

# TASB School Law Update

## *Case of the Month*

## Texas Courts of Appeal

### **Court affirmed district's decision to terminate Trump-tweeting teacher.**

In 2019, Fort Worth ISD proposed the termination of teacher Georgia Clark based on Clark's history of making insensitive and offensive statements in class and on Twitter regarding students of Hispanic ethnicity and/or Mexican national origin. For example, Clark had tweeted to the Twitter account of former President Donald Trump asking for help ". . . to remove the illegals from Fort Worth . . ." On appeal, an independent hearing examiner (IHE) appointed by TEA opined that the district did not provide sufficient evidence to support the good cause termination of Clark's continuing contract. Specifically, the IHE found the allegations of Clark's racially insensitive comments did not prove that she had violated district policy or the educator's code of conduct. Further, the IHE opined that Clark's tweets were protected by the First Amendment. Despite the IHE's recommendation, Fort Worth ISD terminated Clark's employment. The board rejected thirty-two of the IHE's fifty-two conclusions of law but did not adopt any conclusions of law to support its determination of good cause. Clark appealed the board's decision, and the commissioner reversed the board's decision, holding that without any conclusions of law relating to good cause the decision to terminate was arbitrary, capricious, and contrary to law. However, a district court in Travis County reinstated the board's decision to terminate Clark's contract. On appeal, Clark argued that the commissioner had correctly decided that the board's decision had not followed the correct procedure for a good cause termination and that the district violated her First Amendment rights.

With regard to the procedural issue, the court of appeals noted that there is no legal requirement that a board of trustees adopt conclusions of law in a specific manner. The Texas Education Code requires simply that the board's decision include findings of fact and conclusions of law and that the board state "in writing the reason and legal basis for a change or rejection made under this section." Tex. Educ. Code § 21.259(a)(1), (d). Further, whether something is labeled a finding of fact or a conclusion of law is not determinative. According to the court, "the focus is on whether the issue determined is ultimately one of policy, and if so, whether a school board's decision is supported by substantial evidence and free of erroneous legal conclusions." The board's written statement indicated the board's conclusion that "good cause for the termination of Ms. Clark's continuing employment contract exists in this case," and included detailed descriptions of the facts and basis. Thus, the court determined that the school board adopted conclusions of law regarding good cause and that the commissioner's reversal of the board's decision was not supported by substantial evidence.

With regard to Clark's free speech claim, the court agreed that her controversial remarks had something to do with matters of public concern, i.e., immigration and school safety. Clark argued that her interests as a private citizen commenting on a matter of public concern outweighed her employer's interests, emphasizing that she tweeted her comments after hours, to a public official, and she believed they were private. In response, the district argued that Clark was not terminated for her political views or for seeking help from a public official, but because her comments targeted a specific group of students and raised significant concerns about her effectiveness as a teacher. In finding that Clark's termination did not violate the First Amendment, the court agreed that the district had appropriately relied on the IHE's findings that her comments raised community concerns. Thus, to the extent the board found good cause to terminate Clark's contract based on her tweets, the court concluded that there was substantial evidence Clark's First Amendment rights were not violated. For these

reasons, the court of appeals affirmed the district court's judgment. [Clark v. Fort Worth Indep. Sch. Dist.](#), NO. 03-21-00275-CV, 2023 WL 376901, at \*5 (Tex. App.—Austin, Jan. 25, 2023, no pet. h.) (mem. op.).

\*\*\**Editor's Note:* This case was previously reported in the December 2019 and April 2021 issues of the *TASB School Law Update* Newsletter.