

BRANDON KLUCK,	§	BEFORE THE
Petitioner,	§	
	§	
v.	§	COMMISSIONER OF EDUCATION
	§	
BRENHAM INDEPENDENT SCHOOL	§	
DISTRICT,	§	
Respondent.	§	THE STATE OF TEXAS

DECISION OF THE COMMISSIONER

Petitioner, a former educator with Respondent Brenham Independent School District, appeals to the Commissioner of Education asserting that Respondent failed to provide him with a required school board hearing on his grievance. Respondent denies error and asserts that it followed its policies in declining to advance Petitioner's grievance appeal to the board. Respondent also asserts that the Commissioner lacks jurisdiction over Petitioner's appeal.

Adrienne Butcher is the Administrative Law Judge assigned to this case. Petitioner is represented by his counsel, Julie D. Leahy, with the Texas Classroom Teachers Association, in Austin, Texas. Respondent is represented by its counsel, Blaire B. Craven, of Spalding Nichols Lamp Langlois, in Houston, Texas.

Respondent filed an answer but did not file a local record. Both parties filed briefs. Because there is no local record before the Commissioner, any evidence required to determine the timeliness issue is deemed against Respondent. Petitioner's appeal is granted, and this case is remanded to Respondent's school board for proceedings consistent with this Decision.

FINDINGS OF FACT

After due consideration of the record¹ and matters officially noticed, it is concluded that the following Findings of Fact are established by the record and file in this case:

1. Petitioner is a former employee of Respondent.
2. Petitioner filed a Level 1 grievance on February 25, 2025. Respondent dismissed the grievance as untimely on March 18, 2025.

¹ The findings of fact are based on what appear to be undisputed facts, as there is no local record.

3. Petitioner, through his counsel, filed a Level 2 appeal on March 28, 2025. Respondent did not hear the Level 2 grievance.

4. In the absence of a Level 2 decision, Petitioner filed a Level 3 appeal on April 24, 2025. By April 25, 2025 letter, Respondent notified Petitioner that the board would not hear his Level 3 appeal.

5. Petitioner appealed to the Commissioner on June 6, 2025. Petitioner attached to his pleading (1) his February 25, 2025 Policy DGBA (Local) grievance; (2) Respondent's March 18, 2025 dismissal of his Level 1 grievance; (3) Petitioner's March 28, 2025 Level 2 appeal; (4) Petitioner's Level 3 appeal; (5) Respondent's April 25, 2025 letter notifying Petitioner and his counsel that the board would not hear his Level 3 appeal; and (6) June 2, 2025 correspondence from Petitioner's counsel to Respondent's counsel regarding Respondent's failure to set a Level 3 hearing and stating an intent to appeal to the Commissioner to assert a violation of Texas Education Code section 11.1511(b)(13), if no Level 3 hearing was set by June 5, 2025.

6. Respondent filed a June 30, 2025 plea to the jurisdiction and answer. Respondent did not file the local record on June 30, 2025, or thereafter.

7. The Administrative Law Judge held a July 30, 2025 prehearing conference. During the prehearing conference, the Administrative Law Judge and the parties addressed the fact that there is no local record on file in this appeal, including a record of any of the lower-level grievances, the grievance proceedings, or Respondent's grievance policy.

8. On August 7, 2025, the parties filed an agreed motion to abate this appeal, pending settlement discussions. By August 12, 2025 Order, the Administrative Law Judge granted the motion and abated the case until October 1, 2025. However, the parties did not settle their dispute before October 1, 2025.

9. The Administrative Law Judge issued an October 1, 2025 Scheduling Order setting a briefing schedule. The parties filed their briefs in accordance with the schedule.

10. The Administrative Law Judge issued a Proposal for Decision. No parties filed exceptions to the Proposal for Decision.

DISCUSSION

Commissioner's jurisdiction

The Commissioner has jurisdiction under Texas Education Code section 7.057 to hear appeals of school board actions or decisions alleged to violate the school laws of this state. Tex. Educ. Code § 7.057(a)(2)(A), (f)(2). The Commissioner's review is limited to the local record under the substantial evidence standard of review. *Id.* § 7.057(c).

Petitioner argues that Respondent's board erroneously refused to hear his grievance, violating Texas Education Code section 11.1511(b)(13). Section 11.1511(b)(13) is a Texas school law that requires school boards to adopt a process through which school district personnel, students, parents, and the public may obtain a hearing before district administrators and from the board regarding a complaint. *Id.* § 11.1511(b)(13). The Commissioner has recognized that his jurisdiction includes cases in which a petitioner asserts that a school board fails to hear a grievance appeal required to be heard under Texas school laws. *De La Garza v. Grand Prairie Indep. Sch. Dist.*, No. 032-R10-02-2020 (Comm'r Educ. 2020). That does not mean that every instance in which a petitioner has not obtained a school board hearing violates school laws; a petitioner who has not properly requested a Level 3 hearing may not be able to establish that the school board's failure to hear a grievance appeal violated section 11.1511(b)(13). Resolution of such an issue depends on the facts of each case, which in turn requires review of the local record.

School laws

Respondent argues in its brief that Petitioner fails to identify a school law that it allegedly violated. Even before filing this appeal, Petitioner cited Respondent to Texas Education Code section 11.1511(b)(13), which is a Texas school law. Petitioner also cited the same school law in his pleading and in his brief. Petitioner has adequately identified and briefed a school law violation.

Local record

Respondent did not file a local record in this case. The Commissioner's Rule 157.1073 sets out specific rules for hearings brought under Texas Education Code section 7.057, including, in relevant part:

(d) Local record. It is the responsibility of the school district to make and preserve the records of the proceedings before the board of trustees. If the school district fails to create and preserve the record without good cause, all substantial evidence issues that require missing portions of the record for resolution shall be deemed against the school district. The record shall include:

(1) a tape recording or a transcript of the hearing at the local level. If a tape recording is used:

(A) the tape recording must be complete, audible, and clear; and

(B) each speaker must be clearly identified;

(2) all evidence admitted;

(3) all offers of proof;

(4) all written pleadings, motions, and intermediate rulings;

(5) a description of all matters officially noticed;

(6) if applicable, the decision of the hearing examiner;

(7) a tape recording or transcript of the oral argument before the board of trustees; and

(8) the decision of the board of trustees.

19 Tex. Admin. Code § 157.1073(d).

In its brief, Respondent's statement of facts and argument sections refer to Petitioner's employment history, his Levels 1–3 grievances, Respondent's Level 1 grievance decision, provisions of Respondent's Policy DGBA (Local), and "written communication" provided to Petitioner's counsel regarding Respondent's interpretation of whether Petitioner had perfected his grievance appeal. Respondent also argues that it complied with section 11.1511(b)(13) by adopting a required grievance policy. However, none of the evidence to which Respondent refers is in the local record, because there is no local record.

School districts have an affirmative duty to file the local record with the Commissioner. 19 Tex. Admin. Code § 157.1073(d). All substantial evidence issues are resolved against a school district if it fails without good cause to do so. *Id.* Respondent argues that it did not fail to file the local record because there was no Level 3 hearing, so there is no local record to file. However, under the Commission's rules, the local record is composed of more than the Level 3 hearing. *Id.* § 157.1073(d). In this case, even without a Level 3 hearing record, there were

lower-level grievance filings and intermediate rulings that comprise the local record. *Id.* § 157.1073(d)(1)–(4). Respondent’s Policy DGBA (Local), which Respondent asserts it has adopted in compliance with section 11.1511(b)(13), was not entered into the local record for the Commissioner to review. The Commissioner does not consider extra-record evidence except in circumstances that are inapplicable here. Respondent has not shown good cause for failing to file the local record, as defined by Rule 157.1073.

While Respondent may be correct that Petitioner’s grievance was untimely, the Commissioner requires a local record to make that determination. Tex. Educ. Code § 7.057(c).² Respondent cannot rely on Policy DGBA (Local)’s language in its brief or address the contents and defects of Petitioner’s grievances without any local record citations. Because evidence of Respondent’s Policy DGBA (Local) and Petitioner’s grievances are necessary for the Commissioner to decide the timeliness issue and whether Petitioner is entitled to a board hearing, and there is no local record on file, these issues are deemed against Respondent, and Petitioner’s appeal is granted. 19 Tex. Admin. Code § 157.1073(d). Accordingly, this case is remanded to Respondent’s school board to hear Petitioner’s grievances, consistent with Texas Education Code section 11.1511(b)(13). *See* Tex. Educ. Code § 11.1511(b)(13).³

Conclusion

Petitioner’s appeal is granted and this case is remanded to Respondent’s school board for grievance proceedings consistent with Texas Education Code section 11.1511(b)(13).

² Although Petitioner attached some of this evidence as exhibits to his pleading, these exhibits are not the local record, and the Commissioner has not previously considered pleading attachments to be local record evidence. To the extent that Petitioner’s exhibits could be considered jurisdictional evidence, Petitioner did not include Policy DGBA (Local) as an exhibit.

³ Respondent notes in its brief that it offered to proceed with a Level 3 hearing before the board on November 3, 2025, but that Petitioner declined. That may be true, but again, there is no evidence before the Commissioner to make such a determination. In any event, the alleged communication followed Petitioner’s appeal to the Commissioner. As Petitioner’s appeal is granted, Petitioner will have the opportunity to present his grievance, consistent with Respondent’s offer.

CONCLUSIONS OF LAW

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

1. The Commissioner has jurisdiction over this appeal. *See* Tex. Educ. Code §§ 7.057(a)(2)(A); 11.1511(b)(13).

2. Respondent did not file a local record in this appeal. The local record, defined by Agency Rule 157.1073(d), is necessary to resolve whether Petitioner's grievance was untimely and whether he was entitled to a board hearing under Texas Education Code section 11.1511(b)(13).

3. Failure to file a local record without good cause deems all substantial evidence issues required for resolution against a school district. 19 Tex. Admin. Code § 157.1073(d). Respondent did not show good cause for failing to file a local record in this case.

4. Respondent violated Texas Education Code section 11.1511(b)(13) by failing to hear Petitioner's Level 3 grievance.

5. Petitioner's appeal is granted, and this appeal is remanded to Respondent's school board for a grievance hearing consistent with this Decision and the school laws of this state.

ORDER

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact and Conclusions of Law, in my capacity as Commissioner of Education, it is hereby ORDERED that the Petitioner's appeal be GRANTED. This case is hereby REMANDED to Respondent's school board for proceedings consistent with this Decision and the school laws of this state.

SIGNED AND ISSUED this 25th day of February 2026.

Mike Morath Digitally signed by Mike Morath
Date: 2026.02.25 14:51:05 -06'00'

MIKE MORATH
COMMISSIONER OF EDUCATION