

ASHLEE KREBS,  
Petitioner,

v.

LIVINGSTON INDEPENDENT  
SCHOOL DISTRICT,  
Respondent.

§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE

COMMISSIONER OF EDUCATION

THE STATE OF TEXAS

**DECISION OF THE COMMISSIONER**

**STATEMENT OF THE CASE**

Petitioner Ashlee Krebs, an employee of Respondent Livingston Independent School District, filed a Petition for Review with the Texas Commissioner of Education complaining that Respondent repeatedly failed to provide her with a duty-free lunch and a conference/planning period, as required by law, resulting in a breach of her employment contract and warranting additional compensation. Respondent claims the Commissioner lacks jurisdiction to hear Petitioner's appeal for failure to exhaust administrative remedies, since Respondent's board upheld the dismissal of her complaints as untimely at the local grievance level.

Dr. Vicky L. Sullivan is the Administrative Law Judge assigned to this case. Petitioner is represented by her counsel, Heather McClellan Castillo, of the Law Office of Heather McClellan Castillo. Respondent is represented by its counsel, Sierra D. Fisher and Coby Wilbanks, of the Fisher Firm.

For the reasons below, the Commissioner dismisses in part and denies in part Petitioner's appeal.

**FINDINGS OF FACT**

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

1. Respondent employed Petitioner under a probationary educator contract for the 2024–2025 school year.

2. On September 5, 2024, Petitioner received a notice of reassignment letter from Respondent's superintendent notifying her of her reassignment from her position as an Agriculture

(Ag) Science Teacher and Future Farmers of America (FFA) Sponsor to a teacher at the district's Disciplinary Alternative Education Program (DAEP) campus, due to the nature and frequency of complaints raising concerns regarding the effectiveness in her current roles.

3. On March 6, 2025, Petitioner filed a local grievance alleging the following: Respondent violated Petitioner's written employment contract, causing monetary harm; she was aggrieved by the school laws of the state; Respondent reassigned Petitioner outside of her professional capacity from CTE/Agriculture teacher to a DAEP teacher and denied her a duty-free lunch and conference/planning periods while at the DAEP; harassment, retaliation, and hostile work environment; lost job opportunities; Respondent falsely accused Petitioner of taking the district's MagnaWave machine; and character and reputation damage that impacted Petitioner's physical and emotional health.

4. In her local grievance, Petitioner requested the following remedies: a public LISD board hearing to clear her name; monetary compensation in the amount of \$23,423.04 for work performed during her duty-free lunch and conference periods and for work outside of her contract; a Chapter 21 Term Contract offer for the 2025–2026 school year; written acknowledgement that DAEP teachers are entitled to duty-free lunches and conference time; for Respondent to rescind and remove a March 5, 2025 reprimand to Petitioner; that Respondent provide written assurances of no further harassment or retaliation against Petitioner; that Respondent provide positive recommendations and references for Petitioner to potential employers; that Respondent provide written clarification of communications from Ag students be referred to another staff; and no contact or involvement from Director of Personnel regarding Petitioner's contract or employment.

5. Respondent elevated Petitioner's grievance to a Level 2 complaint, and Superintendent Moore held the conference on April 23, 2025. During the conference, Petitioner requested as an additional remedy that Respondent rescind the notice of termination of her probationary contract.

6. On May 9, 2025, Respondent issued its Level 2 response, dismissing all complaints before February 13, 2025, which were not "within 15 days of the date the employee first knew, or

with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance” pursuant to Respondent’s board Policy DGBA (Local). Respondent asserted, “That is, based on your March 6, 2025, filing date, all matters or incidents giving rise to complaints must have occurred on or after February 13, 2025.” Respondent’s Level 2 response dismissed as untimely any claims related to Petitioner’s September 4, 2024 reassignment to the DAEP and allegations regarding duty-free lunches and conference periods occurring the fall of 2024 and before February 13, 2025. The response also documented a review of lunch and conference sign-in/out sheets for the time period starting on February 13, 2025 and determined that Petitioner was not denied her duty-free lunch and conference period during that time frame.

7. Respondent’s Level 2 response granted the following requested remedies: Petitioner’s request to “clear her name” during a public LISD board meeting, stating that Petitioner may discuss an agenda item during the public comment section of board regulations; acknowledgement that DAEP teachers are entitled to duty-free lunches and conference periods; written clarification of communication with Ag students to be referred to another staff; and written assurances that there will be no further harassment or retaliation. All other requested remedies were denied.

8. Superintendent Moore hand-delivered written notice to Petitioner that her contract would be recommended for end-of-term termination at the May 19, 2025 board meeting, and she had until noon on May 1, 2025 to resign. Contrary to the written notice, the board met on May 1, 2025, to terminate Petitioner’s probationary contract. On the same day, Respondent gave Petitioner a hand-delivered written notice that the board had voted to terminate her probationary contract at the end of its term.

9. On May 22, 2025, Petitioner filed both a Level 3 appeal and a second grievance regarding the termination of her 2024–2025 probationary contract. The board heard both grievances in a June 16, 2025 Level 3 closed hearing.

10. On June 17, 2025, Respondent's board issued a Level 3 response upholding the administration's May 9, 2025 Level 2 decision. For the second grievance, the board voted to uphold its determination to terminate Petitioner's probationary contract at the end of its term.

11. On August 1, 2025, Petitioner filed a Texas Education Code section 7.057 appeal with the Commissioner of Education.

12. On September 3, 2025, Respondent filed an Original Answer, Plea to the Jurisdiction, and the local record.

13. The Administrative Law Judge held an October 6, 2025 prehearing conference to address the Commissioner's jurisdiction. Petitioner was provided an opportunity to plead to address the jurisdictional and pleading defects raised during the prehearing conference. On October 17, 2025, Petitioner filed an Amended Petition for Review, and on October 31, 2025, Respondent filed an Answer and Plea to the Jurisdiction to Petitioner's Amended Petition.

14. Because Petitioner has asserted school law violations that require some analysis of the local record, the parties were requested to brief the issues. The parties filed their respective briefs, and oral arguments were held on February 2, 2026.

15. The Administrative Law Judge issued a Proposal for Decision recommending dismissal in part and denial in part of Petitioner's appeal. No parties filed exceptions.

### DISCUSSION

#### The Commissioner's appellate jurisdiction

Petitioner asserts jurisdiction under Texas Education Code sections 7.057(a)(2)(A) and (B). Under section 7.057(a)(2)(A), the Commissioner has jurisdiction to hear appeals of "actions or decisions of any school district board of trustees that violate the school laws of this state." Tex. Educ. Code. § 7.057(a)(2)(A). The school laws of this state are defined as titles 1 and 2 of the Texas Education Code and the rules that implement those two titles. *Id.* § 7.057(f)(2). A petitioner appealing to the Commissioner must affirmatively establish the Commissioner's jurisdiction. Each alleged violation must be supported by sufficient factual assertions to show a potential violation of the school law at issue. Under section 7.057(a)(2)(B), the Commissioner has

jurisdiction over school board actions or decisions alleged to violate a provision of a written employment contract, where the alleged violation causes or would cause the employee monetary harm. *See id.* § 7.057(a)(2)(B). Petitioners have the burden of establishing jurisdiction over their appeals to the Commissioner. Pleadings must include a sufficient factual and legal basis to support each claim. *See* 19 Tex. Admin. Code § 157.1073(c).

#### Hearings before the Commissioner

The Commissioner has rules governing briefing that are similar to the Texas Rules of Appellate Procedure. *See id.* § 157.1058. The Commissioner's rules provide that a Petitioner's brief shall contain the following:

- (1) Statement of the case. The brief must state concisely the nature of the case, the course of proceedings, and the school district's disposition of the case. The statement should be supported by record references, should seldom exceed one-half page, and should not discuss the facts.
- (2) Issues presented. The brief must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is fairly included. However, an issue that is not so identified is waived.
- (3) Statement of facts. The brief must state concisely and without argument the facts pertinent to the issues or points presented. The commissioner will accept as true the facts stated unless another party contradicts them. The statement must be supported by record references.
- (4) Argument. The brief must contain clear and concise argument for the contentions made with appropriate citations to authorities and to the record.
- (5) Prayer. The brief must contain a short conclusion that clearly states the nature of the relief sought.

19 Tex. Admin. Code § 157.1058(a).

Notably, it is not the Commissioner's responsibility to scour the record to find support for or to construct a party's argument. *See Padilla v. Alice Indep. Sch. Dist.*, No. 038-R1-05-2023 (Comm'r Educ. 2023).

#### Petitioner's Claims

In her Amended Pleading, Petitioner claims the board violated Texas Education Code sections 21.404 and 21.405 by failing to provide her with a duty-free lunch and a conference period during her 2024–2025 tenure as a DAEP teacher. She further asserts this failure violated her

employment contract and caused her monetary harm. Petitioner also claims she worked beyond her contracted time, for which she also seeks compensation. Finally, Petitioner asserts that the board failed to comply with Texas Open Meetings Act (TOMA) by denying her request for an open hearing on one of her grievances.

In her brief, Petitioner outlines the following three issues:

- (1) The District's Board violated the schools of the state by repeatedly failing to provide [Petitioner] with a duty-free lunch and a conference/planning period as required by law, or by not requiring the District to do so, and by failing to compensate [Petitioner] for her extra work during those lunch periods and conference/planning times.
- (2) The District breached [Petitioner's] contract with the District by repeatedly failing to provide [Petitioner] with a duty-free lunch and a conference/planning period as required by law, and by failing to compensate [Petitioner] for her extra work during those lunch periods and conference/planning times, thereby causing [Petitioner] monetary harm.
- (3) District breached its contract with [Petitioner], causing her monetary harm, failing to compensate [Petitioner] for the days she worked outside of her 226-contract, as the District did for other contract employees.

#### The Commissioner's Scope of Appellate Review

The Texas Supreme Court has held that, while the timeliness of a grievance is not jurisdictional, if a school board cannot reach the merits of a grievance under its internal procedures, the Commissioner's review is likewise limited. *See Davis v. Morath*, 624 S.W.3d 215, 223 (Tex. 2021). Respondent's board Policy DGBA (Local), contained in the local record, provides that complaint forms must be filed "within 15 days of the date the employee first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance."<sup>1</sup> It further states,

All time limits shall be strictly followed unless modified by mutual written consent.

If a complaint form or appeal notice is not timely filed, the complaint may be dismissed, on written notice to the student or parent, at any point during the complaint process. The student or parent may appeal the dismissal by seeking review in writing within ten days from the date of the written dismissal notice,

---

<sup>1</sup> In 2025, the Texas Legislature enacted Chapter 26A, which sets out procedural requirements for school districts' parent grievance policies, setting new minimum timelines for parents to file grievances, among other changes. Chapter 26A became effective on September 1, 2025, and applies to parent grievances filed on or after that date. The new timelines, had they applied, may have affected the outcome of this case. *See* Tex. Educ. Code § 26A.001–.002(1)(A) (effective Sept. 1, 2025).

starting at the level at which the complaint was dismissed. Such appeal shall be limited to the issue of timeliness.

Petitioner filed a March 6, 2025 local grievance complaining of events that occurred during the 2024–2025 school year. Heard at Level 2, Respondent’s response, in part, dismissed as untimely all complaints occurring prior to February 13, 2025, which were not “within 15 days of the date the employee first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance” pursuant to Respondent’s board Policy DGBA (Local). Respondent explained, “based on [Petitioner’s] March 6, 2025, filing date, all matters or incidents giving rise to complaints must have occurred on or after February 13, 2025.” At Level 3, Respondent’s board upheld administration’s Level 2 decision, dismissing as untimely any claims related to Petitioner’s September 4, 2024 reassignment to the DAEP and complaints regarding duty-free lunches, conference periods, and comp time occurring before February 13, 2025.

Because Petitioner appealed the Level 2 decision “in every regard” to the board, which includes the dismissal of claims before February 13, 2025, she exhausted her administrative remedies on the issue of untimeliness for those events. Therefore, the Commissioner can review whether the board correctly dismissed as untimely Petitioner’s claims about duty-free lunches, conference periods, and compensatory time, but he cannot address their merits. *See Davis*, 624 S.W.3d at 223. However, the Commissioner can address the merits of Petitioner’s claims arising on or after February 13, 2025, which the board addressed.

Texas Education Code sections 21.404 and 21.405

Texas Education Code section 21.404 provides, in full,

Each classroom teacher is entitled to at least 450 minutes within each two-week period for instructional preparation, including parent-teacher conferences, evaluating students’ work, and planning. A planning and preparation period under this section may not be less than 45 minutes within the instructional day. During a planning and preparation period, a classroom teacher may not be required to participate in any other activity.

Tex. Educ. Code § 21.404.

Texas Education Code section 21.405 provides, in full,

- (a) Except as provided by Subsection (c), each classroom teacher or full-time librarian is entitled to at least a 30-minute lunch period free from all duties and responsibilities connected with the instruction and supervision of students. Each school district may set flexible or rotating schedules for each classroom teacher or full-time librarian in the district for the implementation of the duty-free period.
- (b) The implementation of this section may not result in a lengthened school day.
- (c) If necessary because of a personnel shortage, extreme economic conditions, or an unavoidable or unforeseen circumstances, a school district may require a classroom teacher or librarian entitled to a duty-free lunch to supervise students during lunch. A classroom teacher or librarian may not be required to supervise students under this subsection more than one day in any school week. The commissioner by rules shall prescribe guidelines for determining what constitutes a personnel shortage, extreme economic conditions, or an unavoidable or unforeseen circumstances for purposes of this subsection.

Tex. Educ. Code § 21.405.

The local record shows that Petitioner raised concerns regarding her duty-free lunch and conference period on November 21, 2024, with the Director of Student Resources, who followed up with a December 6, 2024 written correspondence to Petitioner memorializing the discussion. In this letter, the Director stated that Petitioner's concerns were addressed with the DAEP campus coordinator. On December 10, 2024, Petitioner sent an email to the district, demanding payment of \$21,242.26 for alleged lost wages from duty-free lunch periods, conference periods, and compensatory time. On January 6, 2025, the Director provided Petitioner with a written response containing the following key excerpts:

On December 10, 2024, you claimed that you have not received your duty-free lunch in over two weeks, 'as well as many times over this last semester.' You also acknowledge that this is due to a personnel shortage and unavoidable or unforeseen circumstances, such as illness which prevents the district from finding individuals to supervisor students during lunch. District records show that such a personnel shortage and/or unavoidable or unforeseen circumstance occurred at this time due to a colleague's hospitalization. The District exhausted all effort to use non-teaching staff and volunteers before requiring you to give up your lunch period during this time.

Pursuant to section 21.405(c), outlined *supra*, a district may require a classroom teacher to supervise student during lunch due to a personnel shortage or unavoidable or unforeseen circumstances. Specifically, the Commissioner's Rules state, "A personnel shortage exists when, despite reasonable efforts of a school district to use nonteaching personnel or the assistance of community volunteers to supervise students during lunch, there are no other personnel available."

19 Tex. Admin. Code § 153.001. The statute allows for this exception no more than one day in any school week.

The response further states,

The District records do not show that you have been asked to work during your duty-free lunch periods throughout the semester, as you claim. The District needs a list of days you were requested to work during your duty-free lunch, the tasks you were required to perform, and the administrator who assigned these tasks.

... the District cannot address your alleged loss of your conference periods without evidence that your conference periods were not provided because of the District's actions. The District is prohibited from assigning you additional duties during your conference periods. If you have evidence of days on which your conference period was denied due to the actions of the District, you are welcome to submit it. If you were not receiving your conference periods, as your letter implies, your remedy was to discuss this with your administrator within 15 days of the date when the District was denying you your planning period. You did not alert the District that its' actions were prohibiting you from receiving your conference period. Your demand letter does not provide any reasons alleging the District's actions caused this loss of your conference period.

If you have been on campus but been denied your conference time, your appropriate remedy is to bring this to the attention of the administration immediately. Prior to your email on December 10, 2024, the District received no communication from you expressing a concern about your conference periods. Board Policy DGBA(LOCAL) requires an employee to raise concerns as soon as possible to allow early resolution at the lowest possible administrative level. In other words, your broad-based statement made at the end of the first semester that "I have not received a conference time since being over here to date," is insufficient to prove that you were denied your conference period due to the actions of the District. You have failed to provide any documentation about the days you did not receive it nor the reasons you did not receive it.

You cannot simply circumvent the District's methods for addressing employee complaints by sending a demand letter for \$21,242.26. You are entitled to file a complaint under Board Policy DGBA regarding the District's actions that resulted in your alleged lost conference periods, lost duty-free lunches, and unpaid compensatory payments. If you have evidence that the District required you to work on your duty-free lunch periods and/or deprived you of your conference periods, please submit that immediately to Director of Personnel for review.

As an employee, you have the right to file a formal complaint against the District for allegedly denying you conference periods, duty-free lunches, and compensatory pay. Please be mindful that Board Policy DGBA(LOCAL) states, "Complaints should have been raised within 15 days of the date the employee first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance; and with the lowest level administrator who has the authority to remedy the alleged problem."

While Respondent asked Petitioner to provide a list of days worked during her duty-free lunch and conference periods, the tasks she was required to perform, and the administrator who assigned these tasks, there is no evidence in the local record that she did so.

Notably, the Director's letter provided Petitioner with district policy grievance instructions that emphasized the required 15-day timeline. If Petitioner had submitted a grievance immediately after receiving the Director's January 6, 2025 response, she likely would have filed within the 15-day timeline.<sup>2</sup> Instead, Petitioner wrote a December 10, 2024 demand for payment letter and waited two more months, until March 6, 2025, to file her grievance in accordance with DGBA (Local) regarding her duty-free lunch and conference period claims.

During the Level 3 hearing, Petitioner's counsel stated that Petitioner had brought her duty-free lunch and conference period concerns to staff during the fall of 2024. The record shows that Petitioner did, in fact, raise these issues during that time, but did not file a formal grievance in accordance with DGBA (Local). Petitioner's complaints raised through a demand letter does not satisfy Respondent's DGBA (Local). Consequently, Respondent did not err in finding these complaints untimely. Accordingly, they are dismissed. *See* 19 Tex. Admin. Code § 157.1056(a).

Regarding the claims arising on and after February 13, 2025, the local record contains lunch and conference sign-in/out sheets beginning on February 17, 2025, through April 11, 2025 documenting that Petitioner regularly signed-in/out for her 30-minute lunch and for her 45-minute conference period.<sup>3</sup> Respondent cited this evidence in its Level 2 response. In her brief, Petitioner confirms that beginning the last week of January 2025, she received consistent conferences and lunches.<sup>4</sup> Accordingly, the Commissioner denies these claims.

---

<sup>2</sup> Pursuant to DGBA (Local), "Days" shall mean District business days, unless otherwise noted. In calculating timeliness under this policy, the day a document is filed is 'day zero.' The following business day is 'day one.' According to Respondent's 2024–25 school calendar in the local record, January 6, 2025 was the first day back from the two-week holiday break. Holidays do not count as District business days. If Petitioner had filed a grievance after receiving the January 6, 2025 response letter, counting backwards 15 District business days would have included any claims beginning December 2, 2024. Significantly, this date is prior to Petitioner's December 10, 2024 demand letter, wherein she claimed she had not received her duty-free lunch and conference period for the two weeks prior.

<sup>3</sup> Respondent's 2024-2025 school calendar shows February 13 and 14, 2025 as holidays and April 13, 2025 is a Sunday, informing as to why the sign-in/out sheets exclude said dates.

<sup>4</sup> Petitioner's brief further adds, "In January 2025 and for that semester, the District made [Petitioner], a teacher, responsible for trying to track and make sure that everyone in DAEP received their conference and lunch times in

### Breach of Petitioner's Contract

Petitioner was given an opportunity to replead her claims to ensure compliance with Commissioner's Rules and the pleading requirements. *See* 19 Tex. Admin. Code § 157.1073(c). Regarding her breach of contract claims, Petitioner must identify each employment contract provision(s) that she believes Respondent's board violated and allege sufficient facts that could support each alleged violation to support the legal basis for each claim. *See* 19 Tex. Admin. Code § 157.1073(c)(4); *see also* Tex. Educ. Code § 7.057(a)(2)(A); *Trevino-Garcia v. Laredo Indep. Sch. Dist.*, No. 029-R10-01-2020, at \*12 (Comm'r Educ. 2020). "In order to properly plead a breach of contract claim, Petitioner must state which provision of the employment contract was violated, provide a brief description of how it was violated, and specify how monetary harm results." *Trevino-Garcia*, No. 029-R10-01-2020, at \*9. Monetary harm must be contract damages, such as loss of salary or benefits. *See id.*

Here, Petitioner's probationary contract is included in the local record. Neither in Petitioner's Amended Pleading nor Brief on the Merits does she identify the contract provision(s) that Respondent's board allegedly violated. Instead, Petitioner generally argues, "The Texas Education Code is incorporated into teaching contracts," and "A violation of Texas Education Code section 21.405 would be violation of Petitioner's contract." Petitioner is correct in stating that the contract incorporates the Texas Education Code.<sup>5</sup> The contract's "Section 6.1: Compensation – Salary," most relevant to Petitioner's claims, states,

The District shall pay you according to the compensation plan adopted by the Board. Your salary includes consideration for all assigned duties, responsibilities, and tasks, regardless of the actual number of hours or days worked (including days not designed on the school calendar) that you work during this Contract.

---

DAEP" resulting in her loss of "duty-free lunch time and conference/planning time consistently during that semester." If that was the case, the local record does not show that Petitioner filed additional grievance(s) regarding this monitoring assignment or loss of duty-free lunch and conference periods after her March 6, 2025 grievance. Texas Education Code section 7.057(a)(2)(A) are appeals and, as such, all claims brought before the Commissioner must first be brought through a school district's grievance process. *See Silva v. Judson Indep. Sch. Dist.*, No. 011-R10-11, at \*2 (Comm'r Educ. 2017) (citing *Clint Indep. Sch. Dist. v. Marquez*, 487 S.W.3d 538, 545–46 (Tex. 2016)).

<sup>5</sup> In fact, the contract cites the following Education Code sections: 21.0031 under certification; 21.4021 under furloughs; chapter 21, subchapter O under incentive and performance pay; chapter 21 under suspension; 21.105 under termination of contract; and chapter 21 under notice to employee. However, none of these categories appear to be applicable to Petitioner's complaints.

It is unclear which, if any, of these provisions Petitioner claims the board violated. The Commissioner cannot construct a party's argument for the party. *See Padilla*, No. 038-R1-05-2023. Petitioner bears the burden in clearly identifying the specific subsection(s) or provision(s) that she believes Respondent's board violated, along with alleging sufficient facts to support each claim, and Petitioner has failed to do so. *See id.*

Alternatively, even if Petitioner had identified a contract provision(s), she still fails to set forth facts from the local record that would support her claim that Respondent failed to provide her with a duty-free lunch or conference period beginning February 13, 2025, as explained *supra*. Accordingly, Petitioner's breach of contract claim is dismissed for failure to state a claim for which relief can be granted. 19 Tex. Admin. Code § 157.1056(a). Alternatively, Petitioner's claim is denied.

#### Inadequately or unbriefed briefed issues

A school board's decision is presumed to be supported by substantial evidence unless a petitioner meets her burden of establishing otherwise. Petitioner's brief contains no argument on substantial evidence and thus does not meet that burden. She also presents no briefing that the board's decision was arbitrary and capricious. By failing to brief these issues, Petitioner waived them for appellate review. *See Evans v. Clear Creek Indep. Sch. Dist.*, No. 030-R1-03-2021 (Comm'r Educ. 2021); *Parents v. Educ. United Indep. Sch. Dist.*, No. 035-R10-03-2018 (Comm'r Educ. 2018) ("Any issue that is not briefed is waived.").

#### A. Comp Time

Petitioner asserts that she is owed funds for comp time worked "outside the regular paid contracted day." In Petitioner's December 10, 2024 demand letter to the Director, she contended being owed monies "since [she] was not given comp time off fully over the summer for "26 days from the 22-23 school year ... which equals to \$7,961.72" and for "23-24 10 days owed at 3, 194.00, 24-25 8 days at \$2687.68" for "a total of \$13,843.40." In her March 6, 2025 grievance, Petitioner included this issue among her complaints. Respondent's board upheld the denial of this requested remedy in part due to untimely filing and in part due to a violation of "Texas Constitution

Article III, Section 52(a), which prohibits the District from providing funds to benefit private parties...” Respondent stated that as “a salaried teacher with a Chapter 21 probationary contract, [Petitioner] is exempt from overtime and compensatory time under board Policy DEAB (LEGAL).”<sup>6</sup>

The local record shows Petitioner’s documentation occurred before February 13, 2025. Pursuant to its district’s Policy DGBA (Local), Respondent correctly dismissed as untimely Petitioner’s comp time claims.

Moreover, Petitioner’s briefing on the comp time claims is wholly insufficient.<sup>7</sup> In her brief, Petitioner cites the following as her third appellate issue: “District breached its contract with [Petitioner], causing her monetary harm, failing to compensate [Petitioner] for the days she worked outside of her 226-contract, as the District did for other contract employees.” However, Petitioner’s brief does not include any ‘Statement of Facts’ surrounding her comp time claim. Instead, Petitioner’s ‘Statement of Facts’ are entirely about the duty-free lunch and conference period for dates prior to February 13, 2025, which Respondent’s board dismissed as untimely.

In addition, Petitioner’s ‘Argument’ Brief section states, “The Local Record provides sufficient information for the Commissioner to order the District to compensate [Petitioner] appropriately...regarding [Petitioner’s] calculations concerning lunch and conference times not received and *comp time not paid for additional duty days*.” (emphasis added). However, the local record is void of any substantive documentation, other than Petitioner’s conclusory statements, to support her comp time claims.

---

<sup>6</sup> In Respondent’s January 6, 2025 response letter to Petitioner’s demand for payment letter, Petitioner was reminded that she was “exempt from overtime or compensatory time under the Texas Fair Wage Act” but that she also “had a contract addendum governing [her] duties as an Agri-science teacher” to include the district’s 17-day flex day reimbursement for FFA Advisors. Respondent emphasized this type of reimbursement has required procedures and necessitates prior approval from the CTE Coordinator. Respondent’s letter further confirmed 17 days of reimbursement for the 2023-24 school year and district “considers the matter of [Petitioner’s] 2023–2024 days resolved.” For the 2022–23 school year, Respondent states that Petitioner has “provided no documentation regarding these requested days, nor [has Petitioner] followed the District’s procedure regarding these days. In addition, a request for reimbursement for work done more than one year ago is untimely and cannot be considered. The District considers this matter resolved.”

<sup>7</sup> Likewise, Petitioner’s Amended Pleading listed this claim as an issue but failed to set forth facts that would support a decision in her favor. See 19 Tex. Admin. Code § 157.1056(a).

Petitioner fails to articulate any facts to support her comp time claim either in her Amended Pleading or Brief on the Merits. Any issue that is not briefed is waived. 19 Tex. Admin. Code § 157.1058(a)(2). To the extent that Petitioner asserts she is owed reimbursement for comp time from the summer of 2024, and/or the two school years prior, her issue is dismissed as untimely, failure to exhaust administrative remedies, and lack of jurisdiction, or alternatively, denied.

**B. Texas Open Meetings Act**

In her Amended Pleading, Petitioner claims Respondent violated the Texas Open Meetings Act (TOMA) in denying her right to an open meeting in one of her grievances. TOMA is part of the Texas Government Code, which is not a school law of the state.<sup>8</sup> See Tex. Educ. Code § 7.057(f)(2). Petitioner has the burden of establishing the Commissioner’s jurisdiction, and to do so, she must specifically plead section 26.007 to assert a school law violation. Here, Petitioner does not plead a violation of Texas Education Code section 26.007. Instead, Petitioner cites Texas Education Code section 11.051(a-1), which states, in full,

Unless authorized by the board, a member of the board may not, individually, act on behalf of the board. The board of trustees may act only by majority vote of the members present at a meeting held in compliance with Chapter 551, Government, at which a quorum of the board is present and voting. The board shall provide the superintendent an opportunity to present at a meeting an oral or written recommendation to the board on any item that is voted on by the board at the meeting.

Tex. Educ. Code § 11.051(a-1).

Irrespective of whether section 11.051(a-1) properly incorporates TOMA into the school laws of the state,<sup>9</sup> Petitioner did not brief her TOMA claim. “Failure to properly brief issues in the appeal waives those issues for appellate review and is a failure to exhaust administrative remedies.” *Parent a/n/f Student v. Fort Bend Indep. Sch. Dist.*, No. 062-R10-06-2024, at \*2 (Comm’r Educ. 2024). Accordingly, this claim is dismissed. 19 Tex. Admin. Code § 157.1056(a).

---

<sup>8</sup> The Commissioner has jurisdiction over adequately pled violations of Texas Education Code section 26.007, which incorporates the TOMA into the school laws of this state. See Tex. Educ. Code § 26.007(b); *Kurt J.B. b/n/f Robert W.B. v. Irving Indep. Sch. Dist.*, No. 003- R5-996 (Comm’r Educ. 1997) (noting that Commissioner’s authority as to TOMA violations derives from Education Code, not TOMA).

<sup>9</sup> The issue of whether Texas Education Code section 11.051(a-1) can be used by a non-parent to adequately plead violations of TOMA, incorporating it into the school laws of this state, is not decided here as it is not necessary to decide that issue to resolve this case.

## Conclusion

For the foregoing reasons, Petitioner's appeal is dismissed in part and denied in part.

## 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 Petitioner's appeal. Tex. Educ. Code §§ 7.057(a)(2)(A) and (B).
2. Petitioner waived her Texas Open Meetings Act violation claim by failing to brief it. Petitioner's TOMA violation claim is dismissed. 19 Tex. Admin. Code § 157.1056(a).
3. For Petitioner's claims dismissed as untimely by Respondent's board, the Commissioner's scope of review is limited to determining whether the board erred in dismissing Petitioner's grievances as untimely under its internal procedures, which limited its decision to the issue of timeliness.
4. Petitioner asserts no facts that could show the board erred in dismissing her grievance complaints as untimely.
5. Petitioner's Texas Education Code sections 21.404 and 21.405 claims, not otherwise dismissed as untimely by Respondent's board, are denied.
6. The Commissioner cannot grant Petitioner's requested relief to reverse or remand Respondent's board decisions or actions because they are not found to violate a school law; to exceed the agency's authority; to be made through unlawful procedure; to be affected by other error of law; to be supported by substantial evidence; or to be arbitrary and capricious.
7. Petitioner's appeal is dismissed in part and denied in part.

## ORDER

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact and Conclusions of Law, in my capacity as Commissioner of Education, it is hereby ORDERED that the Petitioner's appeal be, and is hereby, DISMISSED in part and Denied in part.

SIGNED AND ISSUED this 15th day of April 2026.

**Mike Morath** Digitally signed by Mike Morath  
Date: 2026.04.15 10:03:52  
-05'00'

---

MIKE MORATH  
COMMISSIONER OF EDUCATION