

FRANCENE KILGORE,
Petitioner,

v.

PLANO INDEPENDENT
SCHOOL DISTRICT,
Respondent.

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BEFORE THE

COMMISSIONER OF EDUCATION

THE STATE OF TEXAS

DECISION OF THE COMMISSIONER

STATEMENT OF THE CASE

Petitioner, Francene Kilgore, complains of the decision of Respondent, Plano Independent School District, to terminate her probationary contract. Respondent denies error and asks the Commissioner to deny Petitioner's appeal.

Dr. Vicky L. Sullivan is the Administrative Law Judge appointed by the Commissioner of Education to hear this cause. Petitioner is represented by her counsel, LaJuana Acklin, of Bertolino, LLP, in Austin, Texas. Respondent is represented by its counsel, Lucas Henry, of Abernathy Roeder Boyd Hullett, PC, in McKinney, Texas.

The dispositive issue is whether Respondent's Board of Trustees applied the correct legal standard in terminating Petitioner's probationary contract for her use of physical force against a student. A failure to apply the proper legal standard renders the board's decision arbitrary and capricious.

The record reflects that Respondent's board did not address whether Petitioner was entitled to immunity under Texas Education Code section 22.0512 for her use of force against a student in her special education classroom. Nor did the board recognize or analyze the lawful justification for an employee's use of physical force against a student under Texas Penal Code section 9.62. Because the board failed to consider and apply these governing statutory standards, it did not employ the correct legal analysis in reaching its decision. Accordingly, the Commissioner remands this case to Respondent's Board of Trustees with instructions to properly apply the governing legal standard in a manner consistent with the guidance provided in this decision and applicable legal precedent.

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 in accordance with 19 Tex. Admin. Code § 157.1072(i):

1. Petitioner had a probationary contract for the 2025–2026 school year. Petitioner’s contract required her to, *inter alia*, “comply with all Board and District directives, state and federal laws and rules, District policy, and regulations, as they exist or may hereafter be amended.”

2. During the 2025–2026 school year, Petitioner was employed as a special education teacher at Respondent’s elementary school, working primarily in a self-contained classroom with special education students in a small group setting.

3. Petitioner was trained by Respondent in Crisis Prevention Institute (CPI) methods used to de-escalate student behavior. CPI training instructs teachers to avoid physical contact with students whenever possible and to employ such contact only as a last resort. Respondent implements CPI methods and trains its employees accordingly.

4. On September 26, 2025, one of Petitioner’s students, Student A, exhibited dangerous and aggressive behaviors in Petitioner’s classroom. Those behaviors included Student A picking up laptop computers and forcefully throwing them. Student A hurled a laptop toward another student, nearly striking the student. Petitioner used her body to block Student A while removing other students from the classroom for their safety. Student A’s behavior presented an ongoing emergency that required Petitioner to make physical contact with Student A by holding the student’s arms and sitting the student in a chair, which constituted a restraint under Texas law. While on the chair, Student A continued to move and kick in an effort to break free from Petitioner’s restraint, which resulted in Student A sliding out of the chair onto the floor. Petitioner supported Student A’s head and neck as the student moved to the floor and then held Student A’s arms for approximately 25 seconds while the student was on the floor.

5. Respondent concluded that Petitioner's physical contact was reasonable, considering the totality of the circumstances, since Student A's behavior posed a threat of imminent harm to others and involved the destruction of property.

6. In response to Petitioner's use of force to restrain Student A on September 26, 2025, Respondent issued Petitioner a formal employment directive that instructed Petitioner to:

- Follow all district and state guidelines regarding student restraint and intervention.
- Use de-escalation and redirection strategies before considering physical restraint.
- Document all incidents accurately and thoroughly, including steps taken prior to restraint.
- Seek assistance from the CORE team, support staff or administrators when a situation escalates.
- Participate in ongoing training on crisis prevention and intervention.
- Reflect on and adjust classroom management strategies to reduce the likelihood of future incidents.
- Maintain professional boundaries that prioritize student safety and dignity.

7. Petitioner signed an acknowledgment that she received the First Employment Directive.

8. On October 8, 2025, Petitioner was teaching Student A at a table when the student crawled under the table and walked behind Petitioner's chair. Petitioner slid her chair back. Respondent concluded that Student A was not pinned to the wall. Student A later dumped a bucket of small items onto the floor. Petitioner grabbed Student A by the arm and pulled him down to the floor to get him to pick up the items.

9. Respondent concluded that: Petitioner's use of physical contact was a restraint under Texas law; No emergency situation existed, as the student did not pose an imminent threat of serious harm to himself or others, nor was the student engaging in property destruction; and Petitioner's use of force was excessive and violated the First Employment Directive. In response, Respondent issued a Second Employment Directive, instructing Petitioner to:

- Maintain appropriate boundaries with students. Physical contact should occur only when necessary for safety or instructional purposes and must align with district policy and professional standards.

- Follow all district and state guidelines regarding student restraint and intervention.
- Attend refresher CPI training on crisis prevention and intervention.
- Reflect on and adjust classroom management strategies to reduce the likelihood of future incidents.
- Use de-escalation and redirection strategies before considering physical restraint.
- Follow all CPI protocols.
- Follow BIP/IEP special education plans.

10. Petitioner signed an acknowledgment that she received the Second Employment Directive.

11. On December 3, 2025, Petitioner was working with Student A in the classroom when Student A pushed the Penny Board across the table toward Petitioner. A “Penny Board” is an instructional behavior-management strategy, whereby a teacher provides pennies to a student on a cardboard board as positive reinforcement toward earning a reward. Petitioner took the Penny Board from Student A and tossed or threw it on the floor. Student A picked up the Penny Board from the floor and again pushed it towards Petitioner. Student A then swiped or hit Petitioner’s arm with the Penny Board and sat down in a chair. Petitioner sustained no physical injury from the contact with the Penny Board. The swipe or hit with the Penny Board did not constitute a threat of imminent serious physical harm and was not an emergency situation. Petitioner forcefully grabbed Student A by the arm and led the student to the “cool down” room. Student A turned around and hit Petitioner with an open hand. Petitioner pushed Student A to the floor. Student A got back up, and Petitioner pushed him again, towards the “cool down” room. Petitioner then grabbed Student A by the arms and led the student into the “cool down” room. Respondent concluded that Petitioner’s use of physical contact to pull Student A up from the chair is a restraint under Texas law.

12. Respondent concluded that: Petitioner’s use of the restraint on December 3, 2025 was disproportionately excessive to the situation and was exercised in the absence of an emergency; Petitioner’s use of force was not implemented in such a way to protect the health and safety of the student; Petitioner did not act in accordance with CPI training; and Petitioner’s actions on December 3, 2025 violated the Second employment Directive.

13. CPI expert testified that Petitioner's conduct on December 3, 2025, did not conform to Texas law or Respondent's expectations with respect to the use of restraints.

14. Commissioner's Rule 19 Texas Administrative Code section 89.1053(g) states that "physical force...must not be used to place a student in timeout." "Timeout" is a behavior management technique in which to provide a student with an opportunity to regain self-control by separating the student from other students for a limited period in a setting that is not locked, blocked by furniture, or a closed door held shut from the outside, or another inanimate object. *See* 19 Tex. Admin. Code § 89.1053(b)(3). Respondent concluded that the "cool down" room in Petitioner's classroom met the definition of "timeout."

15. Respondent concluded that Petitioner used physical force to place Student A in a "timeout" in violation of 19 Tex. Admin. Code § 89.1053(b)(g).

16. Respondent concluded that Petitioner's conduct on October 8, 2025 and December 3, 2025 did not comply with Respondent's policies, Texas law, CPI standards, or the Directives issued to Petitioner.

17. Respondent concluded that Petitioner "did not have an objectively reasonable belief that force was necessary in the situation described above." Respondent further concluded Petitioner "was not acting in self-defense or the defense of others when she pulled Student A out of [the] chair on December 3, 2025, and when she pulled Student A to the floor on October 8, 2025."

18. On March 10, 2026, the board voted to terminate Petitioner's probationary contract, effective immediately.

19. The board adopted the Independent Hearing Examiner's (IHE's) Findings of Fact and Conclusions of Law without modification. The adopted Findings of Fact and Conclusions of Law do not contain specific findings applying the governing legal standards set forth in Texas Education Code section 22.0512 or Texas Penal Code section 9.62.

20. On March 30, 2026, Petitioner timely filed a Petition for Review with the Commissioner of Education.¹

DISCUSSION

Petitioner contends that Respondent wrongly terminated her contract because it failed to apply the correct legal standard, thus making its decision arbitrary, capricious, contrary to law, and unsupported by substantial evidence. Respondent alleges that the Findings of Fact and Conclusions of Law adopted by its Board of Trustees “addressed all applicable and necessary facts and legal standards” necessary to support the termination of Petitioner’s contract. Respondent further contends that “Petitioner did not act in self-defense during the incidents in question, nor did she meet the criteria for immunity.”

In the alternative, Respondent asserts in its Answer that “any error was harmless procedural error” or, if there was error, the matter should “be remanded to the Board of Trustees with instructions to adopt additional findings of fact and conclusions of law.” In its Brief, however, Respondent advances a different alternative, requesting that “if the Commissioner finds that the IHE applied an incorrect law, the Commissioner should issue additional findings applying the correct law and find that substantial evidence supports Petitioner’s termination.” These shifting remedial requests suggest Respondent recognized it failed to apply the correct legal standard in the first instance, as required by law.

Texas Education Code section 22.0512: Educator Immunity

The Commissioner has repeatedly held that when a district disciplines a teacher for using physical force against a student, the board must analyze Texas Education Code section 22.0512 if the facts implicate educator use of force. *See Crowley Indep. Sch. Dist. v. Stoneham*, 714 S.W.3d 867 (Tex. App. 2024) (applying Texas Education Code § 22.0512 and Texas Penal Code

¹ Petitioner’s Petition for Review asserts jurisdiction under both Texas Education Code sections 7.057 and 21.301. Recognizing that these provisions involve differing procedural standards and timelines, the Administrative Law Judge scheduled an April 15, 2026 prehearing conference to determine the appropriate jurisdictional basis for the proceeding. Because the claims arising under these sections could not be consolidated and adjudicated within a single proceeding, clarification of jurisdiction was necessary. On April 14, 2026, in response to the Judge’s Order, Petitioner filed a Motion to Withdraw her section 7.057 appeal and elected to proceed solely under section 21.301 as the jurisdictional basis for this case. The Commissioner construes Petitioner’s Motion to Withdraw as a nonsuit of her section 7.057 appeal. *See* Tex. Admin. Code § 157.1056(b).

§ 9.62 to a termination proceeding under Chapter 21 of the Texas Education Code); *see also Stoneham v. Crowley Indep. Sch. Dist.*, No. 036-R2-04-2022 (Comm’r Educ. 2022). Failure to apply the immunity statute is reversible error because it directly limits disciplinary authority. *See Stoneham*, 714 S.W.3d 867. Section 22.0512 is controlling law and must be addressed. *Id.*

Texas Education Code section 22.0512, entitled “Immunity from Disciplinary Proceedings for Professional Employees,” provides professional employees immunity for using physical force against a student. In relevant part, it states:

- (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;

Tex. Educ. Code § 22.0512.

Section 22.0512(a) provides that a professional employee “may not be subject to disciplinary proceedings” for the use of physical force to the extent the force is justified under Penal Code section 9.62 (educator-student use of force). If the use of force is justified under section 9.62 and does not violate the district’s corporal-punishment policy, the district lacks authority to discipline the teacher on that ground at all. This language is mandatory. Therefore, it is not merely a mitigating factor but a bar to discipline for that conduct.

In a Texas Education Code section 21.301 appeal, the Commissioner reviews whether the board’s decision is supported by substantial evidence and is lawful. A board decision that imposes discipline barred by statute is contrary to law and cannot stand. Because section 22.0512 limits disciplinary authority, it must be addressed when raised by the evidence or pleadings. Failure to perform this analysis would bypass an express statutory exception framework.

Section 22.0512 applies to “disciplinary proceedings”

Section 22.0512 expressly applies to “disciplinary proceedings,” defined to include district actions to discharge or suspend a teacher or to terminate or nonrenew a term contract—the very actions reviewed under Chapter 21, Subchapter G (i.e., section 21.301 proceedings). Because a section 21.301 appeal reviews a board’s decision to terminate or suspend an educator, section 22.0512 applies whenever alleged misconduct involves a teacher’s use of physical force.

The disciplinary proceeding arising from the December 3, 2025 incident resulted in the recommended termination of Petitioner’s employment, making Texas Education Code section 22.0512 applicable and requiring its consideration before the proposed disciplinary action could lawfully be taken. Because Texas Education Code section 22.0512 bars disciplinary proceedings for an employee’s justified use of physical force under Penal Code section 9.62—and because a disciplinary proceeding includes contract termination—the threshold inquiry in this case is whether Petitioner’s use of force was legally justified.

Section 9.62: Justification of Educator-Student Use of Force

Before Respondent could lawfully subject Petitioner to termination, it was required to determine whether Penal Code section 9.62 justified Petitioner’s use of physical force against the student was justified. Texas Penal Code section 9.62 provides:

The use of force, but not deadly force, against a person is justified:

- (1) if the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and
- (2) *when and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.*

Tex. Penal Code § 9.62 (emphasis added).

What is reasonable belief?

In *Stoneham*, the Commissioner analyzed the “reasonable belief” standard, holding that “[u]nder [section] 22.0512, the district has the burden to prove that an educator did not have an objectively reasonable belief that force was necessary to maintain control of a group or to compel obedience to a proper command.” *See Stoneham*, 714 S.W.3d at 877; *see also Stoneham*, No. 036-R2-04-2022 (Comm’r Educ. 2022). *Stoneham* further clarifies the proper framework

for applying that standard. Specifically, although “reasonable belief” is evaluated under an objective standard—defined as a belief that would be held by an ordinary and prudent person under the same circumstances—the assessment of an educator’s use of force must nevertheless be conducted from the teacher’s perspective at the time of the incident. *See Stoneham*, 714 S.W.3d at 877; *see also Stoneham*, No. 036-R2-04-2022 (Comm’r Educ. 2022); *Dall. Indep. Sch. Dist. v. Peters*, No. 05-14-00759-CV, 2015 Tex. App. LEXIS 12625, 2015 WL 8732420, at *5 (Tex. App.—Dallas Dec. 14, 2015, pet. denied); Tex. Penal Code § 1.07(42). A school district has the burden of showing that an employee’s use of force was not reasonable. *Id.*; *see also Edinburg Consol. Indep. Sch. Dist. v. Villareal*, 2020 Tex. App. LEXIS 2956 (Tex. App.—Corpus Christi-Edinburg 2020, pet. denied). Reasonableness of force used on a student is not an affirmative defense that the employee must prove. *Earthly v. Fort Bend Indep. Sch. Dist.*, No. 040-R2-0209 (Comm’r Educ. 2009).

In determining whether the use of force is reasonable, the Texarkana Court of Appeals found that the factors in the *Restatement of Torts*, Second Edition are in harmony with Texas case law. *See Hogenson v. Williams*, 542 S.W.2d 456, 459–60, 1976 Tex. App. LEXIS 3180 (Tex. Civ. App.—Texarkana 1976, no writ). The following non-exclusive factors guide the determination of whether an employee’s use of force was reasonable:

- (a) The age, sex, and condition of the child,
- (b) The nature of [the child’s] offense or conduct and [the child’s] motives,
- (c) The influence of [the child’s] 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.

Id.

The *Hogenson* court further concluded:

In our opinion, the proper construction of the rule of privileged force as expressed by the above statutes and authorities, and as the rule is applied in a civil assault case against a school teacher, is that any force used must be that which 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; and in either case, the force or physical contact must be reasonable and not disproportionate to the activity or the offense.

Id. at 460 (emphasis in original).

The *Hogenson* factors are evaluative, not conjunctive; no single factor is dispositive. The inquiry is teacher-focused, examining what the educator reasonably believed at the time, and does not apply hindsight judgments. If, after considering these factors, the use of force is found reasonable and justified under Penal Code section 9.62, then section 22.0512 immunity applies, and the employee may not be subjected to disciplinary proceedings for that conduct.

The employee's belief must be evaluated from the employee's perspective, and the Recommendation and the Decision in the instant case contain no such evaluation. *See* Tex. Pen. Code §§ 1.07(42), 9.62. The record affirmatively demonstrates that Respondent failed to fully evaluate Petitioner's use of physical force against the student under the *Hogenson* factors, or under any comparable statutory framework, with respect to any of the three incidents at issue—those occurring on September 26, 2025, October 8, 2025, and December 3, 2025—each of which involved Petitioner's use of physical force against the student. Both the IHE's Recommendation and the board's Decision adopting that Recommendation fail to address the controlling statutory standard.

Arbitrary and Capricious under *Stoneham*

In *Stoneham*, the school district terminated a teacher's contract for use of force against a student. *See Stoneham*, 714 S.W.3d 867; *see also Stoneham*, No. 036-R2-04-2022 (Comm'r Educ. 2022). Although a hearing examiner and the school board found "good cause," the Commissioner of Education reversed, concluding the district failed to apply Texas Education Code section 22.0512 (statutory immunity for justified use of physical force). *See Stoneham*, 714 S.W.3d 867. The trial court affirmed, and the district appealed to the Fifteenth Court of Appeals. *Id.*

That Court affirmed, holding that when a district disciplines a teacher for using physical force against a student, it must apply section 22.0512, which provides immunity from disciplinary proceedings to the extent Penal Code section 9.62 justifies the use of force. *Id.* Failure to apply section 22.0512 renders the decision legally defective.

The Court agreed with the Commissioner that the IHE and board used the wrong legal framework, evaluating “good cause” without first determining whether the teacher was statutorily immune. *Id.* A decision that ignores statutory immunity that must be considered is arbitrary and capricious as a matter of law. *Id.* The Court held that even under substantial evidence review, the record did not support overcoming the teacher’s immunity. *Id.* Because the board never analyzed whether the force was justified under Penal Code section 9.62, there was no substantial evidence that discipline was legally permissible. The Court affirmed that the Commissioner correctly reversed a board decision that applied an incorrect legal standard and was also unsupported by substantial evidence even under the correct standard. *Id.* Substantial-evidence review must accordingly be conducted within the framework of statutory immunity, rather than under generalized “good cause” standards.

A decision is arbitrary and capricious if it is based on legally irrelevant factors or omits legally relevant factors. *See Pub. Utility Comm’n v. Tex. Indus. Energy Consumers*, 620 S.W.3d 418, 427 (Tex. 2021). Section 22.0512 is a mandatory threshold determination in any Chapter 21 disciplinary action predicated on the use of physical force. A decision based on the use of force must have appropriate findings and conclusions, because a professional employee may not be subject to disciplinary proceedings for force justified under Texas Penal Code section 9.62. *See Tex. Educ. Code* § 22.0512(a). A decision on an educator’s use of force that fails to include findings of fact and conclusions of law as to the statutory factors regarding use of force is arbitrary and capricious because it omits legally relevant factors.

Accordingly, a board decision that fails to analyze and apply section 22.0512 is arbitrary, capricious, and not in accordance with law, and is therefore subject to reversal by the Commissioner.

Texas Education Code section 21.104: Good Cause

According to Texas Education Code section 21.104(a), “A teacher employed under a probationary contract may be discharged at any time for good cause as determined by the board of trustees, good cause being the failure to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts in this state.”

Tex. Educ. Code § 21.104(a). At the hearing, the school district has the burden of proof by a preponderance of the evidence. Tex. Educ. Code § 21.256(h).

Both the IHE’s Recommendation and the Board of Trustees’ Decision—which adopted the Recommendation without modification—concluded that there was good cause to terminate Petitioner’s contract. Specifically, Respondent’s board “determined that failure to comply with District policies, failure to meet the District’s standards of conduct and unreasonable use of restraints or force against students are grounds for termination of a teacher’s probationary contract,” citing the October 8, 2025 and December 3, 2025 incidents.

Respondent’s Brief emphasizes that “when a basis for terminating an educator’s contract does not implicate an immunity defense, the traditional ‘good cause’ standard still applies,” and further relies on *Stoneham* for the proposition that the “‘good cause’ provision supplies the default standard for teacher contract termination, and it predates Section 22.0512.” Respondent is correct in these statements. However, Respondent’s analysis is incomplete because it does not account for the full scope of the court’s reasoning. The *Stoneham* court expressly recognized that “[t]he Legislature enacted Section 22.0512 later—in 2003—to change the law governing teacher terminations for nondeadly use of force. Were that not so, Section 22.0512 would have been a useless act.” *Stoneham*, 714 S.W.3d at 878.

Accordingly, section 22.0512 governs the evaluation of Petitioner’s conduct, and any analysis based solely on “good cause” is insufficient and fails as a matter of law.

Special Education—Only Evaluation of Incidents

In the instant case, neither the IHE’s Recommendation nor the Board of Trustees’ Decision—which adopted the Recommendation without revision—conducted any analysis or conclusion of law addressing Texas Education Code section 22.0512. Rather, in accepting the IHE’s Findings of Fact and Conclusions of Law, the board evaluated Petitioner’s conduct under the Commissioner’s rules governing special education services, including restraint and time-out procedures set forth in 19 Texas Administrative Code Chapter 89. This reliance is reflected throughout the transcript of the hearing and in the board’s Conclusions of Law, which state in pertinent part:

Tex. Educ. Code § 37.0021(a) states: It is the policy of this state to treat with dignity and respect all students, including students with disabilities who receive special education services under Subchapter A, Chapter 29. §37.0021(b)(1) defines “Restraint” “the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body.” See also 19 Tex. Admin. Code § 89.1053(b)(2) (“Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student’s body.”).

19 TAC 89.1053(c) limits the use of restraints to emergency situations. An “emergency” means a situation in which a student’s behavior poses a threat of “imminent, serious physical harm to the student or others”; or “imminent, serious property destruction.” 19 Tex. Admin. Code § 89.1053 (b)(1). Restraints must be limited to the use of reasonable force necessary to address the emergency, must be discontinued at the point at which the emergency no longer exists, must be implemented in such a way as to protect the health and safety of the student and others, and must not deprive the student of basic human necessities. 19 Tex. Admin. Code § 89.1053 (c).

Respondent’s conduct, described above, violated 19 TAC 89.1053(c) because Respondent did not (1) limit the use of restraints to emergency situations; (2) limit restraints to the use of reasonable force necessary to address the emergency; (3) discontinue the restraint at the point at which the emergency no longer existed; and (4) implement any and all restraints in such a way as to protect the health and safety of the student and others.

Respondent’s use of physical force to place Student A in time-out in violation of 19 Tex. Admin. Code § 89.1053(g).

In its Brief, Respondent asserts, “*Stoneham* considered the use of physical force only in the general education setting” but “[a]dditional laws applies to the use of physical force in a special education setting.” This distinction is immaterial because Texas Education Code section 22.0512 and Texas Penal Code section 9.62 apply to a teacher’s use of physical force regardless of the educational setting, and the board’s failure to apply those standards constitutes legal error. Although Respondent’s consideration of compliance with restraint and time-out procedures may be relevant to evaluating Petitioner’s use of force within the context of special education services, it does not substitute for the mandatory legal analysis required under Texas Education Code section 22.0512, which governs immunity and lawful justification for the use of force. Whether in the general education or special education setting, Texas Education Code section 22.0512 applies whenever an educator’s use of physical force is at issue.

The IHE’s Findings of Fact and Conclusions of Law—fully adopted by Respondent’s Board—omit any analysis of the controlling statutory standards, including: Texas Education

Code section 22.0512; Texas Penal Code section 9.62; and whether, from Petitioner’s perspective, she *reasonably believed* the use of force was necessary to further the special purpose or maintain discipline in a group, pursuant to Penal Code section 9.62(b).

Perhaps the closest Respondent comes to addressing this issue appears in its Finding of Fact No. 41, which states as follows:

[Petitioner] did not have an objectively reasonable belief that force was necessary in the situations described above. [Petitioner] was not acting in self-defense or the defense of others when she pulled Student A out of his chair on December 3, 2025, and when she pulled Student A to the floor on October 8, 2025. *Pet. Exh. 11; Pet. Exh. 13.*

Although the statement purports to address whether Petitioner held a “reasonable belief that the force was necessary in the situations described above,” it does not resolve the statutorily required inquiry from Petitioner’s perspective—namely, whether she believed the use of force was necessary to further the special purpose or to maintain discipline in a group, as required by Texas Penal Code section 9.62(b). Significantly, the school district cites exclusively to classroom surveillance video footage from the October 8, 2025 and December 3, 2025 incidents to support its Finding of Fact No. 41. The IHE’s Findings of Fact and Conclusions of Law—which were adopted by the board—contain no finding addressing Petitioner’s belief as to whether force was necessary. The videos alone are insufficient to establish Petitioner’s perspective and do not satisfy the statutory requirement that the decisionmaker evaluate Petitioner’s belief regarding the necessity of the use of force.

In addition to Finding of Fact No. 41, Respondent identifies the following findings to support its position that the educator did not have an objectively reasonable belief that force was necessary:

[Petitioner] use of force was not necessary to maintain discipline of Student A on October 8, 2025 and December 3rd, 2025.

[Petitioner’s] use of force to pull Student A to the ground on October 8, 2025, was an excessive and unreasonable use of force and restraint in light of the circumstances.

[Petitioner’s] use of physical force to place Student A in a time-out [was a] violation of 19 Tex. Admin. Code § 89.1053(g).

Here, as in *Stoneham*, the IHE’s Findings of Fact and Conclusions of Law—which the board adopted—are devoid of a single citation to Texas Education Code section 22.0512 or Texas Penal Code section 9.62. While the IHE’s report concludes that “Respondent’s use of force was not necessary to maintain discipline of Student A on October 8th, 2025 and December 3rd, 2025” and “Respondent’s use of force was not implemented in such a way as to protect the health and safety of the student,” the report is legally deficient because it fails to analyze the incidents under the governing statutes—Texas Education Code section 22.0512 or Texas Penal Code section 9.62.

Notably, the IHE did not quote any language from section 22.0512 or Penal Code section 9.62. Not only does the report fail to cite either statute, but it also entirely omits the required legal analysis of whether the conduct was statutorily justified. The IHE did not expressly consider what Petitioner’s “special purpose” was with respect to section 22.0512 or whether Petitioner had an objectively reasonable belief that force was necessary to maintain control of a group or to compel obedience to a proper command. Neither the Recommendation nor the Decision contains any discussion or findings demonstrating that the IHE or the board concluded that Petitioner, from her perspective, did not reasonably believe that restraining the individual was necessary. In the absence of such findings or conclusions of law, there is no basis upon which the Decision can be meaningfully reviewed or tested.

Because the record reflects that Respondent failed to undertake this required analysis for any of the incidents at issue, Respondent acted contrary to law and exceeded its authority in imposing discipline. As *Stoneham* makes clear, a failure to conduct this threshold statutory-immunity analysis renders a disciplinary decision arbitrary and capricious and unsupported by substantial evidence as a matter of law.

Immunity

When an employee uses force that the employee reasonably believes is necessary, a school district may not impose discipline solely because an administrator previously directed the employee not to use force. *Earthly v. Fort Bend Indep. Sch. Dist.* No. 040-R2-0209 (Comm’r Educ. 2009). Likewise, a district may not take disciplinary action against an employee for using

reasonable force based on a policy or practice that authorizes the use of force more narrowly than Texas Education Code section 22.0512. Conduct protected by section 22.0512 cannot serve as a basis for discipline. Although school districts generally retain authority to discipline educators for violations of local policy, that authority does not extend to uses of force that qualify for statutory immunity under section 22.0512, which controls over conflicting local policies or directives.

Similarly, a school district may not discipline an employee for using force that the employee reasonably believed was necessary based on the district's determination that the conduct violated the Texas Educator Code of Ethics.² Texas Education Code section 22.0512(a) and (b)(2) expressly prohibits the State Board for Educator Certification from disciplining an educator for a use of force that the educator reasonably believed was necessary, and the same limitation applies to school districts. Although administrative directives, local school policies, and the Code of Ethics may inform the analysis of whether an employee's belief regarding the necessity of force was reasonable, they do not independently authorize disciplinary action for conduct that qualifies for immunity under section 22.0512.

Multiple Grounds for Termination

Respondent asserts that Petitioner was terminated for violations of Texas law and applicable employment directives and further contends that Petitioner has waived any challenge to those findings by failing to address them in her Brief. Respondent's argument, however, fails to acknowledge that the alleged violations of Texas law and employment directives are premised on the same force-related conduct at issue in this case and are not based on independent, non-force-related grounds. Respondent's reliance on those findings necessarily implicates the

² The IHE's Finding of Fact No. 7 states that Plano ISD has adopted the Texas Educator Code of Ethics found in Board Policy DH (Local), DH (Exhibit), and 19 Texas Administrative Code section 247.2. The IHE's Recommendation identifies the following provisions of the Texas Educators' Code of Ethics as applicable to Petitioner's conduct and concludes that Petitioner violated each of the following standards: Standard 1.7: The educator shall comply with state regulations, written local school board policies, and other state and federal laws; Standard 1.10: The educator shall be of good moral character and be worthy to instruct or supervise the youth of this state; Standard 3.2: The educator shall not intentionally, knowingly, or recklessly treat a student or minor in a manner that adversely affects or endangers the learning, physical health, or safety of the student or minor; Standard 3.5: The educator shall not intentionally, knowingly, or recklessly engage in physical mistreatment, neglect, or abuse of a student or minor.

force-based allegations and triggers the required legal analysis governing the use-of-force. Where one of the stated grounds for termination requires analysis under Texas Education Code section 22.0512 and that analysis was not performed, the termination decision is legally vulnerable, notwithstanding the citation of additional grounds.

Texas administrative law and Commissioner precedent establish that Texas Education Code section 22.0512 operates as a threshold legal bar, not a discretionary factor to discipline based on the use of force. When termination or Chapter 21 discipline is based in whole or in part on an employee's use of physical force, section 22.0512 requires a determination of statutory immunity. If immunity applies, the employee "is not subject to discipline" for that conduct. That means the decisionmaker lacks authority to impose discipline on that ground, absent the required analysis.

Multiple grounds for termination do not cure a fatal legal defect in one ground. Where a board relies on multiple reasons for termination, Texas administrative law generally requires that each independent ground be legally valid or that the decisionmaker clearly establish the action would have been taken absent the defective ground. If the board relied on conduct involving use of force; failed to analyze section 22.0512 (and, by extension, Penal Code section 9.62); and did not sever or expressly exclude that ground, then the decision is tainted by legal error. The Commissioner has repeatedly held that a decision is arbitrary, capricious, or contrary to law if the board applies the wrong legal standard, or omits a required statutory inquiry, even when other evidence exists. *See Stoneham*, 714 S.W.3d at 878.

Substantial evidence review cannot substitute for immunity analysis. A board cannot defend its decision by arguing that other misconduct existed, or substantial evidence supports termination generally, if the record shows that force-based conduct was part of the rationale, and immunity was never analyzed. Courts and the Commissioner review whether the correct law was applied, not whether the outcome might have been the same.

If one stated reason for termination triggered section 22.0512 and the board failed to conduct that analysis, the decision is not legally defensible unless the record affirmatively

demonstrates that the termination did not rely on that ground. A termination is only defensible if the record clearly shows one of the following:

1. The force-related allegation was withdrawn, rejected, or expressly not relied upon; or
2. The decisionmaker performed and resolved the TEC section 22.0512 & TPC section 9.62 analysis and found immunity did not apply; or
3. The board made an explicit finding that termination was based solely on non-force-related grounds, independent of the defective ground.

Absent that showing, reversal or remand is legally supportable under section 21.301. *See Stoneham*, 714 S.W.3d at 877 (requiring application of section 22.0512); Tex. Educ. Code § 21.301 (authorizing reversal for legal error). Here, the local record does not demonstrate any of the alternatives. Accordingly, Respondent's contention that Petitioner was terminated on multiple grounds—where those grounds are neither independent nor non-force-related—is not legally defensible.

Requested Relief

In her Pleading, Petitioner requests that the Commissioner:

- (1) Accept jurisdiction over [Petitioner's] Petition;
- (2) Find that Respondent's action was arbitrary, capricious, contrary to law, and not supported by substantial evidence;
- (3) Reverse the decision of the Plano Independent School District Board of Trustees;
- (4) Order reinstatement of Petitioner's prior position, along with back pay and benefits; and
- (5) Grant any relief as equity and justice may require.

For the reasons explained *supra*, the Commissioner grants Petitioner's jurisdictional request and concludes that Respondent's termination decision was arbitrary, capricious, contrary to law, and not supported by substantial evidence. All other requests are denied.

Remand for Application of Correct Legal Standard

In a Texas Education Code section 21.301 appeal, when the Commissioner finds that district failed to apply the correct legal standard, the Commissioner has discretion to either—remand the case to the local board or apply the correct legal standard and resolve the issue—but the determination turns on the nature of the error, the adequacy of the board's findings, and the state of the record. *See, e.g., Lozano v. Progreso Indep. Sch. Dist.*, No. 096-R10-06-2025 (Comm'r Educ. 2026) (remanding where the record was not fully developed); *Burnett v. Mart*

Indep. Sch. Dist., No. 046-R20-03-2025 (Comm’r of Educ. 2025) (declining to reconsider and reweigh the evidence and substitute the Commissioner’s judgment for the lower tribunal’s).

The Commissioner will remand a case for the application of the correct standard when:

1. The board never made required threshold determinations (e.g., immunity, employee’s beliefs, necessity, intent, credibility, or justification);
2. Resolution requires fact-finding or discretionary determinations committed to the board;
3. The record is undeveloped as to the correct legal standard.

Remand is common where the board failed to consider a mandatory statute (such as section 22.0512) and made no findings relevant to that statute. In those cases, the Commissioner often concludes the board must apply the correct law in the first instance. Notably, the Commissioner is not obligated to salvage or reconstruct a defective board decision by supplying missing legal analysis or inferring findings the board never made.

The Commissioner may apply the correct standard and render a final decision when:

1. The facts are undisputed;
2. The local record is fully developed;
3. Application of the correct standard is a pure question of law; and
4. No additional credibility determinations or discretionary judgments are required.

See Stoneham, 714 S.W.3d 867; *see also Stoneham*, No. 036-R2-04-2022 (Comm’r Educ. 2022).

This most often occurs where: (1) The board made detailed findings but labeled or framed them under the wrong standard; or (2) The outcome is legally compelled regardless of how the board might weigh discretionary factors.

Here, the board never made the required threshold determinations, resolution would require credibility determinations and discretionary determinations reserved to the board, and the record is underdeveloped as to the correct legal standard. Accordingly, the Commissioner remands this case to Respondent’s Board of Trustees with instructions to properly apply the governing legal standard set forth in Texas Education Code section 22.0512, and by extension, Texas Penal Code section 9.62, to Petitioner’s use of physical force in a manner consistent with the guidance provided in this decision and applicable legal precedent.

Conclusion

The Petition for Review is granted in part and otherwise denied.

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 case under Texas Education Code section 21.301.

2. A decision is arbitrary and capricious where it relies on legally irrelevant factors or fails to consider factors that are legally relevant and required under the governing standard.

3. Texas Education Code section 22.0512 establishes broad immunity protecting professional employees from discipline based on their use of force when the employee reasonably believes such force is necessary.

4. Under Texas Education Code section 22.0512, the school district bears the burden of proving that the employee did not hold an objectively reasonable belief that the use of force was necessary, and the statute does not impose an affirmative defense that the employee must establish.

5. In a termination or nonrenewal case involving a use of force issue under Texas Education Code section 22.0512, the Independent Hearing Examiner's Recommendation and the board's Decision are required to include findings of fact and conclusions of law addressing the applicability of section 22.0512.

6. Because the Decision to terminate Petitioner's contract fails to include the findings of fact and conclusions of law necessary to evaluate Petitioner's use of force under the Texas Education Code section 22.0512, it is arbitrary and capricious.

7. A "reasonable belief" under Texas Education Code section 22.0512 is governed by an objective—not subjective—standard, defined as "a belief that would be held by an ordinary and prudent person in the same circumstances as the actor." Tex. Penal Code § 1.07(42). While the teacher's use of force must be evaluated from her perspective at the time of the incident, this does not require the factfinder to accept the teacher's testimony as true, nor

does it permit a finding of reasonableness based solely on the teacher's subjective belief that her actions were justified.

8. In determining whether a teacher possessed a reasonable belief under Texas Penal Code § 9.62(a)(2), the following factors, drawn from the *Restatement (Second) of Torts*, are relevant:

- (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.

9. Texas Education Code section 22.0512 and Texas Penal Code section 9.62 apply to a teacher's use of physical force in any educational setting, and the board's failure to apply these standards to the conduct at issue constitutes legal error.

10. Section 22.0512 governs the evaluation of Petitioner's use of physical force against a student, and an analysis based solely on "good cause" is insufficient and fails as a matter of law.

11. A board may not defend its decision by relying on other alleged misconduct or by asserting that substantial evidence otherwise supports termination if the record shows that use-of-force conduct formed part of the basis for all good cause determinations in a decision, without any good cause determination unrelated to the use-of-force, and the board failed to evaluate that conduct under the governing statutory immunity framework.

12. The Commissioner is not obligated to salvage or reconstruct a defective board decision by supplying legal analysis that was not performed or inferring findings that the board failed to make.

13. The Petition for Review is granted in part and denied in part. Respondent's decision to terminate Petitioner's term contract is remanded to the Board of Trustees with instructions to apply the correct legal standard as set forth above and make the necessary findings consistent with this decision.

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, GRANTED in part and DENIED in part.

SIGNED AND ISSUED this 15th day of May 2026.

Mike Morath Digitally signed by Mike Morath
Date: 2026.05.15 15:16:30
-05'00'

MIKE MORATH
COMMISSIONER OF EDUCATION