

JOSAPHAT LOZANO,	§	BEFORE THE
Petitioner,	§	
	§	
v.	§	COMMISSIONER OF EDUCATION
	§	
PROGRESO INDEPENDENT SCHOOL	§	
DISTRICT,	§	
Respondent.	§	THE STATE OF TEXAS

DECISION OF THE COMMISSIONER

Petitioner Josaphat Lozano, a former employee of Respondent Progreso Independent School District, appeals to the Commissioner of Education asserting that Respondent violated Texas Education Code section 11.1511(b)(13) by failing to hear his Policy DGBA (Local) grievances and by failing to resolve its Policy DIA (Local) investigation of his complaints of employment harassment and retaliation. Respondent denies error and asserts that Petitioner is no longer an employee, so he could not proceed under Policy DGBA (Local), its employee grievance policy.

Adrienne Butcher is the Administrative Law Judge assigned to this case. Petitioner proceeds *pro se*. Respondent is represented by its counsel, Alyssa Aleman and Eden Ramirez, of O'Hanlon, Demerath & Castillo, P.C., in Austin, Texas.

Because the local record contains no evidence that Respondent has ever heard or decided any of Petitioner's grievances filed in January and June 2025 or concluded its Policy DIA (Local) investigation of Petitioner's redirected January 2025 Policy DGBA (Local) complaints, the Commissioner remands this appeal to Respondent's school board to hear Petitioner's complaints, in accordance with its local policies and Texas Education Code section 11.1511(b)(13).

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 contract for the 2024–2025 school year. Petitioner worked as a special education teacher for Respondent.

2. Respondent has a local grievance policy for employee complaints, Policy DGBA (Local). Respondent also has a local policy for addressing claims of discrimination, harassment, and retaliation, Policy DIA (Local). Both policies are in the local record.

3. In and about January 2025, Petitioner filed several complaints against Respondent’s Director for Special Education Services, complaining about her alleged harassment of and retaliation toward Petitioner related to his Admission, Review, and Dismissal meetings. Respondent issued a March 5, 2025 letter notifying Petitioner that it was proceeding with an investigation of his complaints under its Policy DIA (Local), noting that his allegations, “if proven, would constitute prohibited conduct as defined by Board Policy DIA (Local).”

4. On May 19, 2025, Respondent notified Petitioner that on the superintendent’s recommendation, the board had voted on that date to terminate Petitioner’s probationary contract at the end of its term, in Respondent’s best interests.

5. On or about June 19, 2025, Petitioner filed a grievance with Respondent in letter form, stating that it was an employee grievance under Policy DGBA (Local). The grievance reasserted and expanded on Petitioner’s previous complaints about the Director for Special Education Services.

6. Respondent’s administration did not dismiss or otherwise address Petitioner’s June 2025 grievance. Petitioner then appealed to the Commissioner on June 26, 2025. Respondent moved for leave to file an untimely answer, explaining that it had confused this appeal with another appeal that Petitioner had filed with a similar cause number. The Administrative Law Judge denied the motion for lack of a certificate of conference, which the Commissioner’s rules require for motions that require rulings. Thereafter, Respondent filed an amended motion with a certificate of conference, which the Administrative Law Judge granted.

7. On August 13, 2025, Respondent filed its answer and the local record. Shortly thereafter, it filed a Motion to Dismiss and Plea to the Jurisdiction.

8. The Administrative Law Judge held a prehearing conference and issued an October 29, 2025 Order Following Prehearing Conference noting, as addressed in the prehearing conference, that the local record contained several grievances that Petitioner had filed but no decisions or dispositions by Respondent on any of those grievances. In her Order, the Administrative Law Judge gave Petitioner an opportunity to replead and also gave Respondent an opportunity both to supplement the local record with any decisions or dispositions it had made on Petitioner's grievances and to respond to Petitioner's amended pleading.

9. Petitioner timely amended his pleading. Respondent did not file a response to the amended pleading or supplement the local record.

10. The Administrative Law Judge set a briefing schedule on the issue of whether Respondent violated Texas Education Code section 11.1511(b)(13) by failing to hear Petitioner's complaints. The parties filed briefs, which were heard on submission. The Administrative Law Judge issued a Proposal for Decision recommending remand. Petitioner filed exceptions, primarily seeking additional clarification. Petitioner's exceptions were considered.

DISCUSSION

In this appeal, Petitioner argues that Respondent violated Texas Education Code section 11.1511(b)(13) by failing to hear several grievances that he filed in January 2025, which Respondent redirected and processed under its Policy DIA (Local), and a grievance he filed in June 2025. Respondent argues that it has adopted the statutorily required employee grievance policy under section 11.1511(b)(13) and that Petitioner's argument fails because (1) Respondent addressed his January 2025 complaints through its Policy DIA (Local) investigation and (2) when Petitioner filed his June 2025 grievance, was no longer Respondent's employee and was thus no longer entitled to employee grievance proceedings.

In an October 29, 2025 Order Following Prehearing Conference, the Administrative Law Judge noted that the local record lacks any decisions or dispositions by Respondent on any of Petitioner's grievances and gave Respondent an opportunity to supplement the local record. However, Respondent did not supplement the local record.

Under the Commissioner's rules, school districts have an affirmative duty to file the local record in an appeal with the Commissioner. That duty includes making and preserving the components of the local record described in Rule 157.1073(d), which include intermediate rulings made during grievance proceedings. 19 Tex. Admin. Code § 157.1073(d)(4). If a school district fails without good cause to comply with this duty, then all substantial evidence issues that require missing portions of the local record for resolution are resolved against the school district. *Id.* § 157.1073(d).

After Petitioner timely amended his pleading and in the absence of any grievance decisions or intermediate rulings, the Administrative Law Judge issued a December 4, 2025 Order Setting Briefing Schedule requesting briefing on the issue of whether Respondent violated Texas Education Code section 11.1511(b)(13). In her Order, she stated,

The Agency provided the parties with the Commissioner's rules governing appeals in its June 27, 2025 Acknowledgement Letter to the parties. The parties should follow the Commissioner's briefing rule when filing their briefs. *See* 19 Tex. Admin. Code § 157.1058 (briefing rule).

The parties filed their briefs, which loosely follow the Commissioner's briefing rules.¹ Because this appeal presents a limited issue, the Commissioner finds the parties' briefs substantially compliant with the briefing rule to enable him to address that issue.

The local record contains the following, in order: (1) Respondent's section 21.103(a) notice to Petitioner of its termination of his probationary contract at the end of its term; (2) Petitioner's Level 2 grievance filed in June 2025 (approximately 139 pages); (3) Respondent's Policy DGBA (Local); (4) Respondent's March 5, 2025 letter notice to Petitioner of a third-party investigation of Petitioner's January 2025 grievances under Policy DIA (Local); (5) Respondent's Policy DIA (Local); (6)–(8) Petitioner's three grievances filed in January 2025; (9)

¹ Both briefs refer to record evidence but make few, if any, record citations, as required both in the statement of facts and in the argument, where applicable. *See* 19 Tex. Admin. Code § 157.1058. In addition, Respondent's brief includes extra-record exhibits to its Policies GF (Legal) and (Local). Respondent had an opportunity to supplement the local record with documents introduced during the grievance proceedings; the Commissioner hears appeals based on the local record and not on parties' extra-record evidence filed as exhibits to pleadings or briefs. *See Reyna v. Hidalgo Indep. Sch. Dist.*, No. 033-R10-04-2023 (Comm'r Educ. 2023); *Fernandez v. Harlandale Indep. Sch. Dist.*, No. 022-R10-03-2022 (Comm'r Educ. 2022).

Petitioner's grievance filed in June 2025; and (10) Petitioner's January 17, 2025 email to Respondent's Human Resources department requesting an accommodation. Conspicuously absent from the record are any decisions or intermediate rulings by Respondent on any of Petitioner's grievances in the local record, including any responses that dismiss or finally resolve any grievances or explain Respondent's apparent decision not to process them.

Policy DIA (Local)'s adopted procedures are informative. The policy addresses employee complaints of discrimination, harassment, and retaliation. In its March 5, 2025 letter, Respondent notified Petitioner that it was investigating his January 2025 Policy DGBA (Local) grievances under Policy DIA (Local), also noting that if proven, he raised potential violations. However, the local record contains no investigative conclusion or decision. Respondent argues in its brief that it concluded its investigation after Petitioner's termination (although its finalization date and outcome are unclear). It then argues that, because Petitioner was no longer an employee when it finally concluded its March 2025 investigation after the school year ended, he could not proceed under Policy DGBA (Local) but was limited to Policy GF (Local) (for members of the public),² which Respondent notes he did not pursue.

Respondent's argument contradicts its Policy DIA (Local), which provides,

The District prohibits retaliation against an employee who makes a claim alleging to have experienced discrimination or harassment, or another employee who, in good faith, makes a report of harassment or discrimination, files a complaint of harassment or discrimination, serves as a witness, or otherwise participates or refuses to participate in an investigation.

Examples of retaliation may include termination, refusal to hire, demotion, and denial of promotion. Retaliation may also include threats, intimidation, coercion, unjustified negative evaluations, unjustified negative references, or increased surveillance.

Policy DIA (Local) also provides for an appeal of an investigation's outcome:

A complainant who is dissatisfied with the outcome of the investigation may *appeal through DGBA (Local)*, beginning at the appropriate level. (Emphasis added.)

² To the extent this question calls for interpretation of Respondent's policies, it was not presented to the board. Therefore, on appeal, the Commissioner cannot consider the board's interpretation of its adopted policies. What is clear is that Policy DIA (Local)'s appellate process is through a Policy DGBA (Local) grievance. If Petitioner had filed a Policy GF (Local) appeal, as Respondent argues on appeal, he could have risked denial for noncompliance with Policy DIA (Local)'s prescribed procedures. Petitioner also could not obtain decisions on any his grievances to appeal under any district policy, including a procedural dismissal.

Thus, Respondent's stated procedure to contest a Policy DIA (Local) investigative outcome is to file an appeal under Policy DGBA (Local). While Respondent correctly notes that probationary contract end-of-term terminations are not appealable, Policy PIA (Local) provides for appeal of complaints Petitioner raised starting in January 2025, and it includes employment termination in its examples of actions that may constitute retaliation prohibited by Policy DIA (Local). Retaliation through termination appears to be among Petitioner's myriad complaints presented in his June 2025 Level 2 grievance.³

Regardless of whether Petitioner was still a district employee, if at some point Respondent concluded its Policy DIA (Local) investigation of his complaints, that policy provided for an appeal under Policy DGBA (Local). The local record contains no findings by Respondent on any complaints that Petitioner raised. The *only* responsive document in the record to any of Petitioner's complaints is Respondent's March 5, 2025 notice of investigation under Policy DIA (Local). Respondent provided no record evidence showing that it either resolved or dismissed any of Petitioner's grievances on either procedural or substantive grounds, and it did not establish good cause for failing to do so. There is also no board decision that reflects its interpretation of its adopted grievance policies for the Commissioner's consideration.

To the extent that Respondent's adopted grievance policy permits its nonresponse to an employee's complaints, that policy does not comply with section 11.1511(b)(13). The Commissioner has previously found that that a school district's duly-adopted grievance policy that does *not* permit advancement of a complaint to the board—while nominally establishing that right—does not comply with section 11.1511(b)(13). *See Rice v. Irving Indep. Sch. Dist.*, No. 044-R10-04-2024 (Comm'r Educ. 2024). Policy DIA expressly provides for an appeal through Policy DGBA (Local). Despite that provision, Respondent argues Petitioner should have filed a grievance under Policy GF (Local) as a member of the public, which does not address employment grievances and is also not in the record. The absence of any grievance decisions or

³ Petitioner's Level 2 grievance exceeds 100 pages. The Commissioner does not review the grievance in this appeal, as Respondent has not heard it, but notes that it appears to complain of, *inter alia*, retaliatory termination.

intermediate rulings in the local record deems the absent record evidence against Respondent. Accordingly, Petitioner met his burden of establishing a section 11.1511(b)(13) violation.

Conclusion

The local record contains no evidence that Respondent took any action on any complaints Petitioner raised, including dismissing his grievances or concluding its investigation under Policy DIA (Local). If Respondent concluded its Policy DIA (Local) investigation, its policy provides for appeal under Policy DGBA (Local), not Policy GF (Local). Because Respondent's board has not heard or decided Petitioner's complaints or appeals, the Commissioner cannot consider its interpretation of its policies or review its decisions on his grievances. This appeal is remanded so that Respondent's board can address Petitioner's grievances in accordance with its adopted grievance policies and the school laws of this state.

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. The record lacks any decisions on any grievances that Petitioner filed with Respondent, including decisions dismissing Petitioner's grievances on either procedural or substantive grounds. 19 Tex. Admin. Code § 157.1073(d). The absence of any evidence of any grievance decisions establishes Respondent's noncompliance with Texas Education Code section 11.1511(b)(13).
3. This appeal is granted, and this matter is remanded to Respondent's school board to for proceedings 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. This case is REMANDED to Respondent's school board to address Petitioner's complaints in accordance with its adopted grievance policies.

SIGNED AND ISSUED this 14th day of April 2026.

Mike Morath Digitally signed by Mike Morath
Date: 2026.04.14 08:48:11 -05'00'

MIKE MORATH
COMMISSIONER OF EDUCATION