appeal for the trial court's denial of her attorney's fees.

The appellate court first heard the case in 2011. The first issue was whether Grimm failed to prove each element of statutory immunity. The second issue was whether Gonzalez raised a fact issue that would require a reversal of the trial court's summary judgment. The third issue was whether the trial court should have granted Grimm's attorney's fees. The appellate court held Grimm's summary judgment evidence was deficient and the trial court erroneously granted the summary judgment in Grimm's favor. Grimm failed to provide evidence that the reporting of Gonzalez's call to the police was incidental to or within the scope of the principal's duties. The case was reversed and remanded back to the trial court without a ruling on Grimm's attorney's fees. On remand, Grimm won at the trial court level and the court entered a judgment in favor of Grimm. Gonzalez again appealed the judgment for Grimm in 2015, four years after the first

appeal. The appellate court ultimately ruled in favor of the principal by upholding the judgment in favor of Grimm.

The reasoning of the court in 2011 was that Grimm's affidavit was inadmissible evidence given it was not notarized or signed, so the appellate court did not consider Grimm's affidavit. The one remaining affidavit from Grimm's supervisor was insufficient evidence to prove that Grimm's report of Gonzalez's call to the police was incident to or within the scope of Grimm's duties as the principal. Grimm argued that principals have a duty to protect the students, staff, and other personnel at school, but the appellate court was not convinced reporting an incident involving Grimm's personal social security number and harassment was in furtherance of school business. The court maintained that the alleged threat was to Grimm personally and not against the safety and security of all students, staff and other personnel at the school. Therefore, Grimm was not entitled to a summary judgment for statutory immunity protections under the Texas Education Code §22.0511.

Because the evidence was not sufficient to uphold the trial court's summary judgment in favor of Grimm, the appellate court did not rule on the attorney's fees for Grimm. The appellate court reversed and remanded the case back to the trial court in 2011. After case was remanded back to the trial court, the trial court eventually ruled in favor of Grimm and Gonzalez appealed in 2015. The appellate court ruled in favor of Grimm in 2015 and determined there was no evidence of malicious prosecution. For the final disposition, the appellate court affirmed the trial court ruling in favor of the principal in 2015.

Case of Moore v. Miller (2012)

Joystene Moore was a teacher's aide in a special education classroom in Somerville ISD. Michelle Miller, as next friend of Stacie Woodberry, filed suit against Moore for negligence,

assault, and negligent discipline. Stacie suffered from Rubenstein-Taybi Syndrome, which caused facial abnormalities, broad thumbs, gait issues, short stature, and mental disability. In addition, Stacie was nonverbal due to her mental deficiencies. On December 18, 2017, Moore allegedly removed Stacie from her chair when Stacie refused to do schoolwork. According to Moore, students could not sit at the table if they were not working on schoolwork. Moore claims she told Stacie she could stay at the table and do schoolwork. Moore claimed that if Stacie was not working she needed to stand up or sit on the floor. The initial lawsuit by Miller alleged that Stacie chose to sit on the floor. In Miller's third amended petition, she claimed Moore aggressively dislodged Stacie from her chair as part of a disciplinary measure. Miller also stated that Moore threw Stacie hard onto the ground. Miller claimed that Moore failed to provide Stacie with medical attention.

After the incident, Stacie arrived home agitated and crying, so Miller took her to the emergency room. Stacie was diagnosed with a dislocated knee, torn ligaments and tendons, damage to the tibia, and deep tissue bruising which all resulted from great force. Miller also claimed after the incident that Stacie became uncharacteristically combative, uncommunicative, and distraught. Stacie would wet herself and could not sleep through the night. Moore filed a plea to the jurisdiction alleging Miller failed to exhaust administrative remedies and claiming statutory immunity under the Texas Education Code §22.0511. The trial court denied Moore's plea to the jurisdiction, and Moore filed an interlocutory appeal to the appellate court.

The issue was whether the trial court erred in denying Moore's plea to the jurisdiction. The court held the trial court correctly denied the plea to the jurisdiction. The appellate court's reasoning was the Individuals with Disabilities Education Act (IDEA) provides exceptions to the board policy requiring a parent to exhaust administrative remedies before bringing a lawsuit. The

court of appeals determined Stacie's disability falls within the scope of IDEA. Thus, if Miller pleaded sufficient facts and provided enough evidence than exhaustion of administrative remedies was not required. Moore also claimed she was entitled to statutory immunity under the Texas Education Code §22.0511, but the trial court determined Miller's pleadings indicated Moore could have used excessive force against Stacie. The trial court did not err in denying Moore's plea to the jurisdiction.

Chief Justice Tom Gray wrote a concurring and dissenting opinion in this case. In particular, he stated Miller adequately alleged Moore's actions were disciplinary in nature, and the trial court did not err in its denial of Moore's plea to the jurisdiction. However, Chief Justice Gray determined Moore was immune from ordinary negligence and simple assault as a professional employee so Miller's claims for negligence and assault should be dismissed. The other justices on the court of appeals did not agree with Gray, so the ordinary negligence and simple assault claims were remanded back to the trial court against Moore. For the final disposition, the appellate court affirmed the trial court's denial of the plea to the jurisdiction.

Case of Madden v. State Board of Education (2014)

Don Madden was a high school principal in Cumby ISD. Cumby ISD permits corporal punishment of students in some situations. District policy allows corporal punishment of spanking and paddling that is reasonable, moderate, and not administered maliciously or for revenge. The policy also requires the educator to consider the student's size, age, and condition, as well as the instrument that will be used, the amount of force to be used, and the part of the body that will be struck before administering corporal punishment. Madden gave J.S., a seventh-grade student, two swats on his buttocks for two separate disciplinary infractions. J.S. was 12 years-old at the time of the incident. He was wearing gym shorts when Madden administered the

swats. J.S. had an extensive history of improper behavior at school, and he had received swats on several occasions in the past. Madden had given swats to J.S. for prior instances of misbehavior.

Madden was going to send J.S. to in-school suspension followed by alternative school, but J.S.'s father requested Madden administer corporal punishment instead. The two swats administered by Madden caused large red marks and bruising on J.S.'s buttocks. After school, J.S. complained of the pain, so his mother took him to the emergency room where the staff noted he had moderate to severe early bruising that was pink, red, and purple. The emergency room staff notified Child Protective Services of the incident. J.S. was instructed by the emergency room staff to take over-the-counter pain medication and soak in cold water. J.S.'s mother reported the incident to the police, and the police took photos of the bruises. Four days later, J.S. followed up with the family doctor who noted yellow and brown bruising that were healing. J.S.'s mother took pictures of the progression of the bruises around the same time as the visit to the family doctor.

The State Board for Educator Certification filed the disciplinary action alleging Madden violated the Texas Educators' Code of Ethics and requested a one-year suspension of his certification. The matter proceeded to a contested case hearing and many witnesses were called before the administrative law judge at the State Office of Administrative Hearings. The family doctor testified Madden used excessive force because of the bruising. Another expert who works with Child Protective Services testified that, according to the American Academy of Pediatrics, nonaccidental traumas leading to skin abnormality for more than 24 hours are considered abusive injuries. This expert also opined reasonable physical discipline should not cause the extent of bruising that lasts several days, and injuries of this severity are consistent with child physical abuse.

Another witness, a district attorney, described the criminal standards related to this type of incident. The district attorney opined the corporal punishment against J.S. was administered reasonably and that Madden should not be prosecuted. An administrative assistant in Cumby ISD who witnessed Madden swat J.S. testified that J.S. did not want the swats, but his father called and consented. The administrative assistant said she has witnessed other corporal punishment and Madden did not seem angry or appear to hit J.S. harder than other students. She said she would have reported if Madden gave swats inappropriately or if the force was excessive.

Madden testified the district's policy allows for corporal punishment by paddling if it is reasonable and moderate. He had administered corporal punishment at other times, and this was the first complaint he had received. J.S. did not want swats, but his father requested corporal punishment over in-school suspension and placement in an alternative school. Madden confirmed that J.S. was angry when he left. J.S. did not cry after the swats, and the video footage did not indicate he was crying as he left the school office. J.S. participated in athletics later in the afternoon, and he did not complain of injuries to staff. Madden testified he believed the force used in administering the punishment was necessary, and he denied using any force that was different from the force he had used at other times in administering swats. J.S. testified at the hearing that he had numerous discipline problems including detentions, in-school suspensions, alternative school placements, and swats. J.S. noted Madden had given swats to him on three or four occasions, but none of these instances caused bruising. J.S. indicated he felt a lot of pain after the first swat and asked for a minute to rest, and Madden gave him a minute before administering the second swat. J.S. said the second swat hurt like the first one. He described the pain as feeling like his body was on fire and it was painful to sit afterwards.

After the contested case hearing, the administrative law judge issued a proposal for decision based on the doctor's opinions that J.S. sustained moderate to severe bruising, the bruising was a physically abusive injury resulting from the use of excessive force, and the bruising remained for one week. The administrative law judge determined Madden violated the Texas Educators' Code of Ethics by knowingly treating a student in a manner that adversely affected the student's learning, physical health, mental health, or safety and by physically mistreating a student. Despite the finding of the violation of the educator code of ethics, the administrative law judge determined Madden could not be sanctioned because he reasonably believed the force use was necessary to maintain discipline under the Texas Education Code §22.0512.

In SBEC's final order, it amended one of the administrative law judge's findings of fact and two of his conclusions of law. SBEC rejected the administrative law judge's determination that Madden could not be sanctioned because he reasonably believed the force was necessary. SBEC issued an unpublished censure that does not appear on an educator's certification and does not affect the validity of the educator's certificate. Madden appealed SBEC's final order that issued the unpublished censure. The trial court affirmed SBEC's decision, so Madden appealed to the appellate court. Madden contended SBEC's final order did not provide adequate explanation for their amendments to one finding of fact and two conclusions of law. Particularly, SBEC could not have said Madden's use of force was not justified after an administrative law judge, who was the finder of fact, determined the use of force was justified. SBEC noted the administrative law judge improperly applied SBEC's policies that require regulating educator conduct in a manner that protects the safety and welfare of students and to discipline educators who violate the Educators' Code of Ethics.

The issue was whether the district court improperly upheld SBEC's unpublished censure of Madden's educator certificate. The appellate court held the trial court did not err in determining SBEC's final order provided specific reasons and a legal basis for SBEC's amendment of the administrative law judge's findings of fact. The appellate court also noted the trial court properly upheld SBEC's determinations that use of force against the student was not justified and not exempt from discipline under the Texas Education Code §22.0512. The reasoning of the appellate court was the Texas Government Code allows an agency to change findings of fact and conclusions of law and a proposal for decision if the administrative law judge improperly applied or interpreted applicable law, agency rules, written policies, or prior administrative decisions.

If an agency determines a change is required, the agency must provide a written statement of the specific reasons and legal basis for a change. The appellate court determined SBEC adequately explained the reasons for its changes in the final order. The reasons given for SBEC's amendments were: (a) Madden's belief that he used the necessary degree of force was not reasonable under the circumstances, (b) Madden can be disciplined since he violated the Educators' Code of Ethics and because his use of force exceeded the scope justified under the Penal Code, and (c) Madden's use of force was not justified under the Penal Code since the force used was not reasonable and of the degree necessary under the circumstances.

The appellate court determined SBEC's final order provided specific reasons and a legal basis for mending two of the conclusions of law. Even though the administrative law judge determined Madden was exempt from disciplinary proceedings and that the use of force was justified, SBEC determined this conclusion was not consistent with SBEC's policy to safeguard the safety and welfare of students and to discipline educators who violate the Educators' Code of

Ethics. Madden argued the district court erred in sustaining SBEC's sanctions because he had statutory immunity under the Texas Education Code §22.0512. SBEC argued it properly exercised its authority in issuing the unpublished censure based on its findings that Madden's belief that he used a necessary degree of force was not reasonable under the circumstances and such use of force was not justified. Additionally, SBEC argued they are responsible for enforcing the Texas Educators' Code of Ethics in a manner that protects the safety and welfare of Texas schoolchildren. Thus, SBEC determined Madden's use of force was not justified under the Penal Code so he was not exempt from discipline under the Education Code.

The appellate court noted Madden was not wholly exempt from the unpublished censure, which was the least serious allowed from SBEC just because he claimed he held a reasonable belief that the force was necessary and the force applied was not deadly. State law required SBEC to oversee public school educators' standards of conduct in order to protect Texas students. The appellate court had no authority to determine whether an unpublished censure was an absurd result under the Texas Education Code §22.0512. The appellate court, as in previous decisions, noted an educator must use professional judgment in determining the appropriate force that should be used in the administration of corporal punishment. If the educator cannot make this determination, the educator can choose to administer another form of discipline. For the final disposition, the appellate court affirmed the trial court's judgment upholding the unpublished censure against Madden.

Case of La Joya Independent School District v. Villareal (2014)

La Joya ISD entered into a contract with American Administrative Group (AAG) in 2005 wherein AAG would serve as the district's third-party administrator of the self-funded health plan for district employees. Exhibit A to the contract listed the broker of record for commissions

as Bob Trevino Insurance. In 2012, the district amended the contract after AAG underwent a name change to become HealthSmart Benefit Solutions (HBS), and Exhibit A listed Ruth Villareal as the broker of record. In 2012, Joel Garcia, Juan José Garza, Jesus Avendano, and Oscar Salinas ran for the La Joya ISD school board. Bob Trevino allegedly was the main financial supporter of these individuals when running for the board. Villareal alleged that Bob Trevino gave \$15,000 to some of the candidates running for the board in exchange for them replacing Villareal with Trevino as the insurance broker in the HBS contract.

In January 2013, the school board voted to replace Ruth Villareal as the broker of record with Bob Trevino under the HBS contract. After the board took action to replace Ruth Villareal, she filed suit against the district for breach of contract. Villareal also sued the individual board members for tortious interference with a contract and civil conspiracy. The district and the individual defendants filed pleas to the jurisdiction pleading governmental and statutory immunity protections. The trial court denied both the district's and the individual defendants' pleas to the jurisdiction. The defendants appealed the trial court's decision. The issue was whether the trial court erred in failing to grant the plea to the jurisdiction filed by the district for breach of contract. The second issue was whether the trial court erred in failing to grant the pleas to the jurisdiction filed by the individual defendants for the tort claims. The appellate court held the district waived its immunity protections for the breach of contract claim under the Texas Local Government Code §271.152, so immunity protections under the Texas Education Code §22.0511 is not applicable.

The reasoning of the appellate court was that Villareal was a third-party beneficiary under the contract as a third-party beneficiary so she was entitled to sue under the contract. Even though Villareal was not one of the two named parties under the contract between the district and

HBS. Even though Villareal was not a party to the contract, she was an intended third-party beneficiary since the 2012 amendment to the contract added her name specifically as the broker of record. The district argued that third-party beneficiaries are not allowed to waive immunity for breach of contract claims. The appellate court disagreed since the Texas Local Government Code §271.152 that waives immunity for a breach of contract can pertain to third-party beneficiaries. Villareal was a recipient of commissions specifically named under the contract, so her breach of contract claims against the district can proceed at the trial court level. The trial court was correct in denying the district's plea to the jurisdiction.

The individual defendants were professional employees under the Texas Education Code §22.0511. Villareal argued the board members' actions were not incident to or within the scope of their employment as school board members when they replaced her with Bob Trevino as the broker of record. The individual defendant stated that the change from Villareal to Trevino as a broker of record was simply a contract decision. Villareal argued the only reason these school board members replaced her as the broker of record with Trevino was due to campaign contributions to them by Trevino. Villareal alleged these campaign contributions were bribes, which were outside the scope of protection for the individual board members. The court of appeals, taking Villareal's allegations as true for the purposes of the plea to the jurisdiction issues, determined statutory immunity under the Texas Education Code §22.0511 did not preclude the trial court from hearing the tort claims against the individual defendants. The appellate court agreed with the trial court's decision to deny the individual defendants' plea to the jurisdiction under statutory immunity. For the final disposition, the appellate court upheld the trial court's denial of the pleas to the jurisdiction filed by the district and the individual defendants.

Case of Dallas Independent School District et al. v. Peters (2015)

Adrian Peters was an assistant principal under a term contract in Dallas ISD for the 2010–2011 and 2011–2012 school years. S.M. was a 15 year-old freshman at the high school. In December 2011, S.M. requested to leave her classroom several times to go to the restroom. When the teacher denied her request, S.M. walked out of the class and said she had to go to the nurse's office. Her teacher instructed her not to leave, but she left anyway. She was two months pregnant. Peters stopped S.M. in the hallway and detained her by grabbing her wrist. S.M. told Peters she needed to go to the nurse, and Peters did not ask her why. Instead, he ordered her to go back to the classroom and apologized to her teacher. When S.M. disregarded the order to return to class, Peters used a loud, aggressive, and threatening tone with S.M. Peters, grabbed S.M. by her arm, and began pulling on her clothes while she struggled to get away. S.M. used profanity as she yelled at Peters and told him to leave her alone. Peters then forcefully pinned S.M.'s arm behind her back and pushed her across the hallway that led to her head and body hitting the lockers. Peters' use of restraint was extremely aggressive, and it caused S.M.'s arm to be pushed up her back. Witnesses described the position of her arm as being awkward and looking like a chicken wing. S.M. notified Peters that she was pregnant and repeatedly requested that he let her go, but he continued to restrain her. S.M. told Peters he was going to break her arm.

A counselor in the school intervened in the struggle because he was concerned for S.M.'s safety after he saw Peters chase S.M. to the other side of the hall and pinned her face against the lockers while pressing her arm behind her. The counselor was able to calm S.M. down, but Peters still refused to let S.M. go. S.M. continued to tell Peters she was pregnant, and he responded that he did not care. Peters threatened S.M. that he was going to throw her to the floor.

Three other teachers observed the incident and were concerned for the safety of the student. Specifically, they were concerned Peters would break her arm, and they were concerned with her unborn child. The witnesses all testified that Peters' restraint was inappropriate, unreasonable, and unnecessary.

An independent hearing examiner, after hearing the evidence related to the incident between Peters and S.M., made a written recommendation to the school district to terminate Peters' contract. The independent hearing examiner, after using the Hogenson factors, concluded Peters was physically and verbally abusive of S.M. The school board convened to consider the recommendation of the independent hearing examiner. Peters and his attorney's requested the hearing occur in closed session. While in closed session, a board member incorrectly made a motion to adopt the independent hearing examiner's recommendation to terminate Peters' contract. A second board member seconded the motion, and the board voted unanimously to terminate the contract. Procedurally, the vote should have occurred in an open session. However, the vote occurred in front of Peters and his attorney and an objection was never made regarding the vote occurring in closed session.

Peters appealed the decision of the school board to the commissioner and argued the board violated the Open Meetings Act by failing to vote on the termination of his contract in open session. The commissioner ruled he could not consider Peters' open meetings complaint because he failed to object to the closed session vote at the time it occurred in front of the school board. The commissioner adopted the findings of fact and conclusions of law of the hearing examiner in full. The commissioner noted Peters' use of force was not justified in restraining S.M. The commissioner ruled there was substantial evidence supporting the good cause to terminate Peters' contract. Peters appealed the decision of the commissioner to the district court. He

also filed a declaratory judgment separate and apart from the appeal of the commissioner's decision asking for a ruling that the school board's vote was void given it was made in closed session. The court found substantial evidence supporting the termination of Peters. However, the trial court held the commissioner's decision was void because of the violation of the open meetings act by the school board. Dallas ISD and the commissioner appealed the trial court's decision to be appellate court.

The issue was whether the trial court erred in determining the termination vote was void due to the open meetings violation by the school board. The second issue was whether the trial court erred in granting conditional attorney's fees and costs to Peters. The third issue was whether the trial court correctly determined there was substantial evidence to support Peters' termination. The holding of the appellate court was that the school board's vote in closed session did not lead to an erroneous decision by the commissioner. The trial court erred in ruling the school board's vote was void since it was made in closed session. The trial court erred in awarding Peters' attorney's fees and costs under the Open Meetings Act.

The reasoning of the appellate court was Peter did not use reasonable force in the particular incident. Using the Hogenson factors, the appellate court noted S.M. was 15 years-old, 4'11" and 160 pounds. She was also two months pregnant. Peters, on the other hand, was 5'11" and weighed approximately 189 pounds. The evidence was the incident lasted approximately 10 minutes in the hallway. It caused classes to be disrupted and several other students, parents, and faculty witnessed the accident. S.W. never threatened or acted with intent to harm others, herself or school property. The appellate court determined reasonable minds could have reached the same conclusion as the commissioner when considering the use of force by Peters. Therefore, substantial evidence exists to support the termination of Peter's contract.

Regarding the argument that the vote to terminate Peters' contract was void, the appellate court noted that the standard of review derives from the education code. A district court cannot reverse a Commissioner decision based on a procedural error by a school board unless the court determines the error likely led to an erroneous decision by the commissioner. Thus, the question for the appellate court is whether a closed session vote likely led to an erroneous decision by the school board. The appellate court determined it was not an erroneous decision because Peters and his attorney were present and observed the vote in closed session. No objection was made at that time. Further, there is no evidence that the vote would have differed if it occurred in open session. The award of attorney's fees and costs to Peters by the trial court was reversed because Peters did not have standing to pursue an open meetings claim. The appellate court could reverse the award of attorney's fees in this case.

The appellate court determined the vote in closed session did not cause the school board to make an erroneous decision and there was substantial evidence supporting the termination. Therefore, the appellate court ruled in favor of Dallas ISD in the commissioner. For the final disposition, the appellate court reversed and rendered the trial court's decision in favor of Dallas ISD and the Texas Commissioner of Education. Dallas ISD could terminate Peters.

Case of Rivera v. Port Arthur Independent School District (2016)

In 2004, Trinidad Rivera filed an Equal Opportunity Employment Commission complaint and a subsequent lawsuit asserting claims of discrimination and retaliation by his employer, Port Arthur ISD. At the time, Rivera was a teacher at Memorial High School. Rivera and Port Arthur ISD settled the lawsuit in October 2006. In 2009, Rivera was the head football coach at Edison Middle School in Port Arthur ISD. An incident occurred during a football game in September 2006 wherein Rivera grabbed a player by the collar and told him to get off the field to avoid a

penalty. When Rivera grabbed the student by his shoulder pads, it scratched the student on the neck. The student later complained to this mother that Rivera choked him, and the mother reported the incident to the principal of the school, Barbara Polk. Polk placed Rivera on paid leave during the investigation, which was standard practice for the district. The investigation included witness statements, including eyewitness testimony from an assistant coach, Johnny Brown.

After the investigation, the board voted to terminate Rivera's term contract and Rivera appealed. On appeal, the board determined Rivera should be reinstated, and Rivera returned to the district as a physical education teacher at an alternative school. Rivera no longer received the coaching stipend of approximately \$6,700. Rivera was never selected for open coaching positions in the district, so he sued the district, the superintendent, the principal, and the assistant coach for retaliation under the Texas Commission of Human Rights Act (THRCA). Rivera's lawsuit asserted the defendants retaliated against him because of his previous lawsuit. Rivera also alleged that Cooper, the assistant coach, encouraged the student's mother to file a complaint against Rivera because Cooper wanted to be the head football coach. Rivera claimed he heard months before the incident that Cooper would be the new head coach. Rivera's theory was that Cooper and the principal conspired to remove Rivera as head coach. The jury ruled in favor of Rivera's retaliation claims and ordered payment of \$21,100 in lost earnings and \$21,100 in compensatory earnings. The district filed a judgment notwithstanding the verdict (JNOV) motion because Rivera did not have evidence establishing a causal link between the first lawsuit in 2006 and the current lawsuit. The court noted there was no evidence that the adverse employment action was in retaliation for the prior lawsuit in 2006. The court granted the JNOV motion and dismissed the claims. Rivera appealed the JNOV by the trial court.

The first issue was whether the trial court erred in granting the district's judgment notwithstanding the verdict (JNOV). The second issue was whether the trial court erred in granting the plea to the jurisdictions filed by the superintendent, the principal, and the assistant coach. The third issue was whether the court erred in failing to award attorneys' fees under the Texas Education Code §22.0511. The appellate court held that Rivera did not have any evidence that the district retaliated against him in the adverse employment action in 2009 after he filed the 2006 lawsuit. The appellate court overruled Rivera's claim that the trial court erred in dismissing the claims against the individual defendants because Rivera failed to plead a cause of action under the TCRCA against the individuals. The appellate court denied the individual defendants were not entitled to statutory immunity under the Texas Education Code §22.0511, so they did not receive attorneys' fees under Texas Education Code §22.0517.

The reasoning of the appellate court was that Rivera could not prove a link between the adverse employment actions in 2006 and 2009. The court noted many areas where Rivera lacked evidence. Particularly, Cooper did not have decision-making authority relating to Rivera's job so Cooper could not suspend or terminate Rivera. Rivera had no evidence that Cooper encouraged the student's mother to file a complaint against Rivera in order for Cooper to take Rivera's head coaching job. The evidence indicated that the superintendent and the principal lacked the knowledge of Rivera's previous lawsuit in 2006 so there could not be retaliation on their part. There was no evidence that the district failed to follow its policies and procedures relating to the adverse employment action, and there was no evidence that the district was inconsistent in the treatment of Rivera.

The appellate court agreed the trial court improperly dismissed the claims against the individual defendants under their plea to the jurisdiction. However, Rivera failed to plead a cause

of action under the TCHRA against the individual defendants. Rivera did not argue this issue on appeal, so the court cannot rule on this issue since it is not properly before the appellate court. The appellate court determined the individual defendants were not entitled to payment of attorney's fees under §22.0511 and §22.0517 since the individual defendants were dismissed by the trial court under the election of remedies under the Texas Tort Claims Act, not under statutory immunity.

The individual defendants did not raise the statutory immunity defense until the appeal. The appellate court held the trial court correctly granted the plea to the jurisdiction under the election of remedies from the Texas Civil and Practice Remedies Code §101.106, and the Texas Civil Practice and Remedies Code does not provide attorneys' fees. The trial court was correct in granting the plea to the jurisdiction under this statute since the individual defendants did not plead protection under Texas Education Code §22.0511. For the final disposition, the court upheld the trial court's JNOV motion, and the individual defendants were not entitled to attorneys' fees under Texas Education Code §22.0517.

Case of McPherson v. Wylie (2016)

Matt Wylie, the father of H.W., filed suit against two Blum ISD employees after H.W. sustained injuries during the summer athletic program held in Blum ISD's gym. McPherson was the supervisor and director of the program, which was not part of the district's curriculum. Wylie met with McPherson to discuss a prior injury of H.W. During the meeting, Wylie gave McPherson a doctor's notes indicating H.W. should not participate in jump drills. Langston was a Blum ISD employee who assisted with the summer athletic program. During workouts, Langston required H.W. to do jump training drills. He ordered H.W. to jump faster, and H.W. severely injured her leg during the drill. Wylie sued McPherson and Langston for negligence.

McPherson and Langston filed a plea to the jurisdiction claiming the trial court lacked the jurisdiction to hear the case since they had immunity under the Texas Education Code §22.0511. The trial court denied McPherson and Langston's pleas to the jurisdiction stating the statutory immunity provides immunity from liability, not immunity from suit. The court gave no other explanation regarding the denial of the pleas, and the court did not rule on Wylie's objection to the plea to the jurisdiction.

McPherson and Langston appealed the denial of the pleas to the jurisdiction arguing they have statutory immunity and official immunity. McPherson and Langston also claimed they are entitled to attorney fees under §22.0517. Wylie's lawsuit did not specify whether the lawsuit was against McPherson and Langston individually or in their official capacity. The lawsuit claimed the employees were not acting in their official capacities since the injury occurred over the summer, and the injuries were the result of the individuals' negligence. The first issue was whether the trial court erred in denying the pleas to the jurisdiction because McPherson and Langston have statutory immunity under §22.0511. The second issue was whether the trial court erred in denying that McPherson and Langston enjoyed immunity if they are sued in their official capacity as Blum ISD employees. The appellate court held the trial court properly overruled McPherson and Langston's pleas to the jurisdiction and request for attorneys' fees. The lawsuit was against McPherson and Langston individually, not in their official capacity as employees of Blum ISD.

The reasoning of the appellate court was that employees of a school district can be sued individually or in their official capacity or both. Wylie sued McPherson and Langston individually, and they are entitled to statutory immunity as individuals. Statutory immunity provides immunity from liability. Hence, the trial court could hear the lawsuit. Immunity from

liability will prevent a plaintiff from recovering damages, but the court can still hear the lawsuit. For the final disposition, the appellate court upheld the trial court's denial of the pleas to the jurisdiction.

Case of Edinburg Consolidated Independent School District v. Smith (2016)

Mariley ReBollar was a senior in Edinburg Consolidated ISD in 2015-2016. During the school year, Reynaldo Garza, ReBollar's counselor, advised her that a dual enrollment computer science class would be weighted for class ranking purposes. The computer science class would add an additional 10 points to ReBollar's grade point average. The computer science class was offered for the first time in 2014–2015, and students received an additional 10 points weight for the class. Daniel ReBollar taught the computer science class at the high school. The class was primarily taken by freshmen and sophomores, and ReBollar took the class as a senior and received a 100. Upon completion of the class, school administration realized the computer class did not constitute a core class and could not be used for ranking purposes.

On January 19, 2016, the principal of the high school, Sylvia Ledesma, sent a letter to all the seventy to eighty students who had enrolled in the class informing them it would not be counted towards class rankings for the 2016 graduating class. Without the weighted points, ReBollar would lose her place as the valedictorian of her class. On February 5, 2016, ReBollar and her parents filed a grievance alleging the counselor told ReBollar before she registered and attended the class that it would be a weighted class for class ranking purposes. ReBollar relied on these statements when deciding whether to take the class. The grievance asked the school district to include the 10 point weight to the computer science class in the calculating the 2016 class rank.

On March 4, 2016, Ladesma wrote a decision denying the grievance. The denial stated that the district's board policy only allows English, languages other than English, mathematics, science, and social studies to be part of the calculation of the class rank semester grades. ReBollar and her parents filed a Level II appeal. On April 7, 2016, Carlos Guzman, the High School Area Director of Edinburg Consolidated ISD, wrote a response denying the grievance for several reasons. ReBollar and her parents again appealed the decision. The school board heard the Level III appeal on April 22, 2016, and the board denied the appeal. On April 18, 2016, the ReBollars filed a lawsuit against Edinburg Consolidated ISD and Ledesma. The trial court also granted a Temporary Restraining Order in favor of the ReBollars through May 2. On April 27th, Lydia Elizono Mount, individually and as next friend of Michael Edward Reed, filed a motion to intervene in the lawsuit and also filed a plea to the jurisdiction. Mount asserted the additional 10 point weight would affect her son's class rank since he would not be the valedictorian.

On May 2, 2016, the ReBollars filed their third amended lawsuit, along with an application for a Temporary Restraining Order and a request for a temporary injunction against the school district, Ledesma, and Guzman. The ReBollars sued Ledesma and Guzman for fraudulent misrepresentation, negligent misrepresentation, general negligence, and intentional infliction of emotional distress. The third amended petition included ultra vires claims against Ledesma and Guzman. The ReBollars claimed the failure to include the ten weighted points damaged ReBollar because she would no longer be valedictorian. The valedictorian at every school in Texas receives free tuition for the first year at a public university of their choosing. Without the additional ten points, Michael Reed would be the class valedictorian and awarded the first year of free tuition at a Texas public university. The school district and its employees filed their answers, pleas to the jurisdiction, and other arguments against the lawsuit, and they

asserted statutory immunity protection. Ledesma asserted protection under the Texas Education Code §22.0511, claiming she was not liable for any incidents occurring within the scope of her position and that involved exercise of judgment on her part.

On May 2, 2016, Mount filed an amended intervention and plea to the jurisdiction asking for the trial court to dissolve the Temporary Restraining Order. The trial court held hearings on April 25, April 27, and May 3, 2016, on the pleas to the jurisdiction and the temporary injunction. ReBollar, ReBollar's parents, Mount, Ledesma, Guzman, and the superintendent provided testimony about the rationale for the ten point weights. On May 5, 2016, the trial court denied the pleas to jurisdiction and issued a temporary injunction at 10:05 a.m. prohibiting the district and the district's employees from excluding the computer science course from the class rank calculations. The temporary injunction prohibited the calculation of class rank without the ten point weights for the computer science class until there was a trial on the merits set for October 17, 2016. The trial court required a \$500 bond in order for the temporary injunction to become effective.

At approximately noon on May 5, 2016, the district and the individual employees perfected their appeal and announced they would move forward with the class rankings because they were entitled to an automatic stay of the temporary injunction by perfecting the appeal. On May 6, 2016, the ReBollars filed a petition for writ of injunction with the appellate court. The district proceeded with ranking the students on May 6th and informed Michael Reed he would be the class valedictorian. Ledesma instructed him to prepare his valedictorian speech for graduation. Administration also notified the other top ten rank students. Shortly after the announcement of the valedictorian and top ten students, the ReBollars posted the \$500 bond required for the temporary injunction. That same afternoon, the appellate court issued a

temporary order reinstating the temporary injunction. Any interested party was required to file a response to the petition for writ of injunction. The school district and its individual employees requested the appellate court dissolve the emergency order and dismiss or deny the petition for writ of injunction. Mount filed a response contending the appellate court lacked jurisdiction to issue injunctive relief and requested the petition be moot since the final grades were calculated on May 6, 2016. Mount argued the injunctive relief was moot since the valedictorian and top ten students were already named. The ReBollars argued Ledesma and Guzman acted outside the scope of their employment, exceeded their authority, and failed to comply with district policy regarding class ranking.

The issue was whether Edinburg Consolidated ISD, Ledesma, and Guzman possess governmental or official immunity for their determination that a computer science class does not count as a weighted class for the purposes of class ranking. The appellate court held Edinburg Consolidated ISD, Ledesma, and Guzman have immunity from suit. The trial court's order granting the temporary injunction was reversed, so the temporary injunction was dissolved. The trial court improperly denied the pleas to the jurisdiction filed by all the defendants so there is no jurisdiction to sue the defendants. The petition for writ of injunction is moot.

The reasoning of the appellate court was that under the Texas Civil Practices and Remedies Code §101.106, the election of remedies immediately and forever bars any suit or recovery by the plaintiff against individual employees of a governmental unit regarding the same subject matter. Therefore, the claims against Ledesma and Guzman in their individual capacities were barred. The ReBollars brought an ultra vires claim against Ledesma and Guzman claiming they were not protected by governmental immunity because they acted ultra vires. Ultra vires means the individuals acted without legal authority in carrying out their duties. The ReBollar's

ultra vires claims are Ledesma and Guzman followed board policy in their decision to exclude computer science as a class for purposes of class rank and acted without legal authority. The appellate court denied the ultra vires claim stating the ReBollar's mere assertion of legal conclusions and labeling of Ledesma and Guzman's actions as ultra vires does not prove they were acting beyond their authority.

The court further noted that the district and the individual employees admitted throughout the proceedings they made a mistake when they advised ReBollar and other students that the computer science class would be weighted for class ranking. However, nothing in the pleadings or the record indicate that Ledesma and Guzman made a determination in a way the law would not allow. The appellate court also noted the school board upheld the decision not to include the additional weight for the class in the Level III grievance decision. The ultra vires exception does not overcome the immunity for the individual defendants in the case. For the final disposition, the appellate court vacated the temporary order and dissolved the temporary injunction. The appellate court reversed the trial court's denial of the pleas to the jurisdiction and dismissed the ReBollars claims.

Case of Will v. Bambenek (2017)

S.N.W. was a sophomore student at one of the high schools in Plano ISD. Eric and Michelle Will, the parents of S.N.W., sued Bambenek, S.N.W.'s high school chemistry teacher. S.N.W. burned her hand during a chemistry experiment after she spilled hydraulic acid. The Will Family sued Cathy Bambenek for negligence. The Will Family alleged Bambenek was negligent because she failed to (a) provide protective equipment, including gloves, when handling hydraulic acid, (b) follow the guidelines for safe chemical use in the classroom, and (c) follow the required chemical burn protocol. Bambenek filed a motion for summary judgment claiming

she was immune from liability under the Texas Education Code §22.0511. The trial court granted the summary judgment, and the Will Family appealed.

The issue was whether the trial court erred in granting the summary judgment for Bambenek. The appellate court held Bambenek was entitled to statutory immunity protection under the Texas Education Code §22.0511. The Will Family argued Bambenek failed to follow the nondiscretionary school safety policies for lab experiments. The appellate court disagreed. The reasoning of the appellate court was that Bambenek demonstrated the decisions regarding classroom safety policies involved her judgment and discretion. She also provided evidence that safety policies were not mandatory rules in the district and that the experiment was not mandated by the school district. Instead, Bambenek and her department chair found the experiment in a scientific newsletter used as a resource for teachers to make learning informative and innovative.

Bambenek demonstrated she conducted the experiment personally, and she determined it was appropriate for her students to perform. The students were required to take and receive an A on a written safety quiz before the experiment, and the parents signed a science class safety agreement. Before the students took the safety quiz, Bambenek reviewed in detail the safety rules and did a demonstration of the experiment to show them how to conduct it. The demonstration included ways to clean up spills and how to wash acid off their hands and clothing if needed. Bambenek also noted that she had the authority to remove students from any experiment where safety rules were violated.

The court of appeals determined Bambenek was in charge of creating and implementing safety protocols for the classroom. She had discretion when safety goggles should be worn during experiments, and she assisted in the preparation of the safety quiz about other laboratory safety rules. The appellate court determined Bambenek deliberated about the manner safety

protocols were used in her classroom, and the safety protocol decisions involved her own judgment.

The Will Family argued these safety policies were nondiscretionary based on the passage of the Texas Safety Standards that indicated what a student must do if they receive a chemical burn. The appellate court disagreed with the plaintiffs because there was no evidence that the high school or the school district used the Texas Safety Standards as mandatory standards that teachers were required to follow. The appellate court also indicated the Wills failed to raise a fact issue regarding Bambenek's failure to follow mandatory safety policies. Finally, the appellate court determined Bambenek's affidavit testimony for the summary judgment was sufficient evidence. Bambenek's actions were discretionary so she was entitled to immunity under the Texas Education Code §22.0511. For the final disposition, the appellate court affirmed the trial court's judgment.

Case of Compton v. Port Arthur Independent School District (2017)

Joann Compton began working as a Speech Language Pathologist for Port Arthur ISD in August 2009. She provided speech therapy to students at three different campuses. During her first year in the district, she complained to her supervisors, Emily King and Sharon Boutte, because student reports she printed from one school were routed to a hallway printer at another school. Compton's concern was the printing of student reports in a hallway violated federal student privacy rights. Compton made the complaint and worked with the district technology department to have the printer set up correctly. Compton alleged after this incident, King created a hostile work environment for Compton. Compton maintained that after she filed the complaint about the printer, King created an exhausting and rigorous schedule of meetings for Compton and initiated an investigation against Compton based on false accusations of Medicaid fraud.

The fraud investigation centered on Compton's documentation of services delivered to students. There were discrepancies in the dates and times contained in Compton's reports. The discrepancies prohibited the district from filing claims for reimbursement from the federal government. In October 2010, the district began an investigation into the document inconsistencies, and Compton was placed on administrative leave during the investigation. After the investigation, Compton requested a reassignment as a content mastery teacher, and the district granted her request. After the district reassigned Compton to a teaching position, she filed suit seeking a declaratory judgment that her constitutional right of free speech was violated, and she requested an injunction against future violations, as well as cost and attorney's fees. Compton named Port Arthur ISD, Superintendent Johnny E. Brown, and King, as defendants in the lawsuit. Compton's alleged violation of free speech was based on her complaint that printing student reports from one school resulted in documents being printed in a hallway at another school.

The defendants filed pleas to the jurisdiction or in the alternative, motions to dismiss the claims against them. The school district sought dismissal based on governmental immunity. The district also alleged Compton's claims were moot since Compton requested a transfer to a teaching position. The district argued Compton failed to allege sufficient facts in her pleading to demonstrate constitutional claims against the district or its employees. King and Brown sought dismissal of the claims against them based on statutory immunity under the Texas Education Code §22.0511 and on the election of remedies doctrine under the Texas Civil Practice and Remedies Code §101.106. The trial court granted the defendants' pleas to the jurisdiction. The trial court determined Compton failed to state a viable claim under the free expression clause that protects public employees from engaging in free speech of public concern. Compton filed a

motion for a new trial, so the individual defendants subsequently filed an application for attorneys' fees under the Texas Education Code §22.0511. The trial court denied Compton's motion for a new trial and awarded the individual defendants their attorney's fees. Compton appealed the trial court's decisions.

The first issue was whether the trial court erred in dismissing the claims against the district. The second issue was whether the trial court erred in dismissing the claims against Brown and King, individually. The third issue was whether the trial court erred in awarding attorney's fees to Brown and King. The appellate court held that Compton failed to plead a facially valid constitutional claim against the district, so Compton was not entitled to declaratory relief. The trial court properly dismissed the claims against Brown and King for lack of jurisdiction. The reasoning of the appellate court was that Compton's allegation of violation of free speech involved the printing of student reports in the wrong location. The true content of her speech was a complaint that the district printers were installed in a way that disclosed private information by Compton when she printed Medicaid reports where another employee could not retrieve the report. These matters directly concerned Compton's official duties of creating and submitting reports. The only people Compton spoke to were her supervisors and technology personnel. Therefore, her pleadings do not allege facts that she engaged in any constitutionally protected speech regarding matters of public concern.

Compton asserted she was entitled to injunctive relief on the basis that she wanted to become a speech language pathologist again but would potentially face harassment from King if Compton was a speech therapist for the district. The appellate court determined Compton did not plead for reinstatement of her old position as a speech therapist in the trial court, and she did not allege she had a contractual right to return to that position. Therefore, Compton failed to plead a

justiciable claim since a request to return as a speech therapist is merely hypothetical by Compton and not before the court. Compton alleged she was entitled to attorney's fees under the Uniform Declaratory Judgment Act even if the court did not grant her declaratory relief. The appellate court determined the declaratory judgment act does not waive immunity, and Compton should not be awarded attorney's fees in this situation. Compton did not cite any authority that she was entitled to attorney's fees under the Declaratory Judgment Act.

Compton argued King and Brown were not entitled to immunity because they were acting *ultra vires*, which meant they were acting outside the scope of their legitimate duties. Compton pled she only sought declaratory and injunctive relief on constitutional grounds, rather than damages for tort. The appellate court determined that it could not make a determination on these issues because of the election of remedies doctrine. The trial court awarded attorney's fees to Brown and King upon granting of their pleas to the jurisdiction. The trial court record indicated Compton argued against attorney's fees for the individual defendants because she was not suing for a tort claim. Compton also argued the trial court did not dismiss the individual defendants' claims under the Texas Education Code §22.0511.

The appellate court noted that nothing in the Texas Education Code §22.0517 has a requirement that dismissal must be based on §22.0511 in order to recover attorney's fees. Instead, reading §22.0511 and §22.0517 together, these two provisions only require a finding or determination that a defendant is immune from liability as a professional employee in order to be entitled to receive attorney's fees. Compton attempted to argue that King should not receive attorney's fees because she was motivated by spite and not acting in the furtherance of the interests of the district. However, the trial court found the actions of the individual defendants were within the scope of their duties. Thus, the trial court did not err in awarding King and

Brown their attorney's fees under the Texas Education Code §22.0511 and §22.0517. For the final disposition, the appellate court affirmed the trial court's decision to dismiss all claims against Port Arthur ISD, Brown, and King. The appellate court affirmed the trial court's award of attorney's fees to Brown and King.

Case of Van Deelen v. Spring Independent School District (2018)

Michael Van Deelen was hired as a teacher at a high school in Spring ISD in January 2016. On January 29, 2016, Van Deelen began making reports about unlawful drug use and drug dealings on campus by students and a teacher, Bobby Scott. Van Deelen reported the drug issues to the principal, Pamela Farinas, and various school officials, the district police department, and several governmental entities. Van Deelen claimed Farinas failed to refer the reports to the district's police department and the municipal police department as required under the Texas Education Code. Farinas investigated Van Deelen's claims and found the claims had no merit as to the students or Mr. Scott. Van Deelen claimed that once he made the reports to the principal, several employees at the school began taking adverse personnel actions against him, individually and in concert with each other.

Van Deelen argued he received reprimands and warnings that he would be terminated if he continued to make false allegations concerning the drug use and drug dealing on campus. Farinas recommended removal of Van Deelen from her campus. On February 16, 2018, Van Deelen filed a grievance claiming retaliation against him for whistleblowing. Two days after filing the grievance, human resources informed Van Deelen he was suspended and prohibited from returning to the campus. Van Deelen filed a second grievance on February 19 for whistleblowing. After 60 days, Van Deelen terminated his grievances and filed a lawsuit against

the district and Farinas under the Texas Whistleblowing Act for the violations listed in his February 16 and 19 grievances.

Van Deelen amended his pleadings numerous times, and he ended up suing the district for violating the Texas Whistleblowing Act and the Texas Constitution. He also alleged several district employees took a refrigerator and chair from him while he was on leave. Finally, he sued Farinas and the assistant principal, Corey LeDay, for defamation. Farinas and LeDay filed a motion to dismiss and a plea to the jurisdiction pursuant to the Texas Tort Claims Act and for statutory immunity under the Texas Education Code §22.0511. The trial court granted the motions to dismiss filed by Farinas and LeDay and motions for summary judgment filed by the district for the Texas Whistleblower Act claims and the constitutional takings claim. The final judgment of the court was signed on May 30, 2017. Van Deelen appealed the trial court decisions. The first issue was whether the trial court erred in granting the pleas to the jurisdiction filed by Farinas and LeDay. The second issue was whether the trial court erred in granting the district's motion for summary judgment. The appellate court upheld the trial court's granting of the pleas to the jurisdiction filed by Farinas and LeDay.

The reasoning of the appellate court was that Van Deelen did not negate any of the arguments made by Farinas and LeDay that led to the granting of their pleas to the jurisdiction. The school district argued Van Deelen's whistleblower claims were moot based on Van Deelen's termination. The court of appeals noted that none of the claims by Van Deelen for whistleblowing violations occurred after February 2016. The court noted it is unclear why the termination of Van Deelen makes the whistleblower claims moot. Therefore, the appellate court determined Van Deelen's whistleblowing claims for the suspension were not moot. The district also alleged the trial court lacked jurisdiction over the whistleblowing claims because of the

vagueness of Van Deelen's grievances and pleadings. The appellate court disagreed since the grievances said Van Deelen was retaliated against for complaining about suspected drug dealing taking place in the school parking lot. The appellate court determined Van Deelen's grievances that drug dealing was occurring in the school parking lot were broad enough to put the district on notice that he was referring to the many complaints about Scott providing drugs to students in the parking lot, as well as the alleged failure of Farinas to notify law enforcement about Van Deelen's allegations. Since the trial court record did not contain the grievance procedures, the appellate court could not rule on the district's claim that the trial court lacked jurisdiction based on Van Deelen's failure to follow the proper grievance procedures.

Under the Texas Whistleblowing Act, an employee must prove a report was made to the appropriate law enforcement authority or that the employee had a good faith belief that there was a violation of law. The district argued Van Deelen failed to prove he made a report to law enforcement. Van Deelen declared he reported Farinas' failure to report drug use and drug dealing to the school district chief of police, the Harris County district attorney's office, the Texas Education Agency, a state senator, an assistant superintendent in the district, and the human resources director. The Texas Education Code §37.015 requires a principal to notify agencies if there is a reasonable belief that certain conduct has occurred on campus. The appellate court noted that this section of the Texas Education Code does not have a consequence for failing to report. Therefore, Van Deelen did not have any law enforcement authority to whom he could report, so he could not reasonably believe any of the entities he reported to could investigate Farinas' failure to report.

The district claimed Van Deelen did not prove he made a good faith report and causation, two elements necessary for the whistleblower claims. The appellate court noted that

whistleblower protection does not require hard evidence to prove the violation of law. Instead, the plaintiff must have a reasonable belief that the facts as reported were in violation of law. Van Deelen did have a reasonable belief of a violation of law based on what he personally saw in the teacher parking lot. Particularly, he saw a student unlock Scott's car and open the console where 20 to 30 pill bottles were located. He witnessed the student put the pills in a plastic bag and put the bag in his pocket. Van Deelen also saw Scott retrieve pill bottles from the console and take them into the school.

The appellate court determined a reasonably prudent person could have believed Scott used, and possibly dealt, illegal drugs. The appellate court also determined there is a material fact issue whether Van Deelen's report of Scott's drug dealing led to the suspension of Van Deelen. Van Deelen raised a material fact to defeat the district's summary judgment. For the final disposition, the appellate court determined the trial court erred in granting the district's summary judgment regarding the whistleblower claims. The appellate court upheld the trial court's decision to grant LeDay and Farinas pleas to the jurisdiction.

Case of Burgi v. Hartman (2018)

Mary Jo Hartman was a high school EMT teacher. One of her students, W.B., discussed a hunting trip with his father, Ronald Burgi, during a class related puncture wounds, gunshot wounds, and stab wounds. W.B. told the class he was hit with four pieces of birdshot during the hunting trip. W.B. stated that his father asked if he wanted to go to the hospital, but W.B. said he wanted to finish the day hunting. Burgi eventually took W.B. to the hospital where the doctors did not remove the birdshot since surgery would be more invasive than leaving the birdshot in place. Hartman, after hearing W.B.'s story, began to question him about the incident. CPS subsequently received a report about W.B. shotgun incident and that he had to wait over an hour

before receiving medical treatment. Burgi sued Hartman for defamation and intentional infliction of emotional distress. Burgi worked with Hartman's husband, Daniel Hartman, at Laughlin Air Force Base. Burgi claimed Daniel Hartman had a personal vendetta against Burgi since Burgi is a union representative who represented an employee who accused Daniel Hartman of wrongdoing.

Hartman filed summary judgment motions to have Burgi's claims dismissed under the Texas Education Code §22.0511, and Hartman requested attorneys' fees under the Texas Education Code §22.0517. The trial court granted Hartman's summary judgment motions and ordered Burgi pay Hartman's attorney's fees. Burgi appealed the trial court's judgment. The issue was whether the summary judgment motions granted in favor of Hartman should be overturned. The appellate court upheld that the trial court's ruling in favor of Hartman. Burgi's claims against Hartman were dismissed, and Burgi had to pay Hartman attorney's fees. When educators make a report to CPS, this is incident to or within the scope of their duties.

The reasoning of the appellate court was that Burgi failed to present any evidence that Hartman either filed the CPS report or that Daniel Hartman filed the CPS report. Burgi alleged that if Hartman did not file the CPS report, then she told her husband about W.B.'s incident which led to Daniel Hartman filing the CPS report. The appellate court indicated that a factfinder would have to guess who made the CPS report, so Burgi raised mere suspicions that Hartman or her husband filed the CPS report. The appellate court held that this evidence was too circumstantial; thus, the trial court ruled properly. Burgi argued that questioning W.B. about the hunting trip was outside the scope of Hartman's duties. Hartman provided evidence that a teacher's duties include reporting any suspected child abuse to CPS even if the abuse is simply suspected. The appellate court ruled the summary judgment evidence established Hartman

questioning W.B. about the hunting trip and reporting any suspected child abuse were incident to or within the scope of her duties as a teacher.

Burgi had to pay Hartman's attorney's fees since Hartman prevailed on her affirmative defense of statutory immunity under the Texas Education Code §22.0511. Burgi argued that Hartman provided evidence that she did not make the CPS report; therefore, she should not receive attorney's fees. The court indicated that Hartman prevailed on her affirmative defense so she received attorney's fees. For the final disposition, the appellate court affirmed the trial court's ruling in favor of Hartman.

Data Analysis

After completing the case brief method, the 15 Texas appellate court cases were analyzed and then compared to find similarities and differences. In the sample of 15 appellate courts cases, plaintiffs appealed six of the lower court rulings while defendants appealed the remaining nine cases. Of the 15 cases, educators that sought immunity protection included five (33%) educators at the secondary level, two (13%) at the middle school level, none (0%) at the elementary level, and the school level for eight (54%) educators was either unknown or inapplicable. The sample included six (40%) cases where males were named as defendants in the lower courts, six (40%) cases where females were named as defendants, and three (20%) cases where both males and females were named as defendants. On appeal, ten (67%) of the decisions were affirmed, two (13%) of the rulings were affirmed in part and remanded in part, three (20%) of the rulings were reversed. Table 2 highlights all the appellate court cases in the sample in terms of the appeals granted or denied when an educator invokes statutory immunity protection.

Table 2*Texas Appellate Court Cases*

Year	Name of Case	Plaintiff	Defendant	Outcome
2007	Lane v. Young	Board, Vendor	Supt.	Reversed
2009	Ward v. Theret	Teacher	Principal, Supt.	Affirmed
2010	Robinson v. Brannon	Teacher	Director, Employee	Affirmed/Reversed
2012	Moore v. Miller	Parent	Aide	Affirmed
2014	La Joya ISD v. Villarreal	Vendor	Board Members	Affirmed
2014	Madden v. SBEC	Principal	State Agency	Affirmed
2015	Dallas ISD v. Peters	Teacher	Asst. Principal	Reversed
2015	Gonzalez v. Grimm	Parent	Principal	Affirmed
2016	McPherson v. Wylie	Parent	AD, Coach	Affirmed
2016	Rivera v. Port Arthur ISD	Teacher	Principal, Coach	Affirmed
2016	Edinburg ISD v. Smith	Parent	Principal, Admin.	Reversed
2016	Compton v. Port Arthur ISD	Teacher	Supt., Administrator	Affirmed
2017	Will v. Bambenek	Parent	Teacher	Affirmed
2018	Van Deelen v. Spring ISD	Teacher	Principal, AP	Affirmed/Remand
2018	Burgi v. Hartman	Parent	Teacher	Affirmed

Thirteen (87%) out of 15 appellate court cases addressed immunity from liability under the Texas Education Code §22.0511. The statutory language of the Texas Education Code §22.0511 states educators are not personally liable for acts that are incident to or within the scope of the educator's duties that involve the exercise of judgment or discretion. The language in the statute is clear that districts cannot require educators to waive their statutory immunity from liability. Even more, the statute clearly states that the statutory immunity from liability is in addition to immunity provided to educators under state and federal law. The only time educators are not provided immunity under the Texas Education Code §22.0511 is in circumstances when an educator uses excessive force in the discipline of a student or when negligence results in bodily injury to the student. The appellate court determined in nine out of the 15 cases that educators had statutory immunity protection under the Texas Education Code §22.0511.

Two of the 15 appellate court cases addressed an educator's use of force and the statutory immunity protection given to educators under the Texas Education Code §22.0512. Educators appealed these two cases after an unfavorable decision from a Texas state agency. The statutory wording of the Texas Education Code §22.0512 requires the commissioner to determine whether the use of force by an educator was privileged. If the use of force was privileged under the Texas Education Code §22.0512, the district is prohibited from subjecting an educator to disciplinary proceedings for the use of physical force against a student to the extent that the force is justified under the Texas Penal Code §9.62. The Texas Education Code §22.0512 defines a disciplinary proceeding as an action brought by the school district employing a professional employee of a school district to discharge or suspend the employee or terminate or not renew the employee's contract. The appellate courts determined the two educators did not have statutory immunity protection under the Texas Education Code §22.0512.

Research Question 1

The first research question was what were the legal questions in cases decided by Texas appellate courts where educators invoked statutory immunity protections? The analysis focused on answering what the legal questions were in cases decided by the Texas appellate courts where educators invoked statutory immunity protections. The appellate courts considered various legal issues when determining whether an educator had immunity protection under the Texas Education Code §22.0511 and §22.0512. Six categories emerged involving the legal questions consistently addressed by the appellate courts when determining whether an educator had statutory immunity, including: (a) actions incident to or within the scope of the educator's duties, (b) exercise of judgement or discretion, (c) dispositive motions, (d) appeals of a Texas agency decision, (e) lawsuits relating to daily operations of the district, and (f) harassment.

Actions Incident to or Within the Scope of the Educator's Duties. In seven of the 15 decisions, the appellate court analyzed whether an educator's conduct was incident to or within the scope of their duties (i.e., *Burgi*, *Edinburg*, *Gonzalez*, *La Joya*, *Lane*, *Robinson*, *Ward*). When analyzing whether an educator has statutory immunity under the Texas Education Code §22.0511 the court must first determine whether the acts are incident to or within the scope of the educator's duties. "If the act falls neither within nor incident to the scope of the employee's duties, the statutory immunity does not cover the act" (*Robinson*, p. 866). The appellate courts determined that educators were acting within the scope of their duties in six (86%) out of the seven cases. In *Ward v. Theret* (2009), *Ward*, a former employee of a school district, sued the principal, the school district, and the superintendent for various claims after the teacher was terminated for a disagreement regarding student discipline. The court determined a principal's

duties, as the head campus administrator, “include decisions regarding student discipline and employment matters” (p. 5).

The only case where the appellate court determined the educator did not act within the scope of duties was in *Gonzalez v. Grimm* (2011). In *Gonzalez v. Grimm*, (2011), Gonzalez’s child went to the school where Grimm served as a principal. After Gonzalez made a harassing phone call to Grimm, Grimm reported the call to the police. The police filed a criminal harassment charge against Gonzalez, but the district attorney subsequently dismissed the charges. Gonzalez sued Grimm for malicious prosecution. On appeal, Gonzalez argued that Grimm should not have statutory immunity because calling the police was not incident to or within the scope of her duties as a principal, and the court agreed. The court noted that whether one is acting within the scope of employment depends upon whether the “general act from which the injury arose was in furtherance of the employer’s business and for the accomplishment of the object for which the employee was employed” (*Gonzalez*, p. 274). The court determined that filing a report to law enforcement regarding a threatening phone call was not an act incident to or within the scope of the duties of a principal. Despite this initial ruling by the court, the appellate court in 2011 remanded the decision back to the trial court who ultimately ruled in favor of the principal. In 2015, the appellate court upheld the judgment in favor of the principal named as the defendant. Even though Grimm did not prevail at the appellate court in 2011, she did ultimately prevail when the appellate court heard the case for the second time four years later in *Gonzalez v. Grimm* (2015).

In *Burgi v. Harman* (2018), the court determined that Hartman had a right to question a student, Burgi’s son, after the student discussed a hunting accident. Hartman began questioning the student about the accident after the student indicated his father, Burgi, waited several hours

before getting his son medical attention following a hunting accident. The appellate court determined Hartman had a right, and even an ethical duty, to report suspected child abuse or neglect. Thus, Hartman's questions to the student were incident to and within the scope of her duties as a teacher. In *Edinburg Consolidated ISD v. Smith* (2016), the appellate court determined determining the grade weights of courses were incident to and within the scope of educators' duties.

In *Robinson v. Brannon* (2010), Robinson claimed that two employees, Brannon and Freeman, began a campaign to tarnish Robinson's reputation as an educator. Robinson claimed Brannon conducted an improper personnel investigation and improperly placed Robinson on leave. The appellate court disagreed. The court noted that prior approval is not a requirement for an employee to act within the scope of employment. In this instance, Brannon's investigation and placing Robinson on leave were within the scope of his employment as director of human resources and risk management. Brannon had performed investigations on several employee issues and participated in pretermination hearings as the director of human resources. Though Brannon did not follow Alief ISD's policy, the court still deemed his actions to be within the scope of his duties. However, the court determined the educators' acts of harassing phone calls, along with sending threatening and defamatory text messages and emails, were outside the scope of employment and outside the scope of Texas Education Code §22.0511 immunity.

In *Lane v. Young* (2007), a school board member asked Lane, as the superintendent of the district, to investigate a trust agreement and a \$50,000 gift for a memorial scholarship in honor of the school board president's son. The funds for the scholarship were transferred into the board president's personal account to hold in trust for the scholarship. After Lane investigated the transfer of funds, the board president, the president's wife, a district employee, and an employee

at the bank that deposited the money sued Lane for various causes of action. The question posed to the court was whether the investigation done by Lane, the superintendent, falls under his duties as a superintendent.

In determining what acts were within the scope of Lane's duties as the superintendent, the court cited the Texas Education Code §11.201(d)(5), (7), and (11). These provisions of the education code state that the superintendent is responsible for the day-to-day operations of the district. According to the appellate court, Lane's statutory duties include (a) investigating the transfer of money out of a district's account without board approval and (b) pursuing an investigation to the bank that holds the district's account and which transferred money out of the district's account into a private account. The court found that "Lane was acting within his general authority in furtherance of the district's business, and he was seeking to accomplish an objective for which he was employed--namely the daily administration of the district" (p. 14). Lane established that he acted within the scope of his duties as the superintendent.

Exercise of Judgment or Discretion. In three of the 15 decisions, the appellate court analyzed whether an educator's conduct involved the exercise of judgment or discretion (i.e., Gonzalez, Lane, Will). The court must determine whether the educator's acts are ministerial or discretionary because an educator has to be performing a discretionary task in order to have immunity protection under the Texas Education Code §22.0511. In two (67%) of the three cases, the appellate court determined the educator's conduct involved the exercise of judgment or discretion (i.e., Lane, Will).

The court determined that the principal in *Gonzalez v. Grimm* (2011) was not performing discretionary tasks when she called the police for the parent's harassment. The appellate court noted that "because ministerial duties do not involve the exercise of judgment or discretion, they

do not cloak the actor with immunity” (p. 274). The court recognized the “distinction between an act that is ministerial and one that is discretionary is often one of degree” (p. 274). An assistant superintendent’s affidavit stated that Grimm, as the administrative leader of her campus, was responsible for ensuring the safety and security of students, staff, and other personnel at the school. The affidavit further stated Grimm was required to “exercise judgement and discretion in determining when a situation exists which should be reported to law enforcement officials” (p. 8). The appellate court disagreed and determined that Grimm’s report to law enforcement regarding Gonzalez’s phone call did not involve the exercise of judgment and discretion. Thus, Grimm did not have statutory immunity for calling law enforcement. After the appellate court remanded the case back to the trial court in 2011, the trial court ultimately ruled in favor of Grimm. When the case again came before the appellate court in 2015 for a second time, the appellate court upheld the judgment in favor of Grimm.

In *Will v. Bambenek* (2017), the parents of a sophomore student in Bambenek’s chemistry class sued Bambenek for negligence after hydrochloric acid spilled and burned the student’s hand during a chemistry experiment. The district court granted Bambenek’s summary judgment motion for immunity under the Texas Education Code §22.0511. The appellate court considered whether Bambenek was performing a discretionary task when the accident occurred. The court held the decisions regarding the classroom safety policies involved Bambenek’s judgment and discretion to provide her statutory immunity protection. In particular, the evidence indicated she was in charge of creating and implementing the safety protocols in her classroom including whether to wear safety goggles and what safety procedures to follow. Bambenek’s personal deliberation about the manner and means of the safety protocols involved her own judgment and provided her statutory immunity.

In *Lane v. Young* (2007), a school board member asked Lane, as the superintendent of the district, to investigate a trust agreement and a \$50,000 gift for a memorial scholarship in honor of the school board president's son. The question posed to the court was whether his actions involved the exercise of judgment or discretion. The appellate court determined the statute that sets out the day-to-day responsibilities of a superintendent does not specify how the superintendent should perform duties since such duties are not defined with such "precision as to leave nothing to Lane's exercise of judgment or discretion" (p. 15). In particular, Lane's personal judgment as to whether to investigate, the methods of investigation, who to investigate, and employment and banking decisions all flowed from the investigation. The court further noted "the focus is not on what Lane said, to whom he spoke, or whom he decided to investigate, but on his exercise of judgment and discretion in pursuing the investigation" (p. 16). Therefore, Lane was performing discretionary tasks when he investigated the transfer of funds.

Dispositive Motions. Thirteen out of the 15 of the Texas appellate court cases addressed dispositive motions as a way to eliminate some or all of the claims in the cases against an educator. There were three categories of dispositive motions addressed in the appellate cases: (a) a plea to the jurisdiction, (b) a motion for summary judgment, and (c) a motion to dismiss. Only one educator filed a motion to dismiss in addition to a plea to the jurisdiction at the trial court level (i.e., Van Deelen). Eight of the 15 appeals were for a plea to the jurisdiction (i.e., Compton, Edinburg Consolidated, La Joya, McPherson, Moore, Rivera, Van Deelen, Ward). Pleas to the jurisdiction challenge a court's subject matter jurisdiction to hear a case. Five of the eight pleas to the jurisdiction were in favor of the educator at the appellate court level (i.e., Compton, Edinburg, Ward, Rivera, Van Deelen). At the appellate court level, three of the eight cases involving a plea to the jurisdiction favored the party suing the educator (i.e., Moore, McPherson,

La Joya). The appellate court granted attorney's fees to educators who filed a plea to the jurisdiction in two cases (i.e., Compton, Ward).

Five out of the 15 appeals involved a motion for summary judgment (i.e., Burgi, Gonzalez, Lane, Robinson, Will). The appellate court ruled in favor of four of the five cases wherein an educator filed a motion for summary judgment (i.e., Burgi, Lane, Robinson, Will). The appellate courts granted attorney's fees to educators in three cases involving a motion for summary judgment (i.e., Burgi, Lane, Robinson). The one case where the appellate court ruled against an educator who filed a motion for summary judgment was *Gonzalez v. Grimm* (2011), but the appellate court ultimately ruled in favor of the educator four years later in *Gonzalez v. Grimm* (2015). A judgment in favor of Grimm is significant because she ultimately prevailed against the defendant even though she did not prevail on her initial dispositive motion in 2011.

Appeal of a State Agency's Decision. Two cases involved an appeal of a state agency's decision (i.e., Dallas ISD, Madden). *Dallas ISD et al. v. Peters* (2015), which is also addressed in Chapter 4, involved an appeal of a Texas Commissioner of Education decision wherein Peters used an extremely aggressive restraint against a freshman who was two months pregnant. Peters sought judicial review of the Texas Commissioner of Education's decision under the Texas Education Code §21.307. Peters challenged the sufficiency of the evidence to support termination of his term contract. Peters also argued the district violated the Open Meetings Act when a Dallas ISD subcommittee voted on Peters' contract in closed session instead of in open session. The district court held the termination of Peters' contract was void based on the violation of the Texas Open Meetings Act, but the appellate court overturned the district court's decision. The appellate court also overturned the district court's decision to conditionally award Peters' attorneys' fees and costs under the Texas Education Code §22.0517.

Madden v. State Board for Educator Certification (2014) was an appeal of a decision by the State Board of Educator Certification (SBEC). Madden gave a seventh-grade student two swats on his buttocks for two separate disciplinary infractions. The State Board for Educator Certification filed a disciplinary action alleging Madden violated the Texas Educators' Code of Ethics and requested a one-year suspension of his certification. After a contested case hearing where many witnesses testified, the administrative law judge determined Madden did violate the Texas Educators' Code of Ethics. However, the administrative law judge determined Madden could not be sanctioned because he had statutory immunity protection under the Texas Education Code §22.0512. SBEC then amended the administrative law judges' findings and issued Madden an unpublished censure, the least serious sanction an educator can receive. Madden argued SBEC did not have the authority issue an unpublished censure since his actions were protected under the Texas Education Code §22.0512. The appellate court disagreed and determined the Texas Education Code §22.0512 did not deprive SBEC with the authority to impose a reprimand against Madden for his use of force.

Lawsuits Relating to Daily Operations of a District. In two of the 15 decisions, educators invoked statutory immunity protection for their work in the day-to-day operations of running the school district (i.e., Lane, La Joya ISD). Superintendent Brad Lane appealed a decision by the trial court denying his motion for summary judgment under the Texas Education Code §22.0511 after plaintiffs sued Lane for defamation, malicious prosecution, civil conspiracy, and tortious interference with her employment. The lawsuit stemmed from Lane's investigation into a trust agreement in memory of the school board president's son. A board member asked Lane to investigate the transfer of \$50,000 of district funds to the school board president's personal account to hold in trust for a scholarship in honor of the president's late son. There was

no written record from the board to transfer the funds from the district to a personal account and four of the board members stated they never approved the transfer to the personal account.

After investigating, Lane determined there was no board approval to transfer the funds to a private account. Lane responded to the lawsuit claiming statutory immunity protection. The trial court denied Lane's motion for summary judgment, and Lane appealed. The appellate court determined the investigation regarding district funds clearly fell under the roles and responsibilities of Lane. Thus, the appellate court reversed the trial court's ruling since Lane had immunity under the Texas Education Code §22.0511.

La Joya ISD v. Villareal (2014) involved a breach of contract case filed by a vendor of the district, Ruth Villareal. La Joya ISD entered into a contract with HBS to serve as the district's third-party administrator of the self-funded health plan for district employees. An exhibit to the contract listed Villareal and her company as the insurance broker of record for the district. Shortly after Villareal became the broker of record, four new board members were elected to La Joya ISD's board of trustees. Once elected, the school board voted to replace Ruth Villareal with Bob Trevino as the broker of record. Villareal alleged that Trevino gave \$15,000 to the four new candidates for their school board campaigns in exchange for being named the new insurance broker under the contract. Villareal filed suit against the district and the four board members for breach of contract, as well as other causes of action. Even though the court determined school boards have authority to enter into contracts on behalf of the district, the contract claim did not fall under statutory immunity protection.

Harassment. The court of appeals heard two cases involving harassment (i.e., Gonzalez, Robinson). In *Robinson v. Brannon* (2010), Robinson claimed that two employees, Brannon and Freeman, began a campaign to tarnish Robinson's reputation as an educator. Robinson argued

Freeman made harassing phone calls and sent threatening texts to him. Robinson alleged an email circulated while he was on leave to other employees that set out Robinson's sexual preferences and said Robinson had the AIDS virus and was attempting to spread it maliciously. The appellate court determined Robinson failed to produce any evidence that Brannon or Robinson were the source of the emails and phone calls, and so there was no evidence that Brannon or Robinson participated or made the harassing phone calls, text messages or emails. Robinson merely speculated these employees were involved, and speculation is not enough to overcome the summary judgment in favor of Brannon and Freeman. The appellate court determined harassing phone calls were not incident to and within the scope of employment. Therefore, the court denied attorneys' fees to Freeman.

In *Gonzalez v. Grimm* (2011), the parent, Gonzalez, sued the principal, Grimm, after Grimm filed charges against Gonzalez for harassment using a telephone. Gonzalez called Grimm to recite her social security number to her. Then Grimm asked Gonzalez how it made her feel that he had her social security number knowing what he could do with the number. Grimm filed a police report against Gonzalez. Criminal charges were later brought against Gonzalez for the offense of harassment by use of a telephone in a manner reasonably likely to alarm Grimm by causing her phone to ring repeatedly and making repeated telephone communications to Grimm in a manner likely to harass, annoy, alarm, abuse, torment, or embarrass her. The criminal charges were ultimately dropped against Gonzalez, and Gonzalez then sued Grimm for malicious prosecution.

Synopsis of Research Question 1. The legal questions consistently addressed by the appellate courts when determining whether an educator had statutory immunity included: (a) actions incident to or within the scope of the educator's duties, (b) exercise of judgement or

discretion, (c) dispositive motions, (d) appeals of a state agency's decision, (e) lawsuits relating to daily operations of the district, and (f) harassment. There were three themes that emerged from legal questions answered by Texas appellate courts, including the duties and responsibilities of educators, unsupported evidence against an educator is insufficient, and the type of motion used to plead statutory immunity is insignificant to the outcome.

The duties and responsibilities of an educator was the first theme identified in the data. The duties and responsibilities were a key determination used by appellate courts when considering whether an educator had statutory immunity protection. Included in the duties and responsibilities was a decision by the appellate court as to whether the educator's actions were incident to or within the scope of their duties and whether the educator used the exercise of judgment or discretion. As long as the educator acted in accordance with their job description, or pretty close to it, the appellate courts determined they were entitled to statutory immunity. The appellate courts found that making harassing phone calls and sending harassing texts and emails were not part of an educator's duties and responsibilities.

A second theme that emerged was unsupported evidence against an educator was not sufficient to remove their statutory immunity protection. Appellate courts made clear that mere speculation by the plaintiff that an educator reported a parent to CPS or sent harassing text messages did not constitute supportable evidence to revoke an educator's statutory immunity protection. As noted in *Burgi v. Hartman* (2018), "an inference is not reasonable if it is premised on mere suspicion, as some suspicion linked to other suspicion produces only more suspicion, which is not the same as some evidence" (p. 6). The Burgi court noted that "based on the circumstantial evidence Burgi produced, a factfinder would be required to guess from at least four possibilities that Hartman made a false statement about Burgi to CPS or to her husband" (p.

6). Burgi only raised a suspicion that Hartman made a false report to CPS but did not provide any evidence. Therefore, suspicion without factual evidence is not enough to overturn statutory immunity.

Similarly, in *Robinson v. Brannon* (2010), Robinson, the plaintiff, claimed that Brannon and Freeman actively participated in the harassing phone calls, text messages, and defamatory emails. Robinson testified that he believed Freeman had participated in making the harassing phone calls because he saw her making a phone call on the same day he received one of the harassing calls at his workplace. The appellate court noted the claims that Freeman and Brannon harassed Robinson is based on mere speculation and as unsupported allegations. The court determined there was no evidence that Brannon or Freeman made the harassing communications about which Robinson.

The third theme that emerged from the data was the type of motion filed by the educator was insignificant to the outcome in appellate courts. Educators successfully used motions for summary judgment and pleas to the jurisdiction to invoke statutory immunity. Appellate courts found educators were entitled to statutory immunity regardless of the type of dispositive motion filed. The appellate courts ruled in favor of educators with both types of dispositive motions.

Research Question 2

The second research question was what were the decisions made by Texas appellate courts in cases where educators invoked statutory immunity protections? The analysis focused on answering what decisions were made by the Texas appellate courts where educators invoked statutory immunity protections. The appellate courts made a broad range of decisions when determining whether an educator had immunity protection under the Texas Education Code §22.0511 and §22.0512. Five categories emerged involving the decisions consistently addressed

by the appellate courts when determining whether an educator had statutory immunity including: (a) extensive protections for educators, (b) educators invoking statutory immunity under the Texas Education Code §22.0511, (c) educators invoking statutory immunity under the Texas Education Code §22.0512, (d) appealing party, and (e) attorney's fees.

Extensive Protections for Educators. In *Ward v. Theret* (2009), the court emphasized that the plain language of the Texas Education Code §22.0511 indicates that the “Legislature intended for professional school district employees to be immune from personal liability in most cases” (p. 5). Even more, the court went on to say that absent allegations of excessive force or negligence resulting in physical injury, the “Legislature has provided professional school district employees with protection from personal liability, and the ability to recover the expenses incurred in defending the suit” (p. 5). Furthermore, in *La Joya ISD v. Villarreal* (2014), the court noted that the Texas Education Code §22.0512 is “broad, protecting not only actions falling within the scope of the employee’s duties but also those incident to the employee’s duties” (p. 23). The court further noted that other appellate courts have determined that “if an act falls within or incident to authorize duties, then immunity applies, regardless of whether the act otherwise violates an employer’s code of ethics” (p. 24).

The appellate courts ruled in favor of educators in nine (69%) out of the 13 cases where an educator invoked statutory immunity protection under the Texas Education Code §22.0511 (i.e., Burgi, Compton, Edinburg, Lane, Rivera, Robinson, Van Deelen, Ward, Will). In one case, the appellate court ruled in favor of the educator on grounds other than statutory immunity under the Texas Education Code §22.0511 (i.e., Gonzalez). The appellate courts ruled against educators in three (23%) of the 13 appellate cases when an educator invoked statutory immunity protection under the Texas Education Code §22.0511 (i.e., Moore, McPherson, La Joya ISD).

Interestingly, a parent was the plaintiff in two (67%) of the three cases where the courts ruled against the educator (i.e., Moore, McPherson).

In *Moore v. Miller* (2012), a parent sued Moore, a teacher's aide in a special education classroom. The parent alleged that Moore aggressively dislodged a medically fragile special education student from her chair as part of a disciplinary measure. Miller also stated that Moore threw the student hard onto the ground. The appellate court determined the appellate court properly denied the plea to the jurisdiction. In *McPherson v. Wylie* (2016), the parents sued two employees of Blum ISD after his daughter sustained injuries during the summer athletic program held in Blum ISD's gym. The appellate court upheld the trial court's decision to deny the educators' pleas to the jurisdiction since statutory immunity provides immunity from liability not immunity from suit. The appellate court noted that the trial court could still hear the lawsuit since statutory immunity provides immunity from liability not from suit. Even though the court could hear the lawsuit against the educators, they could not be liable since immunity from liability will prevent a plaintiff from recovering damages. It is important to note that the appellate courts ruled against the educators in four of the 13 cases where an educator invoked statutory immunity protection, but this does mean the educator was ultimately liable.

The appellate courts upheld the trial courts' decision to deny dispositive motions filed by the educators in nine of the 13 decisions involving the Texas Education Code §22.0511. Dispositive motions automatically dismiss the claims against the educators without having to go to trial. The appellate courts held four of the lawsuits at the lower courts could continue against the educators in cases involving a denial of the dispositive motion (i.e., Gonzalez, La Joya, McPherson, Moore). Only one of these cases had a final determination, and the court dismissed the lawsuit against the principal (i.e., Gonzalez). The ultimate outcome is still unknown in three

of the cases sent back to the trial courts by the appellate courts (i.e., La Joya, McPherson, Moore). In these three case, the appellate court appeals were merely the first hurdle plaintiffs had to overcome in order to sue an educator.

Educators Invoking Statutory Immunity Under the Texas Education Code §22.0511.

A total of 23 educators sought immunity from liability under the Texas Education Code §22.0511 in the appellate court cases. As explained in *McPherson v. Wylie* (2016), immunity from liability under the Texas Education Code §22.0511 “is an affirmative defense that provides professional school employees immunity from liability for certain actions taken within the scope of their employment,” (p. 6) and immunity from liability “prevents the recovery of damages” (p. 6). The educators had various roles and worked at all levels in the district. The sample included four (17%) superintendents, four (17%) district administrators, four (17%) principals, (4%) one assistant principal, two (9%) teachers, two (9%) coaches, one (4%) teacher’s aide, four (17%) board members, and one (4%) district employee.

Appellate courts granted sixteen (70%) of these educators requests for immunity from liability under the Texas Education Code §22.0511. Particularly, the appellate courts determined all four (100%) superintendents and all five (100%) principals in the sample were immune from liability. In the sample of appellate court cases, one (100%) assistant principal, two (100%) teachers and one (100%) employee in central administration all had immunity from liability. The appellate courts provided immunity from liability to three (75%) of four district administrators, and one (50%) of two coaches.

The appellate courts did not provide educators immunity from liability under the Texas Education Code §22.0511 to seven (30%) out of 23 educators. Appellate courts denied immunity for all four (100%) board members who pled statutory immunity protection. The appellate court

denied immunity from liability to the only (100%) teacher's aide in the sample. One (50%) of two coaches in the sample and one (25%) of four district administrators were not granted statutory immunity protection by the appellate courts.

Educators Invoking Statutory Immunity Under the Texas Education Code §22.0512.

In the appellate court cases, two educators invoked statutory immunity protection for the use of force against a student under the Texas Education Code §22.0512 (i.e., *Madden, Dallas*).

Madden was a principal and *Peters* was an assistant principal. These cases involved an appeal from Texas state agencies, in particular the State Board of Educator Certification (SBECE) and the Texas Commissioner of Education. In *Madden v. SBECE* (2014), *Madden* filed an appeal of a final order from SBECE that issued the noninscribed reprimand after *Madden* gave swats to a student that left bruises. In *Dallas ISD v. Peters* (2015), *Peters* appealed a decision by the Texas Commissioner of Education to uphold the termination of *Peters*' contract based on *Peters*' use of force against a fifteen year-old pregnant female student. The appellate courts ruled against both *Madden* and *Peters*. In addition, the appellate court reversed the trial court's decision that required the district to pay *Peters*' attorney's fees under the Texas Education Code §22.0512.

Appealing Party. After a trial court makes a decision on a case, the party that did not prevail has the opportunity to appeal the decision to the appellate court. The sample included cases with only one plaintiff and one defendant as well as cases with multiple plaintiffs and multiple defendants. Both plaintiffs and defendants appealed decisions regarding the Texas Education Code §22.0511 and §22.0512 to the appellate courts. The appellant, the party that appealed the lower court's decision, included nine (60%) educators, three (20%) parents, one (7%) district, one state agency (7%), and one (7%) vendor. Appellees, the party responding to the appeal, consisted of five (33%) cases with districts and employees, four (27%) cases with

educators, three (20%) cases with parents, one (7%) case with a district and board members, one (7%) case with board members, and one (7%) case with a state agency. The majority of cases appealed from a lower court are upheld by the appellate court. As evidenced in the sample, the party that filed the appeal, the appellant, only won four (27%) out of the 15 cases appealed. Stated another way, the appellate court overturned 27% of the trial court decisions. On the other hand, the appellate court ruled in favor of the party that responded to the appeal, the appellee, in 11 (73%) of the 15 appellate cases.

All three successful appellants were defendants in the trial court (i.e., Dallas ISD, Edinburg, Lane). While the plaintiff was initially successful in the appellate court in 2011, the case was remanded back to the trial court for a further decision since Grimm was not successful on her dispositive motion. In the *Gonzalez v. Grimm* (2011), the appellate court discussed the defendant's deficient affidavits as the reason for ruling in favor of the plaintiff, which leaves the question as to whether a proper affidavit would have led to a decision in favor of the principal. Even though Grimm did not prevail on her dispositive motion in 2011 because of the insufficient evidence, the appellate court ultimately upheld in the judgment in favor of Grimm in 2015 (*Gonzalez v. Grimm*, 2015). There were 12 cases where the appellate court ruled in favor of the appellee and upheld the decision of the trial court. Nine of these cases were in favor of defendants in the trial courts (i.e., Brannon, Burgi, Compton, Gonzalez, Madden, Rivera, Van Deelen, Ward, Will) and three were in favor of plaintiffs in the trial courts (i.e., La Joya ISD, McPherson, Moore).

Attorneys' Fees. Seven of the 15 cases dealt with an educator's recovery of their attorney's fees under the Texas Education Code §22.0517 (i.e., Burgi, Compton, Dallas, McPherson, Rivera, Robinson, Ward). This provision of the education code allows an educator

to recover attorneys' fees and court costs from a plaintiff if the educator is found to be immune from liability under the Texas Education Code Chapter §22.0511. As noted in *Ward v. Theret* (2009), the Texas Education Code §22.0511 and §22.0517 are meant to be read together. The court explicitly stated that the "Legislature intended for professional school district employees to be immune from personal liability in most cases" (*Ward v. Theret*, 2009, p. 677). The court went on to say that "absent allegations of excessive force, or negligence resulting in physical injury, the Legislature has provided professional school district employees with protection from personal liability, and the ability to recover expenses incurred in defending the suit" (p. 676).

In *Gonzalez v. Grimm* (2011, 2015), Gonzalez, the principal at Grimm's child's school, reported Grimm to law enforcement after Grimm called and allegedly threatened Gonzalez. The parent told the principal he had her social security number and threatened to use it against her. The appellate court in 2011 determined Gonzalez's phone call did not involve the exercise of judgment and discretion, and Grimm did not have statutory immunity for calling law enforcement. Because the educator did not have statutory immunity protection, the appellate court reversed and rendered a decision in favor of the parent that sued the educator for reporting the parent to the police for harassment. The appellate court never discussed whether the educator was entitled to attorneys' fees. After the case was remanded back to the trial court in 2011, the trial court granted a judgment in favor of Grimm. Gonzalez again appealed the case to the appellate court in *Gonzalez v. Grimm* (2015) and the court upheld the judgment in favor of Grimm in this appeal without any attorney's fees for Grimm.

In *Burgi v. Hartman* (2018), Hartman heard one of her students discussing a hunting trip with his father, Ronald Burgi. The student suffered gunshot wounds when hit with four pieces of birdshot during a hunting trip with his father. Hartman, after hearing the story, began to question

the student about the incident. CPS subsequently received a report about the student's shotgun incident. Burgi claimed Hartman's husband had a personal vendetta against Burgi since Burgi is a union representative who represented an employee who accused Hartman's husband of wrongdoing. Burgi sued Hartman for defamation and intentional infliction of emotional distress. The trial court granted Hartman's summary judgment motions and ordered Burgi to pay Hartman's attorney's fees. Burgi appealed the trial court's judgment. The appellate court determined Burgi had to pay Hartman's attorney's fees since Hartman prevailed on her affirmative defense of statutory immunity under the Texas Education Code §22.0511.

In *Compton v. Port Arthur ISD* (2017), the district reassigned Compton to a teaching position and Compton filed suit claiming her constitutional right of free speech was violated. Compton named Port Arthur ISD, Johnny E. Brown, the district's superintendent, and King, Compton's supervisor, as defendants in her lawsuit. The appellate court determined Brown and King were entitled to an award of attorneys' fees since they had statutory immunity under the Texas Education Code §22.0511. Compton argued that King should not receive attorney's fees because she was motivated by spite and not acting in the furtherance of the interests of the district. The trial court awarded attorney's fees to Brown and King upon granting their pleas to the jurisdiction. The appellate court noted in that nothing in the Texas Education Code §22.0517 has a requirement that dismissal must be based on §22.0511 in order to recover attorney's fees. The appellate court read §22.0511 and §22.0517 together and determined that a defendant who is immune from liability as a professional employee is entitled to receive attorney's fees. Since the trial court found the actions of the individual defendants were within the scope of their duties, the appellate court held the trial court did not err in awarding King and Brown their attorney's fees under the Texas Education Code §22.0511 and §22.0517.

In *Robinson v. Brannon* (2010), the defendant educator, Brannon, failed to request attorney's fees in his pleadings filed with the court. It was only after the lower court determined Brannon had immunity under the Texas Education Code §22.0511 that he requested the plaintiff pay his costs and attorneys' fees under the Texas Education Code §22.0517. Since the lower court determined Brannon was immune from liability under the Texas Education Code §22.0511, the lower court awarded Brannon attorney's fees. The appellate court agreed. Even more, the appellate court noted the lower court "had no discretion in awarding attorney's fees" and the "award of attorney's fees was mandatory" under the Texas Education Code §22.0517 (p. 869). The appellate court found Brannon properly requested the fees following the lower court's determination that he had statutory immunity.

Interestingly, the appellate court limited the amount of attorney's fees Brannon could recover since he was only entitled to attorney's fees for his acts of investigating and suspending the plaintiff given these were the only acts covered under the Texas Education Code §22.0512. "Any attorney's fees associated with defending causes of action outside of Brannon's professional immunity, his defenses of exhaustion of administrative remedies and no evidence of the acts of electronic harassment, are not recoverable" under the Texas Education Code §22.0517 (p. 869). The other defendant in the lawsuit, Freeman, was not protected by professional immunity on the alleged acts of her harassment of the plaintiff so she was not entitled to attorney's fees.

In *Rivera v. Port Arthur ISD* (2016), the appellate court did not take the same stance as the court in *Robinson v. Brannon* (2010). The appellate court in *Rivera* held that the defendant educators were not entitled to attorney's fees even though they prevailed on their pleas to the jurisdiction. Even though the defendants ultimately prevailed on their pleas to the jurisdiction,

the trial court did not grant the defendants attorney's fees and costs under the Texas Education Code §22.0517. The defendants argued the trial court abused its discretion by not awarding attorney's fees to the defendants after they prevailed on their pleas to the jurisdiction. They claimed they were entitled to attorney's fees since the lawsuit by the plaintiff was frivolous. The appellate court disagreed since the trial court granted the pleas to the jurisdiction under the Texas Civil Practice and Remedies Code §101.106 not the Texas Education Code §22.0511. According to the appellate court, the trial court abused its discretion by failing to award attorney's fees.

Synopsis of Research Question 2. The decisions consistently determined by the Texas appellate courts when determining whether an educator had statutory immunity included: (a) extensive protections for educators, (b) educators invoking statutory immunity under the Texas Education Code §22.0511, (c) educators invoking statutory immunity under the Texas Education Code §22.0512, (d) appealing party, and (e) attorney's fees. There were two themes that emerged from the decisions made by the appellate courts when an educator sought protection under the Texas Education Code §22.0511 and §22.0512. The two themes were that educators are likely to have immunity from liability in Texas appellate court cases and courts are reluctant to overturn adverse employment decisions against an educator.

The first theme which appears in the appellate cases was that educators are likely to be granted immunity from liability in Texas appellate court cases. The data revealed that appellate courts are likely to grant statutory immunity to educators. The appellate courts determined that five out of the six educators' actions were within or incident to the scope of their duties thereby providing immunity protection to the defendant educator. The only two exceptions to the overarching immunity protection involved a lawsuit against (a) board members relating to a breach of contract case (i.e., La Joya) and (b) lawsuits by parents where a student suffered

physical injury (i.e., Moore, McPherson). An appellate court ruled in favor of educators in a case involving a student's class ranking wherein the student lost her scholarship as the valedictorian (i.e., Edinburg). Educators were provided statutory immunity protection under the Texas Education Code §22.0511 for their day-to-day responsibilities in a majority of the cases in the sample.

The second theme that emerged was that courts are reluctant to overturn adverse employment decisions against an educator. The appellate courts consistently ruled in favor of districts when plaintiffs argued they were wrongly terminated, reassigned, or investigated. In all eight cases where an educator filed a lawsuit at the trial court level disputing an adverse employment action, the courts upheld the decision of the defendant district and administrators. Moreover, the cases appealed by educators regarding a state agency decision were 100% in favor of the state agency (i.e., Madden, Dallas ISD).

Research Question 3

The third research question was what were the trends in the decisions made by Texas appellate courts where educators invoked statutory immunity protections? The analysis focused on answering what the trends were in cases decided by the Texas appellate courts where educators invoked statutory immunity protections. Nine categories emerged involving the trends that emerged as the appellate courts determine if an educator had statutory immunity, including: (a) statutory immunity provisions determined by Texas appellate courts, (b) year of the appellate court cases relating to statutory immunity, (c) grade level, (d) lawsuits filed by parents, (e) lawsuits filed by educators, (f) lawsuits filed by outside parties, (g) causes of action against educators, (h) location of Texas appellate courts, and (i) action by defendants that led to the underlying lawsuit.

Statutory Immunity Provisions Determined by Texas Appellate Courts. Thirteen (87%) of the 15 educators sought immunity from liability under the Texas Education Code §22.0511. The Texas appellate courts determined nine (69%) of these 13 cases provided statutory immunity protection under the Texas Education Code §22.0511, five (38%) cases denied statutory immunity, and one (7%) case was dismissed on other grounds. Two out of the 15 appellate cases involved an educator seeking statutory immunity under the Texas Education Code §22.0512 which provides an educator immunity from disciplinary proceedings. If the educator is deemed to have immunity under the Texas Education Code §22.0512 the district is prohibited from subjecting an educator to disciplinary proceedings for the use of physical force against a student to the extent that is justified under the Texas Penal Code §9.62. Neither of the educators in the sample were granted immunity protection for their use of force in the appellate court cases.

Year of the Decision by the Appellate Court. The first case heard by the Texas appellate courts where an educator invoked statutory immunity was *Lane v. Young* (2007). The appellate courts heard one case per year involving statutory immunity in 2007, 2009, 2010, 2011, 2012, and 2015. In 2014, 2017, and 2018, the appellate courts heard two cases per year. In 2016, the appellate courts heard four cases relating to statutory immunity, which was the most in any given year. The cases in 2016 included *McPherson v. Wylie*, *Rivera v. Port Arthur ISD*, *Compton v. Port Arthur ISD*, and *Edinburg Consolidated ISD v. Smith*. The first case where an appellate court ruled in favor of the plaintiff in the underlying trial court cases was in 2011 (i.e., *Gonzalez*), but this decision only involved Grimm's dispositive motion. In 2015, the appellate court again heard the case and upheld the judgment in favor of Grimm. The other years where

the appellate courts ruled in favor of the plaintiff were in 2012, 2014, and 2015 (i.e., Moore, McPherson, La Joya).

Grade Level. No cases in the sample occurred at the elementary level. Five of the 15 appellate court cases decisions occurred at the high school level. In the high school cases the defendant educators prevailed in two cases, parents prevailed in two cases, and the state agency prevailed in one case. Two of the 15 appellate court cases decisions occurred at the middle school level. The parent prevailed in one of the cases at the middle school level and a state agency prevailed in one (50%) case at the middle school level. There were eight appellate cases in the sample where the grade level was unknown or not applicable. Cases where the grade level was inapplicable involved a lawsuit by a vendor, a central office administrator, or an educator suing a school district and administrators for ending the contractual relationship.

Lawsuits Filed by Parents. Parents brought lawsuits in six of the 15 appellate cases. Four of the parents filed a lawsuit on behalf of a student for negligent behavior. Two of the parents filed suit against the educator for the actions against the parent. The appellate courts ruled in favor of parents regarding a lawsuit relating to a student 50% of the time. These cases involved instances where a student suffered a physical injury (i.e., McPherson, Moore). The appellate court ruled in favor of the educator in only one case where a student suffered a physical injury (i.e., Will). In the two cases where the parent filed suit for the wrongful actions of an educator against the parent, the appellate court ruled in favor of one (50%) educator and one (50%) parent. The appellate court ruled in favor of the parent that sued a principal for filing criminal charges against the parent for harassment. The appellate court ruled in favor of the educator in the lawsuit brought by a parent against the educator for filing a CPS report for alleged child abuse. A report of child abuse is mandatory under Texas law.

Lawsuits by Educators. Educators filed lawsuits in eight of the 15 cases in the sample. Educators appealed state agency decisions in two of these cases (i.e., Madden, Dallas ISD). Five of the eight cases involved an educator filing suit against educator defendants for the adverse employment actions by the district. The adverse employment actions included three terminations (i.e., Rivera, Van Deelen, Ward), one reassignment (i.e., Compton), and one wrongful investigation (i.e., Robinson). A school board member, along with other plaintiffs sued the superintendent for defamation, malicious prosecution, and tortious interference (i.e., Lane). The appellate courts ruled in favor of the defendants in all eight (100%) cases where educators filed the lawsuit.

Interestingly, the two termination cases where the appellate courts ruled in favor of the defendants involved educators hired in the middle of the school year (i.e., Van Deelen, Ward). The two plaintiffs that used statutory immunity to prevent their terminations had probationary contracts, and they were both hired in January. The appellate court also ruled in favor of the defendants in *Compton v. Port Arthur ISD* (2016). Compton, after being investigated for Medicaid fraud, requested to be reassigned as a speech language pathologist to a classroom teacher. Even though the district granted Compton's request to reassign her to a classroom teacher position, she sued the district and her supervisors for retaliation. The appellate court upheld the defendants' pleas to the jurisdiction.

In *Van Deelen v. Spring ISD* (2018), Van Deelen made multiple reports "about what he believed were numerous instances of unlawful drug use and dealing" on the high school's campus "by students and a teacher, Bobby Scott." The principal investigated Van Deelen's allegations at the time and found the allegations had no merit. Van Deelen claimed he soon was the target of adverse personnel actions, including reprimands and warnings that he would be

terminated if he continued to make false allegations concerning drug use and dealing on the school's campus. The appellate court noted it disagreed with the school district that Van Deelen jumped to conclusions after he "saw 20 to 30 pill bottles in the console" of Scott's vehicle and that he observed a student unlock and open the car, open the console and take some of the pills (p. 16). The appeals court found that a "reasonably prudent teacher with similar training and experience and in similar circumstances" could have drawn the same conclusion (p. 17). Despite the appellate court pointing out that it was reasonable for Van Deelen to think the teacher was selling drugs, the appellate court still upheld the decision to grant the pleas to the jurisdiction filed by the principal and assistant principal.

In *Rivera v. Port Arthur ISD* (2016), Rivera sued after the district for retaliation after he was reassigned away from his coaching duties. Rivera claimed the district retaliated against him for filing a previous lawsuit. The jury believed the district retaliated against Rivera by reassigning him to a position outside of coaching, and the jury awarded Rivera damages. However, the trial court overturned the jury award and ruled in favor of the defendants by granting a judgment notwithstanding the verdict due to the statutory immunity protection of the defendant. The appellate court upheld the ruling in favor of the defendants.

Lawsuits by Outside Parties. Two cases in the sample involved outside parties filing a lawsuit. One case involved a breach of contract case against the district and school board members (i.e., La Joya). In the second case, a school board member and his spouse, as well as an employee of a bank that did business with the district, sued the superintendent for defamation, malicious prosecution, and tortious interference (i.e., Lane). The educator defendant won one appeal (i.e., Lane) and the outside party won one (50%) appeal (i.e., La Joya).

Causes of Action Against Educators. Out of the sample of 15 appellate court cases, there were 28 causes of action filed against defendants in the lower courts. Torts were the most common cause of action filed against defendants. Particularly, there were 22 (79%) tort claims against the educators, three (11%) constitutional claims, two (7%) breach of contract claims, and one (3%) claim for assault. The type of torts brought against educators was diverse. Plaintiffs filed four (18%) negligence claims against educators, three (14%) intentional infliction of emotional distress claims, three (14%) defamation claims, two (9%) tortious interference with contract claims, two (9%) malicious prosecution claims, and two (9%) civil conspiracy claims. Finally, there was one (5%) tort claim filed for invasion of privacy, fraudulent misrepresentation, negligent misrepresentation, wrongful termination, retaliation, and negligent discipline. Despite the broad range of claims brought against educators in the 15 appellate court cases, not one of the cases addressed the elements of the causes of action. Instead, the appellate courts focused on the dispositive motions brought by the educators in the 13 appellate cases involving the Texas Education Code §22.0511.

Location of Texas Appellate Courts. Since the passage of the Texas Education Code §22.0511 and §22.0512, the following appellate courts have heard cases involving an educator's statutory immunity: three cases in Corpus Christi (20%), two cases in Dallas (13%), two cases in Beaumont (13%), two cases in Waco (13%), two cases in Houston (13%), two cases in El Paso (13%), one case in San Antonio (7%) and one case in Austin (7%). In appeals heard by the Corpus Christi court of appeals, the educators prevailed in two of the three cases (i.e., Edinburg, Rivera) and the vendor prevailed in one case (i.e., La Joya). In the appeals in the Dallas appellate court, both cases were in favor of the defendants from the trial court cases. The El Paso Court of Appeals ruled in favor of one defendant and one plaintiff parent. The two cases heard by the

Houston Courts of Appeals were both in favor of the defendant educators. Both cases heard by the Waco Court of Appeals were in favor of the parents against educators. The one case heard by the San Antonio court of appeals and the one case heard by the Austin court of appeals were in favor of the educator defendants. Both cases heard by the Beaumont court of appeals were in favor of the educator defendants.

Action by Defendants That Led to the Lawsuit. The sample revealed four categories of lawsuits: educator contract disputes, vendor contract disputes, parent complaints, and state agency appeals. Out of the sample of 15 appellate cases, six (53%) cases stemmed from action by the district regarding the educator's contract (i.e., Compton, Peters, Rivera, Robinson, Ward, Van Deelen). In particular, four lawsuits were for the termination of an educator's contract (i.e., Peters, Robinson, Van Deelen, Ward), and two lawsuits were for an educator's reassignment to a different role in the district (i.e., Compton, Rivera). One lawsuit involved a vendor suing individual board members after the board voted to replace that vendor with another company (i.e., La Joya ISD). Six of the 15 appellate cases from the sample were brought by parents (i.e., Burgi, Edinburg, McPherson, Moore, Will). One educator filed suit to appeal the decision by the State Board of Educator Certification (SBEC) after SBEC reprimanded the educator's teaching certificate (i.e., Madden).

Synopsis of Research Question 3. The trends consistent in the Texas appellate court cases when determining whether an educator had statutory immunity included: (a) statutory immunity provisions determined by Texas appellate courts, (b) year of the decision by appellate court, (c) grade level, (d) lawsuits filed by parents, (e) lawsuits filed by educators, (f) lawsuits filed by outside parties, (g) causes of action against educators, (h) location of Texas appellate courts, and (i) action by defendants that led to the lawsuit. There were three themes that emerged

from the trends in the appellate court cases were a majority of Texas appellate court cases involved the Texas Education Code §22.0511; the educator's actions impacted the outcome of the case more than the position, grade level, or gender of the educator; and parents who filed a lawsuit for physical injuries to a student had an opportunity to succeed on appeal.

The most prevalent theme that emerged from the data was a majority of the appeals to Texas appellate courts involved the Texas Education Code §22.0511 and an educator's immunity from liability. Thirteen out of the 15 appellate cases involved Texas Education Code §22.0511. The Texas appellate courts determined eight (62%) of these 13 educators had statutory immunity protection under the Texas Education Code §22.0511 and five (38%) educators did not have statutory immunity. Two out of the 15 appellate cases involved an educator seeking statutory immunity under the Texas Education Code §22.0512, which provides an educator immunity from disciplinary proceedings.

The second theme that emerged was an educator's actions impacted the outcome of the case more than the position, grade level, or gender of the educator. While the data revealed educators at the high school level were more likely to be named in a lawsuit, the findings indicated the grade level was inconsequential to the appellate court findings. The gender of the educator and the position was not relevant to the appellate court's decision. Overall, the grade level, gender, or position were not significant factors for appellate courts when determining whether the educator had immunity protection. Instead, the appellate courts considered whether the actions by the educator were within the scope of their duties.

The third theme that emerged was parents who filed a lawsuit for physical injuries to a student had an opportunity to succeed on appeal. The appellate courts ruled in favor of parents in cases relating to an injury to a student. For example, an appellate court ruled in favor of a parent

after the daughter was injured during summer athletic conditioning. The parents argued the injuries occurred outside of the school day and outside of the required curriculum. The court also ruled in favor of the parent in a lawsuit where an aide injured a nonverbal special education student. The court did not rule in favor of the parent involving a student injury that occurred during the school day as part of a chemistry experiment. Appellate courts provide educators statutory immunity protection when students suffer injuries that occurred as part of the regular school day and as part of the educator's job duties.

Research Question 4

The fourth research question was what were the legal principles in cases decided in the Texas appellate courts where educators invoked statutory immunity protections? In Chapter 6 the legal principles in the Texas appellate cases, along with the legal principles from commissioner decisions in Chapter 4, will be answered.

Summary

This chapter presented a wide variety of legal issues, decisions, trends, and themes derived from the Texas appellate court cases where educators invoked statutory immunity protections. The final chapter will provide a summary and discussion related to the research questions, findings and conclusion based on the analysis of the Texas Commissioner decisions and Texas appellate court cases, recommendations, and suggestions for future research.

Chapter 6: Discussion, Conclusions, and Recommendations

The purpose of this study was to describe how the Texas Commissioner of Education and Texas state appellate courts have attempted to apply statutory immunity protections provided to educators under the Texas Education Code §22.0511 and §22.0512. A detailed analysis of the Texas Commissioner Decisions and the Texas appellate court cases were presented in Chapters 4 and 5. This final chapter will present a summary and discussion of the research questions and the findings and conclusions based on the analysis of the Texas Commissioner decisions and the Texas appellate court cases. The chapter closes the study with recommendations and suggestions for future research.

Summary and Discussion

Researchers have called for laws to balance the values of correcting and deterring wrongful behavior with the amount of immunity protection provided to educators (Daniels & Martin, 2018; Hendrick, 2016; Schaefer, 2013). In order to determine whether the statutory immunity protections provided under the Texas Education Code §22.0511 and §22.0512 are too broad or too narrow, a study describing how rulings of statutory immunity shield Texas educators from liability was needed (Buckley, 2017; Daniels & Martin, 2018; Maher et al., 2010; Payne, 2012). This study assessed statutory immunity protection of educators by (a) analyzing commissioner decisions and appellate court cases involving the Texas Education Code §22.0511 and §22.0512, (b) determining the set of norms applied in the cases, and (c) predicting the application of norms applied in the cases to future decisions. The results of this study are consistent with previous research showing that statutory immunity for educators is “alive and relatively robust” in Texas (Maher et al., 2010, p. 247).

The findings in this study provide strong evidence that the adoption of the Texas Education Code §22.0511 and §22.0512 have met the Legislature's goal of shielding educators from liability. Since the passage of House Bill 4 in 2003, there have been 19 Texas Commissioner of Education decisions and 15 Texas appellate court cases with rulings about educators' statutory immunity protections. The current findings indicated educators have successfully used statutory immunity as a shield in more cases than determined in previous research. Of particular importance, the findings of this study indicated educators have even higher success rates than in previous studies in two areas, both of which involve adverse employment decisions.

First, the reviewed case data showed the success rate of educators who appealed decisions by a school board to end their contracts was significantly higher than past studies. The commissioner ruled in favor of 50% of educators with a term contract that used force against a student and sought protection under the Texas Education Code §22.0512. Previous studies found educators won appeals in approximately 25% cases. Specifically, Ramirez's (2014) analysis of administrators' appeals of school board decisions involving the nonrenewal of a term contract depicted the Texas Commissioner of Education ruling in favor of 27% of educators and 73% of school boards. Mays (2017), in a study of Alabama cases, yielded similar outcomes to those of Ramirez, with 71% of cases favoring school boards over educators who appealed an adverse employment decision. Clearly, the Texas educators displayed a higher rate of success.

Second, this study of Texas educator cases resulted in higher percentages of educator defendants successfully using statutory immunity to prevail in lawsuits filed by a plaintiff for an adverse employment decision. This study found that the appellate courts determined 100% of the defendants had statutory immunity when sued by a plaintiff regarding an adverse employment

decision. Previously, researchers found courts rule in favor of school boards in 72% (O'Neal, 2013) to 73% (Flatt, 2012) of the cases.

Other than the two areas where immunity protection for educators was higher than previous studies, this study's findings support previous findings showing the courts as favoring educators and limiting their exposure to civil liability (Buckley, 2017; Carman, 2009; Maher et al., 2010). Carman (2009) analyzed qualified immunity protection for Texas educators prior to the passage of House Bill 4 and found that 24 out of 32, or 75%, of the cases provided Texas educators immunity protection. Holben and Zirkel (2011) found educator defendants prevailed in 61% of the lawsuits against them when the lawsuit involved an intervention or nonintervention in a student fight. This study's findings indicate courts favored educators in 77% of the cases.

This research provides clarity about the use of statutory immunity protection for both the use of force and educator immunity from liability since the passage of House Bill 4 in 2003. This study revealed the adoption of the Texas Education Code §22.0511 and §22.0512 achieved the Texas legislature's goal of shielding educators from liability and adverse employment actions based on the reasonable use of force defense. While it is impossible to eliminate all liability and exposure, this study proved that House Bill 4 has had its intended effect of providing educators even greater immunity protection.

Discussion for Each Research Question

The following four research questions were used to focus the study:

RQ1: What were the legal questions in cases decided by the Texas Commissioner of Education and Texas appellate courts where educators invoked statutory immunity protections?

RQ2: What were the decisions made by the Texas Commissioner of Education and Texas appellate courts in cases where educators invoked statutory immunity protections?

RQ3: What were the trends in the decisions made by the Texas Commissioner of Education and Texas appellate courts where educators invoked statutory immunity protections?

RQ4: What legal principles for Texas educators can be discovered from the decisions made by the Texas Commissioner of Education and Texas appellate courts where educators invoked statutory immunity protections?

Research Question 1

The first research question was what were the legal questions in cases decided by the Texas Commissioner of Education and Texas appellate courts where educators invoked statutory immunity protections? The research conducted in this study identified the themes of the legal questions addressed in both the Texas Commissioner of Education decisions and the Texas appellate court cases where an educator invoked statutory immunity protection under the Texas Education Code §22.0511 and §22.0512. The four overarching themes that answer the research question between both groups of cases included (a) the duties and the day-to-day responsibilities of educators, (b) due process protections of educators, (c) tenure of educators, and (d) an educator's belief that the use of force was reasonable.

Duties and Day-to-Day Responsibilities of Educators. The commissioner decisions and the appellate courts both considered the duties and day-to-day responsibilities of educators when applying statutory immunity protections provided to educators under the Texas Education Code §22.0511 and §22.0512. The commissioner made clear educators have rights similar to parents under *in loco parentis*. “As teachers stand in the place of parents, they are protected from allegations that they have improperly used force against children in a very similar manner as parents are protected from equivalent allegations” (*Villarreal v. Edinburg Consolidated ISD*, 2016, p. 6; *Zarsky v. Southside ISD*, 2019, p. 8). Because the duties and responsibilities of

parents flow to educators while students are in their care, the commissioner found several educators immune for their actions since it would have been okay for a parent to use the same type of force.

The appellate courts found that almost all educators acted within the scope of their duties. In 83% of the appellate cases, the actions by the educator were deemed to be within the scope of duties or incident to the duties of the educator, which provided the educator statutory immunity protection. The courts found:

- A superintendent acted within the scope of his duties when he investigated a transfer of district funds to a board president's personal account in *Lane v. Young* (2007);
- Administrators did not act outside the scope of their employment by adjusting the grade weight of a course, even though the educators admitted they made a mistake in advising the student about the grade weight in *Edinburg Consolidated Independent School District v. Smith* (2016);
- A teacher was protected for filing an allegation of child abuse to CPS in *Burgi v Hartman* (2018);
- A human resource director has the right to investigate an employee and to place an employee on leave in *Robinson v. Brannon* (2010); and
- A principal's duties include decisions regarding student discipline and employment matters in *Ward v. Theret* (2009).

Gonzalez v. Grimm (2011) was the only case where the court determined the incident was not within the scope of the educator's duties. This appellate decision in 2011 alludes to the fact that if the principal had filed a properly sworn affidavit the court may have determined she was operating within the scope of her duties and provided immunity. Even though Grimm lost on

appeal in 2011 the trial court ultimately ruled in her favor. In *Gonzalez v. Grimm* (2015), the appellate court upheld the judgment in favor of Grimm in 2015. The outcome of this case emphasizes the importance of submitting proper evidence before the court. The data shows that appellate courts uphold decisions by trial courts finding the educator's actions were within the scope of their duties. A properly sworn affidavit in 2011 may have saved Grimm, the principal, four years of unnecessary litigation. Instead, four years later in *Gonzalez v. Grimm* (2015), the appellate court ruled in favor of Grimm and dismissed the lawsuit.

Due Process Protections of Educators. The commissioner and the appellate courts analyzed cases to determine whether an educator was provided due process, especially in cases where a district moved forward on an adverse employment action against an educator. School boards must follow the processes and procedures set out in the Texas Education Code and district policies involving an educator's contract. Even though the school board has a right to accept or reject findings of fact or conclusions of law from the independent hearing examiner, the commissioner ruled against the board in every decision a board changed the hearing examiner's findings (i.e., Earthly, Lee). Therefore, school boards should accept the decision of the independent hearing examiner as written to avoid the commissioner overturning their decision.

The appellate courts provided due process to educators by granting educators' dispositive motions, which eliminated some or all claims. The courts granted 62% of the pleas to the jurisdiction and 80% of the motions for summary judgment filed by educators. Plaintiffs had to provide specific proof of the allegations brought against educators to prevail in appellate courts. Inferences or mere speculation that an educator's actions were negligent was not sufficient proof to overcome a dispositive motion. For example, a court ruled in favor of educators after a

plaintiff was unable to provide actual proof that the educators sent harassing emails and text messages (i.e., Robinson).

Tenure of Educators. Tenure afforded educators with an increased chance of prevailing in an appeal to the commissioner. Out of the 14 educators with term contracts, tenured educators, meaning educators with a Chapter 21 term contract, prevailed in 50% of the cases appealed to the commissioner regarding the use of force (i.e., Earthly, Harper, Lee, Papa, Villarreal, Williams, Zarsky). There are no other studies to date where an educator prevailed over the school board at such a high percentage.

An Educator's Belief That the Use of Force Was Reasonable. All 19 commissioner decisions involved immunity for an educator's use of force under the Texas Education Code §22.0512. The commissioner consistently emphasized the importance of viewing the reasonableness of the use of force from the educator's viewpoint (i.e., Earthly, Williams, Villarreal, Zarsky). It is irrelevant that administrators, peers, or witnesses believed there was a better way to handle an incident.

While one might argue that another method might also have been successful, this is not the standard. Viewing the scene from [the educator's] perspective and applying an objective standard, three students who were violating school rules and were likely to start a fight were promptly removed from the area. (*Zarsky v. Southside ISD*, 2019, p. 14)

Research Question 2

The second research question was what were the decisions made by the Texas Commissioner of Education and the Texas appellate courts in cases where educators invoked statutory immunity protections? The research conducted in this study identified the themes of the decisions by both the Texas Commissioner of Education and the Texas appellate courts

where an educator invoked statutory immunity protection under the Texas Education Code §22.0511 and §22.0512. The three overarching themes that answer the research question between both groups of cases included: (a) educators have extensive statutory immunity protection, (b) justification for statutory immunity protection of educators, and (c) commissioner and court reluctance to interfere with district-level decisions.

Educators Have Extensive Statutory Immunity Protection. The commissioner ruled in favor of educators in seven (37%) out of 19 cases where an educator invoked statutory immunity protection under the Texas Education Code §22.0512. While educators prevailed at a lower percentage, the percentage of educators who prevailed is a significant finding. Specifically, seven out of fourteen educators with a term contract prevailed. The seven prevailing educators used the following force:

- Restraining a student to prohibit a fight between students in *Earthly v. Fort Bend Independent School District* (2009);
- Grabbing the student's face to have her look at reading materials on the teacher's computer in *Harper v. Alvarado Independent School District* (2010);
- Forcing a student into the hallway in *Lee v. Dallas Independent School District* (2016);
- Forcing the student out of the classroom while grabbing his hands, twisting his arm behind his back, and pushing the student against the door in *Papa v. Presidio Independent School District* (2006);
- Restraining the student by bending and applying pressure to his wrist to keep the student from hitting a female student in *Villarreal v. Edinburg Consolidated Independent School District* (2016);

- Grabbing the student's wrist to keep him from walking away after the teacher walked up on two students fighting in *Williams v. Spring Independent School District* (2017); and
- Blocking three students from entering the in-school suspension room to prohibit a fight, followed by pushing the students out of a restricted hallway towards the office in *Zarsky v. Southside Independent School District* (2019).

The appellate courts ruled in favor of ten (77%) educators, nine wherein an educator invoked statutory immunity protection under the Texas Education Code §22.0511 and one on other grounds. Educators had statutory protection under the Texas Education Code §22.0511 for the following allegations:

- Making an alleged false report to CPS based on a personal vendetta from outside the school setting involving the reporting educator's spouse and the plaintiff in *Burgi v Hartman* (2018);
- Retaliating for the alleged use of free speech in *Compton v. Port Arthur Independent School District* (2017);
- Changing the grade weights of a course causing the student to move from valedictorian to salutatorian in *Edinburg Consolidated Independent School District v. Smith* (2016);
- Investigating a \$50,000 transfer from the district to a board member's personal account in *Lane v. Young* (2007);
- Retaliating after the plaintiff filed an EEOC lawsuit against the district in *Rivera Port Arthur Independent School District* (2016);
- Tarnishing an educator's reputation by sending harassing texts and emails and making harassing phone calls in *Robinson v. Brannon* (2010);

- Ignoring the plaintiff's reports about unlawful drug use and drug dealing on campus by another educator in *Van Deelen v. Spring Independent School District* (2018);
- Terminating a probationary contract based on the plaintiff's discipline over a cheerleader incident in *Ward v. Theret* (2009); and
- Creating, implementing, and assigning a chemistry experiment where a student inadvertently burned herself after spilling hydraulic acid in *Will v. Bambenek* (2017).

The one case where an appellate court ruled in favor of an educator on grounds other than statutory immunity involved a principal reporting a parent to the police for harassment over the phone (i.e., Gonzalez).

One notable finding is the three educators who did not prevail at the appellate court level still may prevail at the conclusion of the case. When the appellate courts denied the dispositive motions of some educators, the court sent the cases back to the trial court for a decision. Dispositive motions are procedural tools used in litigation to dismiss the claims against the educators without having to go to trial. Therefore, a denial of a dispositive motion by the appellate courts simply allows the case to continue against the educator at the trial court level. Similar to the findings by Zirkel and Holben (2017) where the ultimate relief obtained by the plaintiff was unavailable, the ultimate outcomes in three of the four cases sent back to the trial courts is unknown since there is no record of the final determination of these cases. It is unclear if there was a settlement between the parties or if the trial court ruled in favor of one party or another.

Without an appeal of a trial court's ruling to an appellate court, it is difficult to know the ultimate outcome given subsequent conclusive rulings may not be in public records. The educator may ultimately have prevailed in these three cases at the conclusion of the lawsuit. The

ultimate outcome of a case was only known in *Gonzalez v. Grimm* (2015). While Grimm did not prevail on her dispositive motion she ultimately prevailed at trial. The trial court ultimately awarded a judgment in favor of Grimm after the trial.

Justification for Statutory Immunity Protection. The commissioner emphasized educators have to be allowed to use reasonable force when they stand in the place of parents during the school day (i.e., Gracia, Harper, Papa, Peters, Villarreal, Williams, Zarsky). Teachers are similar to parents in that they have the right to prescribe reasonable rules for the “government of children under their charge, and to enforce, by moderate restraint or correction, obedience to such rules” (*Williams v. Spring ISD*, 2017, p. 8). The most recent commissioner decision expressly said the board’s decision to terminate Zarsky, who was “conscientiously doing his job when he intervened to prevent a fight” and “he did not lose control of himself or the situation” is the exact reason educators need statutory immunity (*Zarsky v. Southside ISD*, 2019, p. 15). If Zarsky’s termination were to stand, “Texas teachers would have to carefully think whether they should intervene to prevent or stop fights” (p. 15).

While the justification for immunity protection for educators was not clearly discussed in the appellate court cases as in the commissioner decisions, the appellate court's rulings indicated they are not inclined to overturn decisions by administrators and school districts. For instance, courts ruled in favor of defendants in every case where an employee sued for an adverse employment action. The refusal to overturn any decisions where a plaintiff sued an educator defendant for an adverse employment decision demonstrates the courts’ hesitation in inserting themselves in school district decisions, and particularly personnel decisions.

Commissioner and Court Reluctance to Interfere With District-Level Decisions.

Both the commissioner and the appellate courts demonstrated their reluctance to interfere with

decisions by school systems and state agencies. Courts consistently demonstrated the reluctance to interfere with a school district's decision making. As noted in *Edinburg Consolidated ISD v. Smith* (2016), "courts do not and cannot intervene in the resolution of conflicts that arise in the daily operations of school systems and which did not directly and sharply implicate basic constitutional values" (p. 43). Courts were also reluctant to question a decision by a state agency since "it is the general rule in Texas that courts do not interfere with the statutorily conferred duties and functions of an administrative agency" (*Edinburg Consolidated ISD v. Smith*, 2016, p. 43).

Research Question 3

The third research question was what were the trends in the decisions made by the Texas Commissioner of Education and the Texas appellate courts where educators invoked statutory immunity protections? The research conducted in this study identified the themes found in both the Texas Commissioner of Education decisions and the Texas appellate court cases where an educator invoked statutory immunity protection under the Texas Education Code §22.0511 and §22.0512. The four overarching themes that answer the research question between both groups of cases included (a) the types of statutory immunity protection in the cases, (b) the role of educators, (c) the difference in grade levels in commissioner decisions and appellate court cases, and (d) the causes of action against educators.

Types of Statutory Immunity Protection in the Cases. All 19 commissioner decisions involved an educator's protection under the Texas Education Code §22.0512. The Texas Education Code §22.0512 provides educator immunity from disciplinary proceedings for professional employees, including the use of justified physical force against a student. The commissioner had to determine in these cases whether the educator had statutory immunity for

the use of force against a student. Thirteen out of 15 cases in the Texas appellate courts involved the Texas Education Code §22.0511, which provides educator's immunity from liability. The other two appellate cases involved the Texas Education Code §22.0512 and an educator's use of force.

Role of Educators. Nineteen educators used the Texas Education Code §22.0512 as the basis of the appeal to the commissioner for an adverse employment decision by a school board. Classroom teachers made up the majority of educators who appealed cases to the Texas Commissioner of Education. Out of 13 appeals by classroom teachers, the teachers prevailed in six (46%) cases and the school district prevailed in six (46%) cases, and one (8%) appeal was remanded back to the district. School districts won every appeal filed by a teacher's aide, principal, and assistant principal. The one librarian in the sample prevailed and was reinstated by the commissioner.

A total of 23 educators sought immunity from liability under the Texas Education Code §22.0511 in the appellate court cases. Appellate courts granted sixteen (70%) of these educators immunity from liability, and all but one of these educators had immunity under the Texas Education Code §22.0511. The one prevailing educator without statutory immunity was in *Gonzalez v. Grimm* (2015), and the educator prevailed at trial even though the appellate court initially denied her statutory immunity protection. Superintendents were one of the most frequently named defendants in the cases. Even though superintendents usually were not involved personally, they were likely named as a defendant due to their visibility in the district and their higher compensation. The same could be said for principals and district administrators. Principals, the most frequently named defendant in the sample, prevailed in all claims against them. The appellate courts granted principals statutory immunity in 80% of the cases and the

20% prevailed on other grounds at trial. Courts also provided superintendents and central administrators statutory immunity in 100% of the cases. The assistant principals, two teachers, and one central office employee all had statutory immunity. Finally, the courts determined that all but one district administrator and one coach had statutory immunity.

Difference in Grade Levels in Commissioner Decisions and Appellate Court Cases.

Six of the 19 commissioner decisions occurred at the elementary level. Four school districts and two educators prevailed in the elementary cases. Nine decisions occurred at the secondary level. School districts prevailed in four cases at the secondary level, and educators prevailed in five cases. Grade levels were unknown in four of the cases, and four districts prevailed, with the other case was remanded back to the trial court. No appellate cases occurred at the elementary level. In the five high school cases, the defendant educators prevailed in two cases, parents prevailed in two cases, and the state agency prevailed in one case. Two of the 15 appellate court cases decisions occurred at the middle school level, and one parent and one state agency prevailed. Out of the five cases where the grade level was unknown, the district prevailed in five cases. The grade level was irrelevant in five cases as these cases since defendants were school board members or central administration employees.

Causes of Action Against Educators. The 19 decisions appealed to the commissioner included one appeal of a grievance where the commissioner ruled in favor of the district; four decisions involved a nonrenewal of educator's contract wherein three (75%) school districts prevailed and one (25%) educator prevailed; and 14 decisions involving the termination of an educators' contracts wherein seven (50%) school districts prevailed, six (43%) educators prevailed, and one (7%) case was remanded back to the district. In the 15 appellate court cases,

28 causes of action were pled against defendants, including 22 (79%) tort claims, three (11%) for constitutional issues, two (7%) claims for breach of contract, and one (3%) claim for assault.

The type of tort claims brought against educators was diverse. The findings aligned with previous studies that negligence was the most predominant tort claim brought against educators (Buckley, 2017; Eckes et al., 2012; Holben & Zirkel, 2011). Out of the 22 tort claims filed, plaintiffs filed:

- Four (18%) negligence claims,
- Three (14%) intentional infliction of emotional distress claims,
- Three (14%) defamation claims,
- Two (9%) claims for tortious interference with a contract,
- Two (9%) claims for malicious prosecution,
- Two (9%) claims for civil conspiracy,
- One (5%) claim for invasion of privacy,
- One (5%) claim for fraudulent misrepresentation,
- One (5%) claim for negligent misrepresentation,
- One (5%) claim for wrongful termination,
- One (5%) claim for retaliation, and
- One (5%) claim for negligent discipline.

Research Question 4

The fourth research question was what legal principles for Texas educators can be discovered from the decisions made by the Texas Commissioner of Education and Texas appellate courts where educators invoked statutory immunity protections? This research question is a synthesis of the Texas commissioner decisions and the Texas appellate cases. The research

conducted in this study identified the legal principles found in both the Texas Commissioner of Education decisions and the Texas appellate court cases where an educator invoked statutory immunity protection under the Texas Education Code §22.0511 and §22.0512. The two overarching themes that answer the research question between both groups of cases included (a) overcoming procedural requirements and (b) submitting admissible evidence in all pleadings.

Overcoming Procedural Requirements. Appeals to the commissioner of education and to the courts have specific requirements and timelines that have to be met. Parties on both sides of the appeals encountered issues with procedural requirements. The board of trustees lost every appeal to the commissioner after they changed the findings of fact or conclusions of law of an independent hearing examiner. The commissioner repeatedly stated the procedural requirements were an issue in the case. The districts often cited the failure to exhaust administrative remedies as a defense. Even though districts are not always successful in the argument on exhaustion of remedies, the educator still had to overcome the district's argument in their pleadings. In the appellate courts, both plaintiffs and defendants used the failure to exhaust administrative remedies as a defense so all parties need an understanding of procedural requirements.

Another procedural hurdle addressed by the appellate courts involved recovery of attorney's fees under the Texas Education Code §22.0511 and §22.0517. In several instances, the educator did not plead for attorney's fees for having to defend a claim against them. While educators had numerous defenses they used to defeat claims by plaintiffs, the appellate court was not always clear in their decisions which defense it used to rule in favor of the educator. Several courts determined educators had the right to recover their attorney's fees just by requesting them in their pleadings to the court, but 47% of educators failed to request them.

Submitting Admissible Evidence. The commissioner and the appellate courts discussed the submission of inadmissible evidence by the parties. From a lack of a proper attestation on an affidavit to the failure to attach proper exhibits, the commissioner decisions and court cases both addressed problems with evidence. The failure to attach a properly sworn-affidavit to a motion for summary judgment may have led to one educator having to defend a lawsuit for an additional four years. In *Gonzalez v. Grimm* (2011, 2015), the principal who was named as a defendant in a lawsuit failed to submit a sworn-affidavit of her testimony indicating that calling the police was part of her duties as a principal. The appellate court noted that the other affidavits attached to the principal's motion for summary judgment were not enough to demonstrate the principal acted within her duties when she reported a parent's harassment to the police. By failing to attach a properly sworn-affidavit, the appellate court ruled against the principal and sent the case back to the trial court where the case was tried. Even though the defendant educator ultimately prevailed in the trial court, it added an additional four years to the lawsuit. If the educator had initially attached a properly sworn-affidavit, the court may have dismissed the case in 2011.

Findings and Conclusions

This study revealed the following findings and conclusions derived from an analysis of the Texas Commissioner of Education decisions and Texas appellate court cases where educators invoked statutory immunity protections under the Texas Education Code §22.0511 and §22.0512:

1. The passage of the Texas Education Code §22.0511 and §22.0512 achieved the legislature's goal of providing additional immunity protections to educators.
2. The Texas Education Code §22.0511 protections are too broad. There has to be a threshold where educators are legally responsible for their egregious actions. The

development of a bright-line test by the Texas Legislature could bring more balance needed to correct and deter wrongful behavior as called for by Buckley (2017). For example, the data revealed plaintiffs were often responsible for the defendant's attorneys' fees under the Texas Education Code §22.0511. A bright-line test for the reimbursement of attorney's fees could differentiate between a lawsuit brought by a plaintiff for harassment purposes only and a lawsuit for physical injuries to a student.

3. The Texas Education Code §22.0512 protections are balanced. Educators must have the ability to use reasonable force to control students and maintain discipline in their classrooms. The data revealed districts are quick to terminate an educator for their use of force even when the use of force was reasonable. Thus, protections available under the Texas Education Code §22.0512 are necessary to protect educators from unlawful dismissals and to incentivize educators to remain in the education field.
4. Disgruntled employees cannot ignore the outcome of lawsuits in favor of administrators named as defendants in adverse employment cases. As with previous studies, appellate courts in this study consistently provided school administrators statutory immunity protection against claims by disgruntled employees, which illustrates the judicial system's hesitancy to interfere with district personnel decisions. Disgruntled employees must weigh the costs with the rewards of bringing a lawsuit against administrators. Disgruntled employees not only face procedural hurdles that are time consuming and difficult, but they could also be required to pay the attorney's fees of administrators found to have statutory immunity protection under the Texas Education Code §22.0511 and §22.0517.

5. Educators can legally touch their students to control, train, educate, or punish for prohibited conduct. Educators have significant immunity for the reasonable use of force because they need protection to do their jobs without the fear of discipline. The results prove educators have statutory immunity for: (a) placing a hand on a student's shoulder to keep the student in line, (b) using force to break up a fight, (c) self-defense, (d) holding a student's hand to comfort or direct a student, and (e) pushing a student out of a classroom or down a hallway for the protection of other people or property and grabbing property out of a student's hand. Educators do not have to use a verbal command before using reasonable force. The commissioner provided immunity to educators when they demonstrated: (a) the force used was purposeful to protect people or property, (b) a physical restraint did not present a danger of injury, (c) they maintained emotional control of themselves, and (d) they were conscientiously doing their job. Force is likely to be deemed excessive if used by a male educator against a female student or if force is used against a smaller, younger student. This study contradicted the belief that educators cannot touch students.
6. In cases where an educator appeals a decision by a school district to end the educator's contract for the physical use of force against a student, the educator is likely to prevail as long as (a) the educator is under a term contract, (b) the educator does not have previous written reprimands for the same type of behavior within a three-year timeframe, (c) it is the first time the educator used force against a student, and (d) a reasonable person would agree that a parent could use the same force against their child without the action being considered abusive.

Recommendations

The following recommendations bring awareness to teachers, school district employees, school administrators, school boards, parents, attorneys, and legislators. I compiled these recommendations from the data and my viewpoints as a school administrator, a previous litigator, and general counsel for school districts, a former legislative aide in the Texas House of Representatives that covered the education committee, a parent, and a wife of a school administrator and coach. The recommendations regarding the application of statutory immunity apply to administrators, educators, parents, lawyers, school boards, and legislators. Each group of stakeholders could have agendas that conflict with another. Nonetheless, the recommendations are the following:

1. Administrators must fully understand the Texas Education Code Chapter 21 contractual protections and the Texas Education Code §22.0512 before disciplining an educator for the use of force against a student. The administrator must consider whether: (a) the student has physical injuries, (b) if the student is significantly smaller than the educator, (c) does the gender of the student and the educator differ, (d) is a special needs student or an elementary student involved, (e) if video footage exists, does it benefit the district or the educator, (f) is this the first time the educator has used force against a student, (g) has the educator had a reprimand for similar behavior in the past three years, and (h) is the educator on a term, probationary, or at-will contract. If an educator has an excellent work history and reputation, the administrator should carefully consider moving forward with a written reprimand instead of a more severe punishment.
2. If educators do use force against a student, they need to articulate the reasons they believed the force was necessary. They also should ask for any copies of video footage

where the incident occurred. For additional protection, educators need to join a teachers' representative group that provides legal representation for its members. They should ask the district for training on proper restraint techniques and de-escalation tactics so know how to deal with emotional, physical, disobedient, and erratic students. Educators should purchase a separate insurance policy when they oversee a summer extracurricular program since these programs could be outside the scope of their duties since it is not during the school year or part of the required curriculum. Finally, educators must have enough self-awareness to step away from situations where their own emotions are rising. If an educator reacts emotionally against a student, they need to fight the urge to immediately apologize for their behavior since the commissioner deemed an apology as an admission that the use of force to be unreasonable. Therefore, school districts might institute emotional intelligence training for their educators and provide policies that enable educators to understand the boundaries of emotional behavior in the presence of children.

3. Parents must advocate for their children, including having regular contact with school officials. If the parent believes inappropriate behavior occurred at school, they have to report it to administration, especially if it involved a younger child or child with special needs. Parents need to advocate for their children by reporting to administrators any incidents where an educator used force that was not reasonable. It is important for parents to track any changes in their children's behavior after an alleged incident occurred as part of making the case for an educator's actions having adverse effects on their children.
4. Lawyers defending educators must specifically plead for attorney's fees under the Texas Education Code §22.0511 and §22.0517. This study proved courts are willing to grant

defendants their attorneys' fees for their statutory immunity defense, yet defendants failed to request their fees in 47% of the cases. Since defendants used a variety of defenses, court decisions were not always clear on which statute the court relied on to dismiss the claims against educators. Pleadings must request attorney fees under the Texas Education Code §22.0511 and §22.0517 because courts interpreted these provisions together to mean educators who are immune from liability are entitled to receive attorney's fees.

5. School boards should adopt the full recommendation of the independent hearing examiner when determining whether to terminate or not to renew an educator's contract under Chapter 21 of the Texas Education Code. The commissioner ruled in favor of the educator in every appeal where the school board made changes to the independent hearing examiner's findings of fact and conclusions of law.
6. Legislators need to reevaluate the statutory immunity protections for educators. While educators need some protection against litigious plaintiffs, there has to be a way to hold educators accountable when an educator causes serious injuries. The legislature should consider requiring educators to purchase personal liability insurance up to a certain policy limit for coverage in situations when an educator causes serious physical injuries. There may only be a few circumstances where the insurance policy is necessary, but at least parents could have some remedy in extreme situations.

Suggestions for Further Research

Based on the findings and conclusions of this study, the following suggestions for further research are:

1. This study can be duplicated using trial court cases and independent hearing examiner decisions to determine whether the lower level decisions provide the same statutory immunity protections for educators as at the appellate level.
2. A similar study can be done in other states can be that provide educators statutory immunity protections in order to compare and contrast the protections provided to educators in Texas.
3. An expansion of this study could be done with other governmental employees who enjoy statutory immunity protection to determine whether the state agencies and appellate courts provide the various governmental employees the same immunity protections as educators.
4. Due to the changing nature of state law, this study should be repeated in 10 years to determine if the decisions by the Texas Commissioner of Education or the Texas appellate courts have continued being sustained.

Final Reflection

As a licensed attorney and a member of the State Bar of Texas since 2002, I have represented governmental entities as well as parties suing governmental entities in litigation. I have also served as a school district administrator in a Texas school district. I found the cases to be intriguing from that professional perspective, and I maintained my awareness of my experiences to avoid any biases affecting my analysis of the data. With these aspects of my positionality in mind, I will carry the knowledge that the findings imparted with me throughout my practice of law within the public education system of Texas. I think the legislature of Texas was right to protect teachers when they must use force, especially with the litigiousness found in today's society.

Summary

This final chapter provided a summary and discussion related to the research questions, findings and conclusion where educators invoked statutory immunity protections. This chapter provided recommendations for teachers, school district employees, school administrators, school boards, parents, attorneys, and legislators. The chapter concluded with suggestions for future research.

References

- Adams-Valdez, S. A. (2005). *Stakeholder perceptions of hearing examiner legislation in Texas teacher dismissal cases* (Publication No. 3167268) [Doctoral dissertation, The University of Texas - Pan American]. ProQuest Dissertations and Theses Global.
- Aktar, Z. (2018). Acts of state, state immunity, and judicial review in the United States. *British Journal of American Legal Studies*, 7, 205–234. <https://doi.org/10.2478/bjals-2018-0006>
- Alexander, J. J., & Alexander, J. A. (2019). *American public school law* (9th ed.). Wadsworth.
- Allen v. Jacksboro Independent School District, 2013 TX Educ. Agency LEXIS 16 (2013).
- Almeyda v. Alief Independent School District, 2012 TX Educ. Agency LEXIS 44 (2012).
- American Law Institute. (1965). *Restatement of the law second: Torts* (Vol. 2). American Law Institute. <https://www.ali.org/publications/show/torts/>
- Anderson, D. A. (2007). Judicial tort reform in Texas. *Review of Litigation*, 26, 1–28. <https://www.questia.com/library/journal/1P3-1210857121/judicial-tort-reform-in-texas>
- Batista, P. J., & Shaunessy, M. (2003). Invoking sovereign immunity to protect public university athletic departments and administrators. *Texas Review of Entertainment & Sports Law*, 4, 83–108. [https://library.laredo.edu/eds?query=%22WAIVER%20--%20Law%20&ff\[\]=ContentProvider:Texas%20Reference%20Center&resultsperpage=50](https://library.laredo.edu/eds?query=%22WAIVER%20--%20Law%20&ff[]=ContentProvider:Texas%20Reference%20Center&resultsperpage=50)
- Black, D. W. (2016). The constitutional challenge to teacher tenure. *California Law Review*, 104, 75–148. https://scholarcommons.sc.edu/law_facpub
- Black v. Hart Independent School District, 2012 TX Educ. Agency LEXIS 94 (2012).
- Blank, S. K. (2015). The king’s court: Demystifying governmental immunity. *Journal of the Missouri Bar*, 71, 192–198. <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=3428&context=mlr>

- Bloomberg, L. D., & Volpe, M. (2008). Analyzing data and reporting findings. In L. D. Bloomberg, & M. Volpe (Eds.), *Completing your qualitative dissertation: A roadmap from beginning to end* (pp. 94–125). Sage. <https://doi.org/10.4135/9781452226613>
- Blume, H., & Resmovits, J. (2016, August 24). Now that the Vergara case is over, let's reform teacher tenure laws. *Los Angeles Times*. <https://www.latimes.com/opinion/editorials/la-ed-teacher-tenure-ruling-20160823-snap-sto>
- Borg, W. R. (1989). *Educational research: An introduction* (5th ed.). Longman.
- Buckley, P. (2017). Barrier to justice, limits to deterrence: Tort law theory and state approaches to shielding school districts and their employees from liability for negligent supervision. *Loyola University Chicago Law Journal*, 48(4), 1015–1039. <https://lawecommons.luc.edu/luclj/vol48/iss4/7>
- Burgi v. Hartman, 2018 Tex. App. Lexis 5025 (Court of Appeals of Texas, Fourth District, San Antonio, 2018).
- Carman, J. (2009). *Analysis of qualified immunity for Texas public school professional employees as interpreted by the Texas courts* (Publication No. 3377447) [Doctoral dissertation, University of North Texas]. University of North Texas Digital Archive. <https://digital.library.unt.edu/ark:/67531/metadc9857/>
- Carlson, E. A. (2005). Tort reform: Redefining the role of the court and the jury. *South Texas Law Review*, 47(2), 245–287. <https://law.justia.com/cases/texas/supreme-court/2011/2001662.html>
- Catalina Development v. County of El Paso, 121 S.W.3d 704 (Tex. 2003).

- Centner, T. J. (2007). Discerning immunity for governmental entities: Analyzing legislative choices. *Review of Policy Research*, 24(5), 425–441. <https://doi.org/10.1111/j.1541-1338.2007.00293.x>
- Chemerinsky, E. (2001). Against sovereign immunity. *Stanford Law Review*, 53, 1201–1224. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1685&context=faculty_scholarship
- Chisholm v. Georgia, 2 U.S. (2 Dall.) 419 (1793).
- Chriss, W. J. (2005). House Bill 4 and other new legislation: Homeowners insurance, architects & engineers, and immunity for school & charity workers and volunteer firefighters. *South Texas Law Review*, 46, 1201–1215. <https://texaslawreview.org/>
- City of Galveston v. State, 217 S.W.3d 466 (Tex. 2007).
- Clary, B. G., & Lysaght, P. (2010). *Successful legal analysis and writing: The fundamentals*. West Academic.
- Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).
- Cohens v. Virginia, 19 U.S. (6 Wheat.) 264 (1821).
- Compton v. Port Arthur Independent School District, 2017 Tex.App.Lexis 6717 (Court of Appeals of Texas, Ninth District, Beaumont, 2017).
- Corbin, J., & Strauss, A. (2008). *Basics of qualitative research: Techniques and procedures for developing grounded theory* (3rd ed.). Sage.
- Dagley, A. (2012). *Retaliation for school employee speech*. (Doctoral dissertation, University of Alabama). University of Alabama Digital Archive. https://ir.ua.edu/bitstream/handle/123456789/1409/file_1.pdf?sequence=1&isAllowed=y

- Dallas Independent School District and Michael L. Williams, Commissioner of Education v. Peters, 2015 Tex.App.Lexis 12625 (Court of Appeals of Texas, Fifth District, Dallas, 2015).
- Daniels, S., & Martin, J. (2016). Where have all the cases gone? The strange success of tort reform revisited. *Emory Law Journal*, 65, 1445–1489.
<http://law.emory.edu/elj/content/volume-65/issue-6/articles-essays/where-cases-gone-success-tort-reform-revisited.html>
- Daniels, S., & Martin, J. (2018). Damage caps and access to justice: Lessons from Texas. *Oregon Law Review*, 96, 635–670.
<https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/23210/Transcript%20--%20The%20Practical%20Consequences%20of%20Caps%20on%20Damages%20final.pdf?sequence=1&isAllowed=y>
- DeLuccio, C. (2010). Keys to the kingdom: The need for judicial reform of contractual sovereign immunity in Texas. *Houston Law Review*, 46, 1641–1677.
<https://houstonlawreview.org/article/4265-keys-to-the-kingdom-the-need-for-judicial-reform-of-contractual-sovereign-immunity-in-texas>
- DeMitchell, T. A. (2006). *Negligence: What principals need to know about avoiding liability*. Rowman & Littlefield Education.
- DeMitchell, T. A., & Onosko, J. J. (2016). Vergara v. State of California: The end of teacher tenure or a flawed ruling? *Southern California Interdisciplinary Law Journal*, 25(3), 1–39. <https://gould.usc.edu/why/students/orgs/ilj/assets/docs/25-3-DeMitchell-Onosko>
- Doggett v. Seguin Independent School District, 2019 TX Educ. Agency LEXIS 9 (2019).

- Dougherty, J. W. (2004). *Torts and liability: An educator's short guide*. Phi Delta Kappa Educational Foundation.
- Duncan, M. J., & Turner, R. (2012). *Torts: A contemporary approach* (2nd ed.). West Academic.
- Earthly v. Fort Bend Independent School District, 2009 TX Educ. Agency LEXIS 17 (2009).
- Eckes, S. E., Decker, J. R., & Richardson, E. N. (2012). Trends in court opinions involving negligence in K-12 schools: Considerations for teachers and administrators. *West's Education Law Reporter*, 275, 505–522.
<https://www.researchgate.net/publication/286459004>
- Edinburg Consolidated Independent School District v. Smith, 2016 Tex.App.Lexis 5591 (Court of Appeals of Texas, Thirteenth District, Corpus Christi, 2016).
- Entrikin, J. L. (2018). The death of common law. *Harvard Journal of Law & Public Policy*, 42(2), 352–487. <https://www.questia.com/library/journal/1G1-596402739/the-death-of-common-law>
- Epstein, L., & Martin, A. (2014). *An introduction to empirical legal research*. Oxford University Press.
- Essex, N. L. (2012). *School law and the public schools: A practical guide for educational leaders*. Pearson Education.
- Federal Sign v. Texas Southern University, 951 S.W.2d 401 (1997).
- Flatt, C. (2012). *Adverse employment actions and public school administrators: An analysis of litigation, 1981-2010*. [Doctoral dissertation, University of Alabama]. University of Alabama Digital Archive. <http://library.ua.edu/vwebv/holdingsInfo?bibId=3386085>
- Flores v. Houston Independent School District, 2012 TX Educ. Agency LEXIS 26 (2012).

- Flynt, J. (2005). Saved by the bell: An overview of liability rules for professional employees of Texas school districts. *Baylor Law Review*, 57, 833–861.
<https://www.baylor.edu/law/review/index.php?id=933862>
- Forgey, J. R. (2018). Let's shake on it: Settling with a municipality when governmental immunity applies. *Baylor Law Review*, 70, 637–665.
<https://www.baylor.edu/law/review/doc.php/335428>
- Garner, B. (1996). *Black's law dictionary: Pocket edition*. West.
- Goldberg, J. C. P., & Zipursky, B. C. (2010). Torts as wrongs. *Texas Law Review*, 88, 917–986.
<https://ssrn.com/abstract=1576644>
- Gonzalez v. Grimm, 353 S.W.3d 270 (Court of Appeals of Texas, Eighth District, El Paso, 2011).
- Gonzalez v. Grimm, 479 S.W.3d 929 (Court of Appeals of Texas, Eighth District, El Paso, 2015).
- Gracia v. Brownsville Independent School District, 2018 TX Educ. Agency LEXIS 24 (2018).
- Guastini, R. (2015). A realistic view on law and legal cognition. *Journal for Constitutional Theory and Philosophy of Law*, 27, 45–54. <https://doi.org/10.4000/revus.3304>
- Hall v. Tawney, 621 F.2d 607 (4th Cir. 1980).
- Hall, M. A., & Wright, R. F. (2008). Systematic content analysis of judicial opinions. *California Law Review*, 96, 63–122. <http://www.law.berkeley.edu/journals/clr/>
- Harper v. Alvarado Independent School District, 2010 TX Educ. Agency LEXIS 26 (2010).
- Harris, F. Y. (2012). *Litigation involving student misconduct in schools* [Doctoral dissertation, University of Alabama]. University of Alabama Digital Archive.
<http://library.ua.edu/vwebv/holdingsInfo?bibId=3386086>

Hendrick, B. M. (2016). Pennsylvania governmental immunity and public school districts: A call for legislative change. *Widener Law Journal*, 25, 223–252.

<https://widenerlawjournal.com/>

Hogenson v. Williams, 542 S.W.2d 456 (Tex. Civ. App.—Texarkana 1976, no writ).

Hoglund-Shen, A. (2017). Fixer-upper: Reforming Vergara’s teacher tenure statutes. *William & Mary Bill of Rights Journal*, 25, 1151–1177.

<https://scholarship.law.wm.edu/wmborj/vol25/iss3/14>

Holben, D., & Zirkel, P. A. (2011). Empirical trends in teacher tort liability for student fights.

Journal of Law and Education, 40, 151–169. <https://heinonline.org/HOL>

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/jle40&div=7&id=&page=>

Holben, D., Zirkel, P. A., & Caskie, G. I. (2009). Teachers fear of litigation for disciplinary actions. *Journal of School Leadership*, 19(5), 559–585.

<https://doi.org/10.1177/105268460901900503>

Hosner v. DeYoung, 2 Tex. 497 (1847).

House Research Organization. (1995). *Senate Bill 1 analysis*.

<https://hro.house.texas.gov/pdf/ba74R/SB0001.PDF>

Hull, M. S., Cooper, R. B., Bailey, C. W., Wilcox, D. P., Gadberry, G. J., & Wallach, D. M.

(2005). *House Bill 4 and Proposition 12: An Analysis with Legislative History*. School of Law, Texas Tech University. <https://texastechlawreview.org/>

Hutchinson, T., & Duncan, N. (2012). Describing and defining what we do: Doctrinal legal research. *Deakin Law Review*, 17, 83–119.

<https://doi.org/10.21153/dlr2012vol17no1art70>

- Jackson, V. C. (1988). The Supreme Court, the Eleventh Amendment, and state sovereign immunity. *Yale Law Review*, 98, 1–126.
<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=7175&context=yjl>
- Johnson v. Kenedy Independent School District, 2008 TX Educ. Agency LEXIS 10 (2008).
- Kawananokoa v. Polyblank, 205 U.S. 349 (1907).
- Khandkar, S. H. (2013). *Open coding*. University of Calgary.
<http://pages.cpsc.ucalgary.ca/~saul/wiki/uploads/CPSC681/opencoding.pdf>
- Kim, E. Y. (2014). Can you sue the government? An examination of the legal doctrines for governmental liability regarding their involvement with wind power development. *Columbia Journal of Environmental Law*, 39, 319–355.
[www.https://www.calt.iastate.edu/](http://www.calt.iastate.edu/)
- Lacefield, K. L. (2010). *A legal analysis of litigation against Oklahoma educators and school districts under the Oklahoma Governmental Tort Claims Act* [Doctoral dissertation, University of North Texas]. University of North Texas Digital Archive.
<https://digital.library.unt.edu/ark:/67531/metadc28446/>
- La Joya Independent School District v. Villareal, 2014 Tex.App.Lexis 7162 (Court of Appeals of Texas, Thirteenth District, Corpus Christi, 2014).
- Lake v. Dripping Springs Independent School District, 2006 TX Educ. Agency LEXIS 62 (2006).
- Lammasniemi, L. (2018). *Law dissertations: A step-by-step guide*. Routledge.
- Lane v. Young, 2007 Tex.App.Lexis 144 (Court of Appeals of Texas, Ninth District, Beaumont, 2007).

- Lee v. Dallas Independent School District, 2016 TX Educ. Agency LEXIS 27 (2016).
- Lewis v. Houston Independent School District, 2012 TX Educ. Agency LEXIS 7 (2012).
- Linares, P. A. (1997). *Senate Bill 1: An analysis on the development and adoption of the new Texas Education Code* (Publication No. 304372861) [Doctoral dissertation, The University of Texas]. ProQuest Dissertations and Theses Global.
- Lincoln, Y. S., & Guba, E. G. (1985). *Naturalistic inquiry*. Sage.
- Logan, D. (2015). Juries, judges, and the politics of tort reform. *Law Faculty Scholarship*, 83, 903–948. <https://ssrn.com/abstract=2653919>
- Lupini, W. H., & Zirkel, P. A. (2003). An analysis of education litigation. *Education Policy*, 17(2), 257–279. <https://doi.org/10.1177/0895904803017002004>
- Madden v. State Board of Education, 2014 Tex.App.Lexis 5444 (Court of Appeals of Texas, Third District, Austin, 2014).
- Maher, P. J., Price, K., & Zirkel, P. A. (2010). Governmental and official immunity for school districts and their employees: Alive and well? *Kansas Journal of Law and Public Policy*, 14(2), 234–270. <http://law.ku.edu/lawjournal>
- Masso, J. F. (2005). Mind the gap: Expansion of Texas governmental immunity between takings and tort. *St. Mary's Law Journal*, 36, 265–299. https://www.texasbar.com/AM/Template.cfm?Section=Table_of_Contents=/CM/ContentDisplay.cfm=28319
- Mayger, L. K., & Zirkel, P. A. (2014). Principals' challenges to adverse employment actions: An empirical analysis of the case law. *NASSP Bulletin*, 98(3), 219–236. <https://doi.org/10.1177/0192636514542872>

Mays, A. M. (2017). *The 2004 Alabama Teacher Tenure Act: Issues and application* [Doctoral dissertation, University of Alabama]. University of Alabama Digital Archive.

<http://library.ua.edu/vwebv/holdingsInfo?bibId=6237469>

McDaniel, R. R. (2014). *A legal analysis of litigation against Georgia educators and school districts under the Georgia Governmental Tort Claims Act* [Doctoral dissertation, University of North Texas]. University of North Texas Digital Library.

<https://digital.library.unt.edu/ark:/67531/metadc700100/>

McPherson v. Wylie, 2016 Tex.App.Lexis 13288 (Court of Appeals of Texas, Tenth District, Waco, 2016).

Merriam, S. B., & Tisdell, E. J. (2016). *Qualitative research: A guide to design and implementation* (4th ed.). Jossey-Bass.

Moore v. Miller, 2012 Tex.App.Lexis 941 (Court of Appeals of Texas, Tenth District, Waco, 2012).

Moore, M. (2016). *Revocation or suspension of teaching certificates* [Doctoral dissertation, University of Alabama]. University of Alabama Digital Archive.

<http://library.ua.edu/vwebv/holdingsInfo?bibId=4607365>

Moreno v. Donna Independent School District, 2013 TX Educ. Agency LEXIS 42 (2013).

National School Boards Association. (2004). *Teacher liability*.

<https://www2.ed.gov/policy/elsec/leg/esea02/pg33.html>

Nelson, S. L. (2009). The king's wrongs and the federal district courts: Understanding the discretionary function exception to the Federal Tort Claims Act. *South Texas Law Review*, 51, 259–302. <http://www.stcl.edu/academics/law-reviews-journals/south-texas-law-review/masthead/>

Newton, B. (2019). *An investigation of court decisions related to educator immorality* [Doctoral dissertation] (University of Alabama at Birmingham).

<https://pdfs.semanticscholar.org/be43/902fa61519d6022d24bf6cbea975c40ea3a9.pdf>

Nockleby, J. T. (2007). How to manufacture a crisis: Evaluating empirical claims behind “tort reform.” *Oregon Law Review*, 86, 531–598. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1546586

Olabisi v. Aldine Independent School District, 2014 TX Educ. Agency LEXIS 48 (2014).

O’Neal, C. S. (2013). *Court cases about teacher insubordination* [Doctoral dissertation, University of Alabama]. University of Alabama Digital Archive.

<http://acumen.lib.ua.edu/u0015/0000001/0001381>

Osborne, A. G., & Russo, C. J. (2011). *The legal rights and responsibilities of teachers: Issues of employment instruction*. Corwin Press.

Papa v. Presidio Defendant School District, 2006 TX Educ. Agency LEXIS 90 (2006).

Patton, M. Q. (2015). *Qualitative research & evaluation methods* (4th ed.). Sage.

Paul D. Coverdell Teacher Protection Act of 2001, Pub. L. No. 107-110, §§ 2361-2368 (2001).

<http://www.mickesotoole.com/articles/paul-d-coverdell-teacher-protection-act-federal-statute-provides-protections-to-school-personnel-by-natalie-hoernschemeyer/>

Payne, B. T. (2012). *An examination of court cases involving immunity in the K–12 setting* [Doctoral dissertation, University of Alabama]. University of Alabama Digital Archive.

http://acumen.lib.ua.edu/u0015/0000001/0000916/u0015_0000001_0000916

Peters v. Dallas Independent School District, 2012 TX Educ. Agency LEXIS 75 (2012).

- Phelan, M. (2011). A synopsis of Texas and federal sovereign immunity principles: Are recent sovereign immunity decisions protecting wrongful governmental conduct? *St. Mary's Law Journal*, 42, 725–791. <http://www.stmaryslawjournal.org/default.aspx>
- Popham, W. J., & DeSander, M. (2014). Will the courts save teachers? *Educational Leadership*, 71(5), 55–58. <http://www.ascd.org/publications/educational-leadership/feb14/vol71/num05/Will-the-Courts-Save-Teachers%C2%A2.aspx>
- Raboin, B. (2016). Punish the crown, but protect the government: A comparative analysis of state tort liability for exemplary damages in England and punitive damages in the United States. *Cardozo Journal of International & Comparative Law*, 24, 261–286. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/cjic24&div=12&id=&page>
- Ramirez, C. (2014). *Analysis of Texas Education Agency Commissioner decisions regarding superintendent, associate superintendent, school administrator, athletic director, and central office administrator term contract nonrenewal appeals from 1983 to 2013* [Doctoral dissertation, University of North Texas]. University of North Texas Digital Archive. <https://digital.library.unt.edu/ark:/67531/metadc700004/m1/91/>
- Reata Const. Corp. v. City of Dallas, 197 S.W.3d 371, 374 (Tex. 2006).
- Rich, W. J. (2017). Hiding in plain view: Path around sovereign immunity for state government employees. *William Mary Bill of Rights Journal*, 25(4), 1179–1238. <https://scholarship.law.wm.edu/wmborj/vol25/iss4/2>
- Rivera v. Port Arthur Independent School District, 2016 Tex.App.Lexis 4132 (Court of Appeals of Texas, Thirteenth District, Corpus Christi, 2016).

- Robertson, M. (2015). Chalk talk: Blaming teacher tenure is not the answer. *Journal of Law and Education*, 44, 463–471. <https://www.questia.com/library/p61682/journal-of-law-and-education/i3827608/vol-44-no-3-summerhttps://www.questia.com/library/p61682/journal-of-law-and-education/i3827608/vol-44-no-3-summer>
- Robinson v Brannon, 313 S.W.3d 860 (Court of Appeals of Texas, Fourteenth District, Houston, 2010).
- Roederer, C. J. (2008). Democracy and tort law in America: The counter-revolution. *West Virginia Law Review*, 110, 647–709. <https://researchrepository.wvu.edu/wvrl>
- Rumel, J. E. (2013). Back to the future: The *in loco parentis* doctrine and its impact on whether k-12 schools and teachers owe a fiduciary duty to students. *Indiana Law Review*, 46, 711–751. <https://doi.org/10.2139/ssrn.2771309>
- Rumel, J. E. (2015). Beyond nexus: A framework for evaluating k-12 teacher off-duty conduct and speech in adverse employment and licensure proceedings. *University of Cincinnati Law Review*, 83, 685–746. <https://doi.org/10.2139/ssrn.2771268>
- Russell v. Men of Devon, 100 Eng. Rep. 359 (1788).
- Saldaña, J., & Omasta, M. (2017). *Qualitative research: Analyzing life*. Sage.
- Salehijam, M. (2018). The value of systematic content analysis in legal research. *Tilburg Law Review*, 23, 4–8. <https://doi.org/10.5334/tilr.5>
- Schaefer, K. (2013). Reining in sovereign immunity to compensate Hurricane Katrina victims. *Ecology Law Quarterly*, 40, 411–440. <https://doi.org/10.15779/Z38VZ75>
- Shaunessy, M., & Ranis, E. (2017, July 26). *Understanding sovereign immunity and the Texas Tort Claims Act or the “The Chamber of Secrets”* [Paper presentation]. State Bar of Texas, Government Boot Camp, Austin, Texas. <https://txgovernmentlaw.org/wp->

[content/uploads/2017/04/2017_07-09_Texas-Tort-Claims-Act-CLE-Roadshow-Michael-Shaunessy.pdf](#)

Shenton, A. K. (2004). Strategies for ensuring trustworthiness in qualitative research projects.

Education for Information, 22, 63–74. <https://doi.org/10.3233/EFI-2004-22201>

Shine, K. (2017). Everything is negative: Schoolteachers' perceptions of news coverage of education. *Journalism*. <https://doi.org/10.1177/1464884917743827>

Simmons, A. (2013). Sovereign immunity in Texas-You breach, you [don't] pay? *Baylor Law Review*, 65, 402–424. <https://www.baylor.edu/content/services/document.php/199303.pdf>

Skinner, J. A. (2010, June 11). *Governmental immunity: Individual rights and responsibilities program* [Paper presentation]. State Bar of Texas Annual Meeting, Fort Worth, Texas. http://www.texasbar.com/flashdrive/materials/Individual_Rights_section/IRR_Skinner_Governmental_FinalArticle

Smith, A. C. (2017). Authority, jurisdiction, and remedies for students within school law appeals: Why the Texas Commission of Education now possesses none of the above. *Texas Tech Administrative Journal*, 18, 341–365. <http://www.studentweb.law.ttu.edu/alj/>

Smith, F. (2016). Local sovereign immunity. *Columbia Law Review*, 116(2), 409–487. <https://columbialawreview.org/content/local-sovereign-immunity/>

Statsky, W. P., & Wernet, R. J. (1995). *Case analysis and fundamentals of legal writing*. West.

Stevens, K. (2018). Reasoning by precedent-between rules and analogies. *Legal Theory*, 24, 216–254. <https://doi.org/10.1017/S1352325218000113>

Strom, D. J., & Baxter, S. (2001). From the statehouse to the schoolhouse: How legislatures and courts shape labor relations for public education employees during the last decade.

- Journal of Law & Education*, 30(2), 275–303. <https://www.usedulaw.com/318-grievance.html>
- Texas Education Code. (2019). <https://statutes.capitol.texas.gov/>
- Texas Civil Practice & Remedies Code. (2019). <https://statutes.capitol.texas.gov/>
- Texas Penal Code. (2019). <https://statutes.capitol.texas.gov/>
- Thorn, K. (2015). *Tort liability for school personnel* [Doctoral dissertation, University of Alabama]. University of Alabama Digital Archive.
http://acumen.lib.ua.edu/u0015/0000001/0001855/u0015_0000001_0001855.pdf
- Tooke v. City of Mexia, 197 S.W.3d 325, 332 (Tex. 2006).
- Tritico, C. L. (1997). Teacher contacts and the hearing process: The road to victory. *Houston Lawyer*, 34, 26–32. <https://www.thehoustonlawyer.com/past.html>
- Umpstead, R., Brady, K., Lugg, E., Klinker, J., & Thompson, D. (2013). Educator ethics: A comparison of teacher professional responsibility laws in four states. *Educator Ethics*, 42(2), 183–225. <https://www.questia.com/library/journal/1P3-2952456161/educator-ethics-a-comparison-of-teacher-professional>
- Vacca, R. S., & Bosher, W. C. (2003). *Law and education: Contemporary issues and court decisions* (7th ed.). LexisNexis.
- Van Deelen v. Spring Independent School District, 2018 Tex.App.Lexis 10613 (Court of Appeals of Texas, Fourteenth District, Houston, 2018).
- Villarreal v. Edinburg Consolidated Independent School District, 2016 TX Educ. Agency LEXIS 7 (2016).
- Walsh, J., Kemerer, F., & Maniotis, L. (2018). *The educator's guide to Texas school law* (9th ed.). University of Texas Press.

Ward v. Theret, 346 S.W.3d 672 (Court of Appeals of Texas, Eighth District, El Paso, 2009).

Webley, L. (2010). Qualitative approaches to empirical legal research. *Oxford Handbook of Empirical Legal Research*.

<https://doi.org/10.1093/oxfordhb/9780199542475.001.0001/oxfordhb-9780199542475-e-39>

Will v. Bambenek, 2017 Tex.App.Lexis 3491 (Court of Appeals of Texas, Fifth District, Dallas, 2017).

Williams, E. (1996). Annual survey of Texas law: Education. *Southern Methodist University Law Review*, 49, 901–938.

<https://scholar.smu.edu/cgi/viewcontent.cgi?article=2502&context=smulr>

Williams v. Spring Independent School District, 2017 TX Educ. Agency LEXIS 40 (2017).

Zarsky v. Southside Independent School District, 2019 TX Educ. Agency LEXIS 110 (2019).

Zirkel, P. A. (2015). Revocation or suspension of educator certification: A systematic analysis.

Journal of Law and Education, 44(4), 539–584. <https://www.questia.com/library/journal/1P3-3887369381/revocation-or-suspension-of-educator-certification>

Zirkel, P. A., & Clark, J. H. (2008). School negligence case law trends. *Southern Illinois*

University Law Journal, 32(2), 345–363. <https://law.siu.edu/academics/law-journal/online-issues.html>

Zirkel, P. A., & Holben, D. M. (2017). Spelunking in the litigation iceberg: Exploring the

ultimate outcomes of inconclusive rulings. *Journal of Law & Education*, 46(4), 195–217.

<https://www.questia.com/>

Zirkel, P. A., & Johnson, L. (2011). The “explosion” in education litigation: An update. *West’s Education Law Reporter*, 265, 1–8. <https://www.worldcat.org/title/wests-education-law-reporter/oclc/818992591?referer=di&ht=edition>