

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, appeals the action taken by Respondent, Plano Independent School District Board of Trustees, on remand from the Commissioner's prior Decision in this matter. In the prior appeal, the Commissioner remanded the case to Respondent with instructions to apply the statutory framework governing educator use of force and immunity under Texas Education Code section 22.0512 and Texas Penal Code section 9.62. On remand, the board conducted a hearing at which both parties presented oral argument concerning the application of those statutes to the existing record. Following the hearing, the board applied Texas Education Code section 22.0512 and Texas Penal Code section 9.62 to the existing record, adopted conclusions addressing Petitioner's claim of statutory immunity, and again voted to uphold the termination of Petitioner's probationary contract. Petitioner contends that Respondent failed to meaningfully comply with the Commissioner's remand instructions and failed to conduct the reasonable-force and immunity analysis required by law. Respondent denies error and requests that Petitioner's appeal be denied.

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 central issue is whether Respondent meaningfully complied with the Commissioner's remand order by conducting the reasonable-force and immunity analysis required under Texas Education Code section 22.0512 and Texas Penal Code section 9.62, or whether Respondent

simply reaffirmed its original decision to terminate Petitioner's probationary contract without undertaking the analysis required by the Commissioner's remand instructions. A secondary issue is whether Petitioner's rights were prejudiced by alleged ex parte communications between Respondent's counsel and counsel for Respondent's Board of Trustees concerning the submission of proposed findings and conclusions before the June 1, 2026 remand hearing.

The record reflects that, on remand, Respondent's Board of Trustees expressly addressed whether Petitioner was entitled to immunity under Texas Education Code section 22.0512 for her use of force against a student and analyzed whether Petitioner's conduct was justified under Texas Penal Code section 9.62. The board applied the governing statutory framework, evaluated Petitioner's claim of justification and immunity, and made the determinations necessary to resolve those issues. Because Respondent applied the correct legal standard and substantially complied with the Commissioner's remand instructions, the Commissioner denies 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 in accordance with 19 Texas Administrative Code section 157.1072(i):

1. Petitioner was employed by Respondent under a probationary contract during the 2025–2026 school year.
2. During the 2025–2026 school year, Petitioner served as a special education teacher at one of Respondent's elementary schools, working primarily in a self-contained classroom with special education students in a small group setting.
3. On March 10, 2026, Respondent's Board of Trustees adopted the Independent Hearing Examiner's Proposal for Decision and voted to terminate Petitioner's probationary contract, effective immediately.
4. The board's March 10, 2026 decision did not expressly analyze Texas Education Code section 22.0512 or Texas Penal Code section 9.62.

5. Petitioner timely appealed the March 10, 2026 decision to the Commissioner of Education.

6. On May 15, 2026, the Commissioner remanded the matter to Respondent and directed the board to apply the statutory immunity framework set forth in Texas Education Code section 22.0512 and Texas Penal Code section 9.62.

7. On June 1, 2026, Respondent's Board of Trustees conducted a hearing on remand at which Petitioner and Respondent presented oral argument concerning the application of Texas Education Code section 22.0512 and Texas Penal Code section 9.62 to the existing evidentiary record. In connection with the remand proceeding, both parties submitted proposed Findings of Fact and Conclusions of Law for the board's consideration.

8. Following consideration of the parties' oral arguments, proposed findings and conclusions, and the existing record, Respondent's Board of Trustees adopted Findings of Fact and Conclusions of Law on remand applying Texas Education Code section 22.0512 and Texas Penal Code section 9.62 and again voted to uphold the termination of Petitioner's probationary contract.

9. Respondent concluded that Petitioner did not possess an objectively reasonable belief that force was necessary and that Petitioner's conduct on October 8, 2025, and December 3, 2025, was not justified under Texas Penal Code section 9.62.

10. Respondent further concluded that Petitioner was not entitled to immunity from discipline under Texas Education Code section 22.0512.

11. On June 19, 2026, Petitioner timely filed the instant Petition for Review following Respondent's June 1, 2026 decision on remand.

DISCUSSION

Petitioner contends that Respondent wrongly terminated her contract because it failed to meaningfully apply the legal standard required by the Commissioner's remand order, thereby rendering Respondent's decision arbitrary, capricious, contrary to law, and unsupported by substantial evidence. Petitioner further contends that the Findings of Fact and Conclusions of Law adopted on remand largely mirrored those proposed by the District and failed to adequately

consider evidence supporting Petitioner's claim that she reasonably believed the use of force was necessary under the circumstances. Petitioner argues that Respondent's analysis impermissibly incorporated traditional good-cause considerations and relied on factors irrelevant to the statutory immunity inquiry. Accordingly, Petitioner maintains that Respondent failed to properly apply the statutory framework required by Texas Education Code section 22.0512 and Texas Penal Code section 9.62.

Respondent's decision on remand must be evaluated under Texas Education Code section 21.303. The issue is not whether Respondent reached the same result it previously reached but whether Respondent meaningfully applied the legal framework required by the Commissioner's prior decision. A decision may be arbitrary or capricious if it fails to consider factors required by law or fails to apply the governing legal standard. In the prior appeal, the Commissioner remanded the matter because Respondent failed to analyze whether Petitioner's use of force was justified under Texas Penal Code section 9.62 and therefore protected by Texas Education Code section 22.0512. Accordingly, the Commissioner must determine whether Respondent's conclusions and analysis on remand reflect a genuine consideration of Petitioner's purpose in using force, her asserted reasonable belief, the necessity and proportionality of the force used, and the applicability of statutory immunity, and whether Respondent simply reaffirmed its prior decision without undertaking the analysis required by the Commissioner's remand instructions.

Petitioner also contends that her rights were prejudiced by alleged ex parte communications between Respondent's counsel and counsel for Respondent's Board of Trustees concerning the submission of proposed findings and conclusions before the June 1, 2026 remand hearing. That issue is addressed separately below.

Commissioner's Prior Decision in This Matter (Docket No. 078-R2-03-2026)

The Commissioner held that Respondent's termination decision was arbitrary, capricious, contrary to law, and unsupported by substantial evidence because the board failed to apply the controlling statutory framework governing educator use of force. *See Kilgore v. Plano Indep. Sch. Dist.*, No. 078-R2-03-2026 (Comm'r Educ. 2026). Although the termination was predicated on Petitioner's alleged use of physical force against a student, neither the Independent Hearing

Examiner nor the board analyzed Texas Education Code section 22.0512 or the corresponding justification standard under Texas Penal Code section 9.62. *See* Tex. Educ. Code § 22.0512; Tex. Penal Code § 9.62.

The Commissioner has held that when a district disciplines a teacher for using physical force against a student, the district must address Texas Education Code section 22.0512 whenever the facts implicate educator use of force. *See Stoneham v. Crowley Indep. Sch. Dist.*, No. 036-R2-04-2022 (Comm’r Educ. 2022); *Crowley Indep. Sch. Dist. v. Stoneham*, 714 S.W.3d 867, 877–78 (Tex. App.—Houston [1st Dist.] 2024, no pet.). Section 22.0512, entitled “Immunity from Disciplinary Proceedings for Professional Employees,” provides that a professional employee “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.” Tex. Educ. Code § 22.0512(a). The statute further defines a disciplinary proceeding to include a school district action to discharge an employee or terminate a contract. Tex. Educ. Code § 22.0512(b)(1).

Section 22.0512 imposes a mandatory threshold inquiry that directly limits a district’s disciplinary authority. Under the statute, if an educator’s use of force is justified under Penal Code section 9.62 and does not otherwise violate an applicable corporal punishment policy, the district lacks authority to impose discipline based on that conduct. *See* Tex. Educ. Code § 22.0512; *Stoneham*, 714 S.W.3d at 877–78. Consequently, statutory immunity is not merely a mitigating consideration within a Chapter 21 good-cause analysis; it is a legal bar to discipline for conduct falling within the statute’s protection.

Because section 22.0512 incorporates Penal Code section 9.62, Respondent was required to determine whether Petitioner held an objectively reasonable belief, viewed from her perspective at the time of the incident, that the force used was necessary to maintain discipline or further a legitimate educational purpose. *See* Tex. Penal Code §§ 1.07(42), 9.62; *Stoneham*, 714 S.W.3d at 877. Instead, the board relied upon a generalized good-cause analysis under Texas Education Code section 21.104 and regulatory standards governing special-education restraints,

neither of which substitutes for the threshold statutory immunity analysis required by section 22.0512. *See* Tex. Educ. Code § 21.104(a); 19 Tex. Admin. Code § 89.1053.

Relying on *Stoneham*, the Commissioner concluded that Respondent's failure to apply section 22.0512 constituted reversible legal error because the statute expressly limits a district's disciplinary authority. *See Stoneham*, 714 S.W.3d at 877–78. A board decision imposing discipline barred by statute is contrary to law, and the omission of findings and analysis addressing Petitioner's asserted reasonable belief and statutory justification rendered the decision legally deficient and incapable of meaningful review. *See id.*; *Pub. Util. Comm'n v. Tex. Indus. Energy Consumers*, 620 S.W.3d 418, 427 (Tex. 2021); *Kilgore*, No. 078-R2-03-2026.

The Commissioner also rejected Respondent's reliance on multiple grounds for termination, explaining that those grounds did not cure the legal defect where each basis for discipline was predicated, at least in part, on the same use-of-force conduct that had not been analyzed under Texas Education Code section 22.0512 and Texas Penal Code section 9.62. *See Kilgore*, No. 078-R2-03-2026; *Stoneham*, 714 S.W.3d at 878; Tex. Educ. Code § 21.301.

Because the board failed to undertake the statutory immunity analysis required by Texas Education Code section 22.0512 and Texas Penal Code section 9.62, the Commissioner did not reach a final determination regarding whether Petitioner's conduct was justified or whether statutory immunity applied. Instead, the Commissioner remanded the matter to Respondent's Board of Trustees with instructions to apply the governing statutory framework, make the determinations necessary to resolve Petitioner's justification and immunity claims, and reconsider the matter consistent with the Commissioner's decision. *See Kilgore*, No. 078-R2-03-2026; Tex. Educ. Code § 21.301.

Compliance with the Remand Order

Nothing in the Commissioner's remand order required Respondent to conduct a new evidentiary hearing, retake witness testimony, or receive additional evidence. Respondent was permitted to reconsider the matter based on the existing record provided it applied the statutory framework identified in the Commissioner's prior decision. Although additional evidence was not required, the board nevertheless conducted a remand hearing at which both parties presented

oral argument concerning the application of Texas Education Code section 22.0512 and Texas Penal Code section 9.62.

Petitioner emphasizes that Respondent largely retained the factual findings underlying its original decision. However, the remand did not require Respondent to alter its factual findings or reach a different result. Rather, the issue is whether the board applied the statutory immunity framework governing educator use of force and made the determinations necessary to resolve Petitioner's claim of justification and immunity under Texas Education Code section 22.0512 and Texas Penal Code section 9.62.

The Commissioner's review therefore focuses on whether the board addressed the deficiencies identified in the prior decision and applied the governing statutory framework.

Petitioner's Purpose

The Commissioner's prior decision required Respondent to determine whether Petitioner's use of force was undertaken to further a legitimate educational or custodial purpose or to maintain discipline within the meaning of Texas Penal Code section 9.62.

On remand, the board expressly considered whether Petitioner's actions were undertaken in her role as an educator entrusted with the care, supervision, and education of Student A. The board concluded that the force used was not necessary to further Petitioner's educational purpose, maintain discipline, preserve classroom order, or address a safety concern, but instead was disproportionate to the student conduct at issue.

Petitioner was afforded an opportunity to present her position through oral argument and proposed findings and conclusions submitted to the board. Although Petitioner contends that Respondent merely repackaged its prior good-cause determination, the board's conclusions demonstrate that it undertook the statutory analysis omitted from the original decision and expressly addressed Petitioner's asserted educational purpose and its relationship to the force used.

Petitioner's Perspective and Objective Reasonableness

The Commissioner's prior decision required Respondent to determine whether Petitioner possessed an objectively reasonable belief that the use of force was necessary under the

circumstances, viewed from Petitioner’s perspective at the time of the incidents rather than through hindsight. *See* Tex. Penal Code §§ 1.07(42), 9.62. This inquiry required Respondent to consider the circumstances confronting Petitioner, including what she observed, what she perceived regarding Student A’s conduct, and whether an ordinary and prudent educator in the same circumstances could have reasonably believed that force was necessary to further a legitimate educational purpose or maintain discipline.

On remand, the board expressly acknowledged and applied that standard. In evaluating Petitioner’s asserted belief, the board considered video evidence, witness testimony, Petitioner’s own testimony, and evidence regarding the availability of alternative methods of redirection and de-escalation. The board did not treat educator testimony as dispositive but considered that testimony together with the video evidence, Petitioner’s testimony, and other evidence relevant to objective reasonableness. The board ultimately concluded that Petitioner did not possess an objectively reasonable belief that force was necessary during either the October 8, 2025 or December 3, 2025 incidents.

The board also applied the factors identified in *Hogenson*, evaluating Student A’s age, size, disabilities, motives, the effect of his conduct on other students, the necessity of force, the availability of alternative methods of control, and the potential for injury. *See Hogenson v. Williams*, 542 S.W.2d 456, 459–60 (Tex. Civ. App.—Texarkana 1976, no writ). The Commissioner further notes that the *Hogenson* factors are not an exclusive checklist and that no single factor is dispositive of the objective-reasonableness inquiry. Consistent with the Commissioner’s prior remand decision, the board was permitted to consider all relevant circumstances reflected in the record as a whole when evaluating objective reasonableness under Texas Penal Code section 9.62. The fact that the board ultimately rejected Petitioner’s asserted justification does not establish that it failed to consider the circumstances confronting Petitioner at the time of the incidents. Based on that analysis, the board concluded that Petitioner’s use of force was disproportionate to the circumstances and that an ordinary and prudent educator would not have believed such force was necessary.

Unlike the original decision, the board's conclusions on remand expressly apply the *Hogenson* factors and connect those factors to the determination that Petitioner's asserted belief was not objectively reasonable.

Necessity and Proportionality

The Commissioner's prior decision required Respondent to determine whether Petitioner's use of force was necessary under the circumstances and proportional to the conduct being addressed. On remand, the board concluded that force was not reasonably necessary because Student A was not engaged in serious property destruction, did not pose an imminent threat of harm, and was either seated or otherwise at rest when force was applied. The board further relied on evidence that de-escalation strategies and other intervention techniques remained available.

Petitioner contends that Respondent improperly relied on CPI practices, restraint regulations, and alternative interventions. The board did not apply Texas Education Code section 37.0021 or 19 Texas Administrative Code section 89.1053—statutes and rules governing special-education restraint and time-out procedures—as separate legal elements of statutory immunity but reasonably considered those standards as evidence relevant to the necessity and reasonableness of the force used. While those standards do not replace the statutory immunity inquiry, they may aid the board in considering whether an objectively reasonable educator could have believed force was necessary under the circumstances.

Applying the *Hogenson* factors, the board concluded that Petitioner's actions were disproportionate to the student conduct at issue. Unlike the original decision, the board's conclusions on remand expressly address both necessity and proportionality and explain why the force used exceeded what was reasonably required under the circumstances.

Credibility Determinations

The Commissioner's prior decision required Respondent to evaluate Petitioner's claim of statutory justification and immunity under Texas Education Code section 22.0512 and Texas Penal Code section 9.62. In doing so, Respondent was required to assess the credibility and weight of the evidence bearing on Petitioner's asserted reasonable belief, including Petitioner's

explanation of the events, the testimony of other witnesses, and objective evidence such as video recordings. Respondent was not required to accept Petitioner's account simply because it was offered; rather, Respondent was required to resolve conflicts in the evidence and make the determinations necessary to assess justification, reasonableness, and immunity.

On remand, the board made express credibility determinations relevant to Petitioner's immunity claim. The board found that Petitioner's explanation that Student A fell because he tripped, rather than as a result of Petitioner's use of force, was not credible and was contradicted by the video evidence. The board also credited testimony from multiple educators and CPI-trained witnesses who testified that force was unnecessary under the circumstances.

By resolving conflicts in the evidence, identifying the testimony it found persuasive, and explaining why it rejected portions of Petitioner's account, the board incorporated credibility determinations into its analysis of objective reasonableness and statutory immunity.

Immunity Under Texas Education Code section 22.0512

The central issue identified in the Commissioner's prior decision was whether Petitioner's conduct was protected from discipline under Texas Education Code section 22.0512. Because section 22.0512 incorporates Texas Penal Code section 9.62 and operates as a threshold limitation on a district's authority to discipline a professional employee for the use of force, Respondent was required on remand to determine whether Petitioner's use of force was justified under section 9.62 and, if so, whether section 22.0512 barred disciplinary action based on that conduct.

On remand, the board expressly recognized that section 22.0512 limits a district's authority to discipline an educator whose use of force is justified under section 9.62. After analyzing Petitioner's asserted educational purpose, objective reasonableness, necessity, proportionality, credibility, and the *Hogenson* factors, the board concluded that Petitioner's conduct was not justified under Texas Penal Code section 9.62 and therefore was not protected by Texas Education Code section 22.0512.

Unlike the original decision, the board expressly addressed and resolved Petitioner's claim of statutory immunity under the governing statutory framework.

Conclusion Regarding Compliance with the Commissioner's Remand Order

The Commissioner's prior decision remanded this matter because Respondent failed to apply the statutory immunity framework set forth in Texas Education Code section 22.0512 and Texas Penal Code section 9.62. The remand required Respondent to apply that framework to the existing record and make the determinations necessary to resolve Petitioner's claim of justification and immunity.

Upon review of the board's conclusions on remand, the Commissioner concludes that the board addressed the deficiencies identified in the prior decision. The board analyzed Petitioner's asserted justification under Texas Penal Code section 9.62, evaluated the evidence bearing on objective reasonableness, necessity, proportionality, and credibility, applied the *Hogenson* factors, and expressly resolved Petitioner's claim of statutory immunity under Texas Education Code section 22.0512.

Although Petitioner disagrees with the outcome, the issue on remand was whether the board would perform the analysis required by the Commissioner's prior decision, not whether the board was required to reach a different result. The board's conclusions on remand demonstrate that it applied the statutory framework previously found lacking and made the determinations necessary to resolve Petitioner's immunity claim. Accordingly, the Commissioner concludes that Respondent substantially complied with the remand instructions set forth in Docket No. 078-R2-03-2026.

Arbitrary, Capricious, and Contrary-to-Law Review

Under Texas Education Code section 21.303, the Commissioner may not disturb a board decision unless it is arbitrary, capricious, unlawful, or unsupported by substantial evidence. Tex. Educ. Code § 21.303. A decision may be arbitrary or capricious if it fails to consider factors required by law, fails to apply the governing legal standard, or reaches a conclusion without a rational connection between the facts found and the result reached. *Pub. Util. Comm'n*, 620 S.W.3d at 427. A decision is contrary to law when it applies an incorrect legal standard or fails to apply controlling statutory provisions. *Id.*

In the prior appeal, the Commissioner determined that Respondent's decision was arbitrary, capricious, and contrary to law because Respondent failed to apply the statutory immunity framework set forth in Texas Education Code section 22.0512 and Texas Penal Code section 9.62. *Kilgore*, No. 078-R2-03-2026.

As discussed above, Respondent's conclusions on remand expressly addressed the issues identified in the prior decision, including Petitioner's asserted justification, objective reasonableness, necessity, proportionality, credibility, and claim of statutory immunity. The record reflects that Respondent applied the statutory framework identified in the Commissioner's remand order and made the determinations necessary to resolve Petitioner's immunity claim. Accordingly, the Commissioner concludes that Respondent's decision on remand is not arbitrary, capricious, or contrary to law. *See* Tex. Educ. Code § 21.303.

Substantial Evidence Review

Having determined that Respondent substantially complied with the Commissioner's remand instructions and applied the statutory framework required by Texas Education Code section 22.0512 and Texas Penal Code section 9.62, the remaining issue is whether substantial evidence supports Respondent's determination that Petitioner's use of force was not justified and therefore was not protected by statutory immunity.

Substantial evidence exists when the record contains evidence upon which reasonable minds could have reached the conclusion reached by the board. The Commissioner may not reweigh conflicting evidence, reassess witness credibility, or substitute his judgment for that of the board. *See Timmons v. Killeen Indep. Sch. Dist.*, No. 019-R1-03-2017 (Comm'r Educ. 2017); Tex. Educ. Code § 21.303.

As discussed above, Respondent considered the circumstances surrounding the October 8, 2025 and December 3, 2025 incidents, including video evidence, witness testimony, Petitioner's testimony, evidence concerning available alternatives to force, credibility determinations, and the *Hogenson* factors. Based upon that evidence, Respondent concluded that Petitioner did not possess an objectively reasonable belief that the force used was necessary and that her conduct was therefore not justified under Texas Penal Code section 9.62.

Under the deferential substantial-evidence standard applicable to Chapter 21 appeals, the Commissioner concludes that the record contains sufficient evidence from which the board could reasonably reach that determination. Because substantial evidence supports Respondent's conclusion that Petitioner's conduct was not justified under Texas Penal Code section 9.62, substantial evidence likewise supports Respondent's determination that Petitioner was not entitled to immunity under Texas Education Code section 22.0512. Accordingly, the Commissioner will not disturb the board's decision. *See* Tex. Educ. Code § 21.303.

Alleged Ex Parte Communication

Petitioner further contends that Respondent engaged in improper ex parte communications by conferring with the board's attorney regarding proposed findings and conclusions before the June 1, 2026 remand hearing.¹ Respondent argues that Petitioner waived this complaint because Petitioner's counsel was aware of the communication before the remand hearing but did not raise an objection before the board. The record reflects that Petitioner's counsel received notice of the communication before the June 1, 2026 proceeding. In a Chapter 21 appeal, the Commissioner generally may not consider issues that were not first raised before the local board. *See Marilyn Boyer v. Blooming Grove Indep. Sch. Dist.*, No. 022-R2-10-2011 (Comm'r Educ. 2011); Tex. Educ. Code §§ 21.301(c), 21.302.

Even assuming the issue was preserved, Petitioner's claim fails on the merits. The record reflects that Respondent's counsel disclosed the communication to Petitioner's counsel and expressly informed Petitioner's counsel that she could communicate with the board's attorney concerning the same subject matter. Accordingly, the communication was not undisclosed and was not conducted without notice to Petitioner.

¹ Respondent argues that the challenged communication does not satisfy the traditional definition of an ex parte communication because it was not made to a judicial decision-maker, did not concern the merits of the case or provide an undisclosed strategic advantage, and involved routine communications concerning the submission of proposed findings and conclusions. *See Retzlaff v. GoAmerica Commc'ns Corp.*, 356 S.W.3d 689, 694 (Tex. App.—El Paso 2011, no pet.) (citing Restatement (Third) of the Law Governing Lawyers § 113 cmt. c (2000)). Because Petitioner has failed to establish prejudice and thus has not demonstrated reversible error, the Commissioner need not determine whether the communication satisfies the technical definition of an ex parte communication.

Petitioner further argues that the board's findings and conclusions substantially resembled those proposed by District counsel. However, a board's consideration of proposed findings prepared by a party does not, standing alone, establish improper influence, bias, or a failure to exercise independent judgment. Petitioner identifies no evidence considered by the board outside the record as a result of the communication, nor does Petitioner identify any finding or conclusion based upon undisclosed information rather than evidence already contained in the administrative record. The record further reflects that the board considered proposed findings and conclusions submitted by both parties before making revisions and issuing its decision on remand. Accordingly, the board's consideration of proposed findings and conclusions as part of its deliberative process does not, without more, establish a due-process violation or demonstrate that the decision-making process was improperly tainted.

Moreover, the communication concerned proposed findings and conclusions, a matter commonly addressed through post-hearing advocacy and legal briefing. Petitioner has not established that the board considered evidence outside the record or that the communication otherwise deprived her of a fair opportunity to present her position. To the contrary, Petitioner was afforded an opportunity to submit her own proposed findings and conclusions and to present oral argument to the board on remand.

Even assuming a procedural irregularity occurred, the Commissioner may not reverse a board decision unless the error was likely to have led to an erroneous decision. Tex. Educ. Code § 21.303(c). Petitioner's assertion that the communication may have involved more than logistical matters is speculative. The Commissioner cannot presume prejudice from the possibility that additional matters may have been discussed. Petitioner identifies no evidence outside the record, no undisclosed legal authority, and no demonstrated effect on the board's deliberations. An appearance of impropriety, standing alone, does not constitute reversible error under Texas Education Code section 21.303(c) absent a showing that the alleged irregularity was likely to have led to an erroneous decision. Petitioner has made no such showing here.

Petitioner has not demonstrated that the communication affected the board's analysis, altered the evidentiary record, deprived her of a meaningful opportunity to be heard, or resulted

in an erroneous decision. Accordingly, Petitioner has failed to establish reversible error based on the alleged ex parte communication. *Id.*

Requested Relief

In her Petition for Review, 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; and
- (4) Order reinstatement of Petitioner's prior position, along with back pay and benefits; and grant any relief as equity and justice may require.

For the reasons discussed herein, the Commissioner concludes that Respondent substantially complied with the remand instructions contained in Docket No. 078-R2-03-2026, that Respondent's decision is neither arbitrary, capricious, nor contrary to law, and that the decision is supported by substantial evidence. Accordingly, Petitioner's requested relief is denied.

Conclusion

For the reasons stated herein, the Petition for Review is 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 appeal pursuant to Texas Education Code section 21.301.
2. In a Chapter 21 appeal, the Commissioner may not substitute the Commissioner's judgment for that of a board of trustees unless the board's decision is arbitrary, capricious, unlawful, or unsupported by substantial evidence. Tex. Educ. Code § 21.303.
3. A decision is arbitrary or capricious when it fails to consider factors required by law, fails to apply the governing legal standard, or reaches a conclusion without a rational connection between the facts found and the result reached.

4. A decision is contrary to law when it applies an incorrect legal standard or fails to apply controlling statutory provisions.

5. Texas Education Code section 22.0512 requires a school district to determine whether an educator's use of force is justified under Texas Penal Code section 9.62 before imposing discipline based upon that use of force.

6. Texas Penal Code section 9.62 justifies an educator's use of force when, and to the degree, the educator reasonably believes the force is necessary to further the educator's special custodial purpose or maintain discipline in a group.

7. The reasonableness of an educator's belief under Texas Penal Code section 9.62 is evaluated from the educator's perspective at the time force was used, using an objective standard of reasonableness.

8. In evaluating whether an educator possessed an objectively reasonable belief that force was necessary, a board may consider the non-exclusive factors identified in *Hogenson v. Williams*, including the student's age, condition, conduct, motives, the effect of the student's conduct on others, the necessity of force, and the proportionality of the force used.

9. The Commissioner's prior decision remanded this matter because Respondent failed to conduct the statutory analysis required by Texas Education Code section 22.0512 and Texas Penal Code section 9.62 and failed to make the determinations necessary to resolve Petitioner's claim of statutory immunity.

10. The Commissioner's prior remand did not require Respondent to make different factual findings or reach a different result. Rather, Respondent was required to apply the statutory immunity framework set forth in Texas Education Code section 22.0512 and Texas Penal Code section 9.62 to the existing record and resolve Petitioner's immunity claim in the first instance.

11. On remand, Respondent expressly analyzed Petitioner's purpose in using force, Petitioner's asserted reasonable belief, the necessity and proportionality of the force used, the applicability of the *Hogenson* factors, credibility determinations bearing on Petitioner's claim of

justification, and Petitioner's claim of statutory immunity under Texas Education Code section 22.0512 and Texas Penal Code section 9.62.

12. Respondent was not required to accept Petitioner's account of Student A's prior conduct, Petitioner's perception of escalating behavior, or Petitioner's asserted justification for using force, so long as Respondent considered and resolved the evidence in applying Texas Penal Code section 9.62.

13. Evidence concerning available de-escalation techniques, alternative interventions, educator training, CPI practices, restraint regulations, and the presence or absence of circumstances requiring immediate physical intervention may be considered in determining whether an objectively reasonable educator could have believed that force was necessary under Texas Penal Code section 9.62.

14. Respondent substantially complied with the Commissioner's remand instructions contained in Docket No. 078-R2-03-2026.

15. Because Respondent applied the statutory framework required by Texas Education Code section 22.0512 and Texas Penal Code section 9.62 and addressed the deficiencies identified in the Commissioner's prior remand order, Respondent's decision on remand is not arbitrary, capricious, or contrary to law.

16. The record contains substantial evidence from which the board could reasonably conclude that Petitioner's use of force on October 8, 2025, and December 3, 2025, was not reasonably necessary under the circumstances and was disproportionate to the conduct being addressed.

17. The existence of conflicting testimony, competing inferences from the video evidence, or evidence that may have supported a contrary conclusion does not render Respondent's decision unsupported by substantial evidence.

18. The record contains substantial evidence from which the board could reasonably conclude that Petitioner did not possess an objectively reasonable belief that the use of force was necessary to further a legitimate educational purpose or maintain discipline within the meaning of Texas Penal Code section 9.62.

19. Because substantial evidence supports Respondent's determination that Petitioner's use of force was not justified under Texas Penal Code section 9.62, substantial evidence also supports Respondent's determination that Petitioner was not entitled to immunity under Texas Education Code section 22.0512.

20. Petitioner failed to establish that the alleged ex parte communication resulted in the consideration of evidence outside the record, deprived Petitioner of a fair opportunity to be heard, or was likely to have led to an erroneous decision. Tex. Educ. Code § 21.303(c).

21. The adoption of proposed findings of fact and conclusions of law submitted by one party does not, standing alone, establish improper influence, bias, denial of due process, or a failure by the board to exercise independent judgment, particularly where the board made revisions to the proposed findings and conclusions before issuing its decision.

22. Petitioner failed to establish reversible error based upon the alleged ex parte communication. Tex. Educ. Code § 21.303(c).

23. Petitioner's appeal is denied.

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, DENIED.

SIGNED AND ISSUED this 31st day of July 2026.

Mike Morath Digitally signed by Mike Morath
Date: 2026.07.31 09:16:30
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MIKE MORATH
COMMISSIONER OF EDUCATION