

Texas Classroom Teachers Association

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Testimony of Lonnie Hollingsworth, Jr.
Director of Governmental Relations
Texas Classroom Teachers Association

On behalf of the Texas Classroom Teachers Association, I respectfully request that the Senate Education Committee vote against the passage of S.B. 398.

S.B. 398 would impede the state's ability to accomplish its intended purposes when pass-through salary increases for teachers are approved. The data are clear that money sent to districts intended for teacher salaries often do not reach teachers unless a pass-through provision is included and required. Further, it should be noted that these raises are fully funded by the state and require no local share, which makes it even less reasonable that districts should resist spending the state funds for the explicit purpose for which they are sent. The state minimum salary schedule provides a floor for compensation, but in the vast majority of districts is below the salaries actually paid. Passage of this legislation would limit the state's ability to direct funding to teachers in the future, and allow local districts to divert some or all of the state funding intended to raise instructional salaries to other purposes.

In 1999 and 2006, the Texas Legislature provided for much welcomed salary increases for teachers and related professionals. These pay raises were done in conjunction with school finance formula increases that improved overall school funding, as well as improving equity and reducing recapture.

As most districts pay above the amount required by the state minimum salary schedule, these raises were done on a "pass-through" basis. The pass-through language provided that each district's salary schedule in place during the year immediately before the pay raise was considered to continue to be in place for one additional year so that teachers would get the pay raise provided by the state plus any step increases that may have been included in the salary schedule that was in place for the previous year. The reason for this language was to insure that the additional state funding was used to supplement and not supplant pay raises that would have been made by the school districts under the school finance system that was in place prior to the school finance reform.

The bill analysis for S.B. 398 states that some school districts have hiring schedules and therefore had no predetermined salaries for 2006-2007. Districts that utilize the salary services of the Texas Association of School Boards use an initial "hiring schedule" to determine new hires and base subsequent raises on a "midpoint system" that bases salary changes on the midpoint salary for each

salary range. A midpoint is determined by taking the average of the highest and lowest salary in the range. The board of trustees then determines a percentage to be multiplied by the midpoint salary to determine how much of a raise everyone in a pay range will receive. The assertion is made that these districts are somehow different from districts that use salary schedules, because these districts did not have any sort of pre-determined pay increase built in to their salary schedules. This assertion is incorrect, as many district salary schedules attempt to limit the application of the salary schedule to the current year for the very reason that school boards do not want to create any sort of expectation for increases for future year.

The bill analysis is also incorrect when it says that TEA has historically interpreted hiring schedules as salary schedules, "which forces the districts to give "step" increases and often costs them more than they have budgeted for a pay raise." On the contrary, despite an earlier opinion that appears to require otherwise, since 1999 TEA has refused to grant relief to teachers who have appealed to TEA to ask for step increases when a district has failed to adopt a new salary schedule by the deadline for a teacher to resign from the district without penalty (45 days prior to the first day of instruction). See, United Educators Association v. Arlington ISD, Docket No. 012-R10-1102, Comm'r Educ. 2004; Saenz v. San Diego ISD, Docket No. 089-R10-199, Comm'r Educ. 1999.

The stated intent of the bill is to exempt school districts with hiring schedules from any "step increase" component of any future pass-through salary increases that may be enacted by the Legislature. Ironically, the primary school district proponent of this bill, the Amarillo ISD, won a case before the Commissioner of Education in 2000 in which the petitioners argued that the district should have been required to continue paying according to the mid-point pay raise that had been paid in previous years.

Should the Legislature decide to enact another pass-through salary increase, school districts that happen to employ the compensation system provided by TASB should not be exempted from some sort of mechanism that keeps them from using the additional state funding to pay salaries that the districts would otherwise have increased if the state pay raise had not been enacted. TCTA respectfully asks the member of the committee to vote against this bill.



Comparison of increases in teacher salaries to increases in state and local expenditures per pupil. Increases are aggregate percentage increases above the 1991-92 school year. Prepared by Texas Classroom Teachers Association.

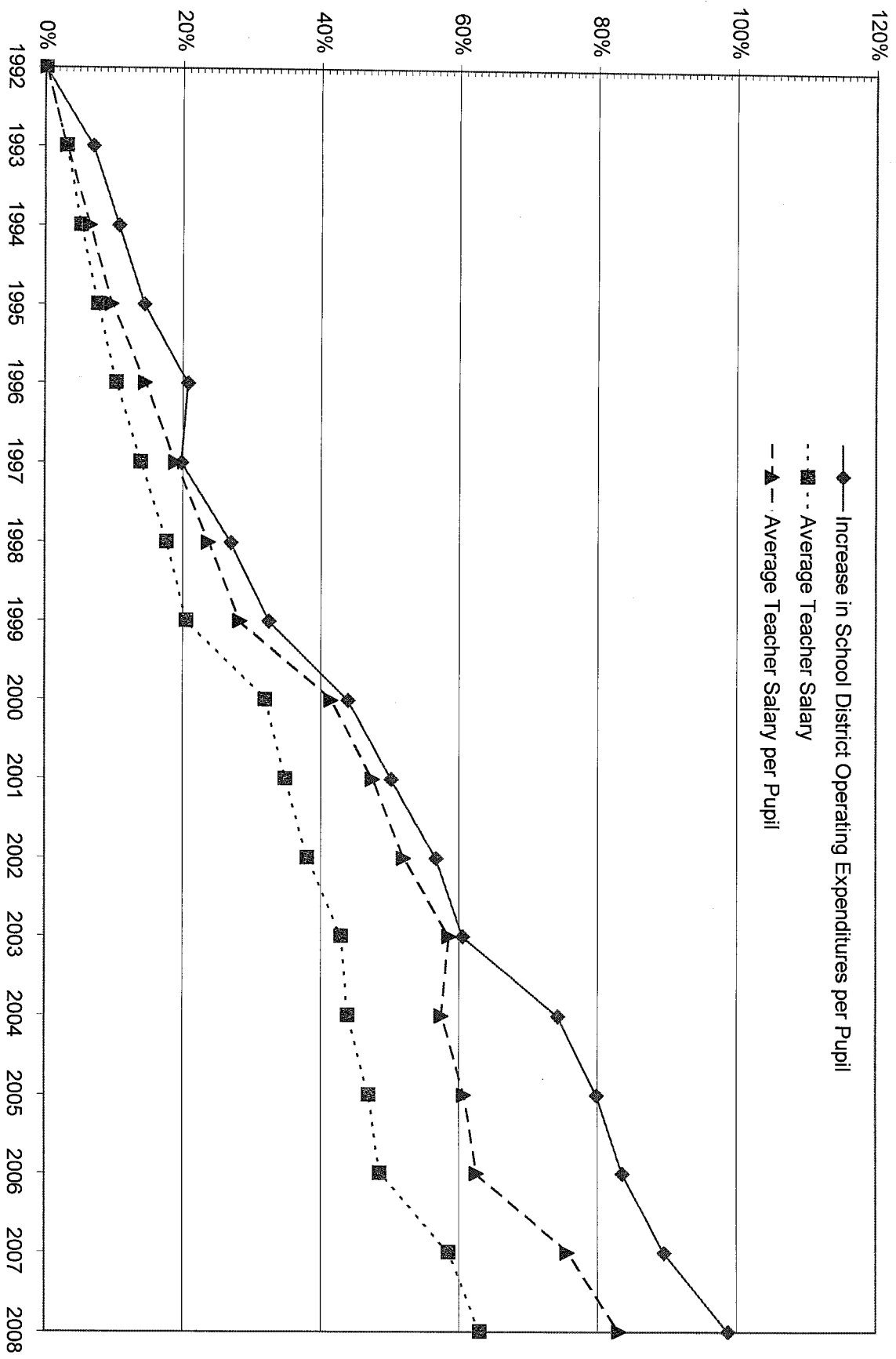
School Year	Total Expenditures per Pupil	Percentage Increase from 1991-92	Operating Expenditures per Pupil	Percentage Increase from 1991-92	Average Teacher Salary ¹	Percentage Increase from 1991-92	Average Student/Teacher Ratio	Teacher Salary per Pupil	Percentage Increase from 1991-92
1991-92	\$4,452		\$3,939		\$29,041.00		16.3	\$1,782	
1992-93	\$4,774	7.2%	\$4,214	7.0%	\$29,935.00	3.1%	16.3	\$1,837	3.1%
1993-94	\$4,898	10.0%	\$4,360	10.7%	\$30,521.00	5.1%	16.1	\$1,896	6.4%
1994-95	\$5,057	13.6%	\$4,504	14.3%	\$31,223.00	7.5%	16	\$1,951	9.5%
1995-96	\$5,358	20.4%	\$4,756	20.7%	\$32,001.00	10.2%	15.7	\$2,038	14.4%
1996-97	\$5,282	18.6%	\$4,717	19.8%	\$33,038.00	13.8%	15.6	\$2,118	18.9%
1997-98	\$5,597	25.7%	\$5,002	27.0%	\$34,133.00	17.5%	15.5	\$2,202	23.6%
1998-99	\$5,853	31.5%	\$5,217	32.4%	\$34,949.00	20.3%	15.3	\$2,284	28.2%
1999-00	\$6,354	42.7%	\$5,668	43.9%	\$38,287.00	31.8%	15.2	\$2,519	41.4%
2000-01	\$6,638	49.1%	\$5,915	50.2%	\$39,122.00	34.7%	14.9	\$2,626	47.4%
2001-02	\$6,913	55.3%	\$6,167	56.6%	\$40,049.00	37.9%	14.8	\$2,706	51.9%
2002-03	\$7,088	59.2%	\$6,317	60.4%	\$41,479.00	42.8%	14.7	\$2,822	58.4%
2003-04	\$7,708	73.1%	\$6,861	74.2%	\$41,768.00	43.8%	14.9	\$2,803	57.3%
2004-05	\$8,916	100.3%	\$7,084	79.8%	\$42,645.00	46.8%	14.9	\$2,862	60.6%
2005-06	\$9,269	108.2%	\$7,229	83.5%	\$43,105.00	48.4%	14.9	\$2,893	62.4%
2006-07	\$9,629	116.3%	\$7,466	89.5%	\$45,971.00	58.3%	14.7	\$3,127	75.5%
2007-08	\$10,162	128.3%	\$7,826	98.7%	\$47,283.00	62.8%	14.5	\$3,261	83.0%

Teacher salary if average teacher salary per pupil had kept up with increases in operating expenditures per pupil **\$51,332**
 Difference (the amount by which teacher salaries have fallen behind due to insufficient dedication of revenues to teacher salary increases) **\$4,049**

Source, Snapshot and Pocket Edition, Texas Education Agency

¹ Average teacher salaries include pay for supplemental duties such as career ladder, extracurricular activities, etc.

Percentage Increase in Operating Expenditures vs. Teacher Salaries





Magnolia Independent School District

Salary Schedule 2007-2008 School Year Only

www.magnoliaisd.org

This pay scale is designed for the 2007-2008 school year only; it may not be used to determine 2008-2009 salaries.

Years of Experience	Bachelor's Pay Grade
0	\$41,000
1	\$41,500
2	\$41,700
3	\$42,700
4	\$43,000
5	\$43,500
6	\$43,700
7	\$43,825
8	\$43,950
9	\$44,075
10	\$44,200
11	\$44,325
12	\$44,450
13	\$44,824
14	\$46,015
15	\$47,206
16	\$48,397
17	\$48,940
18	\$50,089
19	\$51,201
20	\$52,267
21	\$53,312
22	\$53,740
23	\$54,137
24	\$54,524
25	\$54,879
26	\$55,214
27	\$55,538
28	\$55,841
29	\$56,372
30	\$56,400

Note for new teachers:
Teachers in this category with 0-5 years experience have received an average increase of **\$1,900** over the last **five years** when the salary schedule has been adopted for the new year.

Example:
A teacher who started with M.I.S.D. having no experience in 2002-2003 made \$34,000 and in 2007-2008 with five years of experience will make \$43,500. This equals an increase in pay of \$9,500 over the last five years which is an average increase of \$1,900 per year.

M.I.S.D. Benefits Overview

The District provides a comprehensive benefits program including:

- **Medical Coverage**
MISD contributes \$225 a month towards the TRS-ActiveCare health plan premiums
- **\$10,000 Life Insurance Plan**
- **Catastrophic Sick Leave**
- **Employee Incentive Plan**
(refer to the information on the back side of this document)
- **Personal Leave**
- **Tax-Sheltered Annuities**
- **Direct Deposit**
- **Credit Union**
- **New Teacher Academy**
- **Mentor Stipends**
- **Professional Training Opportunities**

Master's Degree: Based on a bachelor's degree plus a stipend of \$500 per year

Doctorate Degree: Based on a master's degree plus a stipend of \$1000 per year. The degree must be in the subject area taught and received from an accredited university.

MISD Salary Schedule for the 2007-2008 is for full-time Classroom Teachers, Librarians, Counselors, and School Nurses based on a ten (10) month contract.

Magnolia I.S.D. Employee Incentive Plan

District Level Contributions

(vested beginning 4th year)

- **District Basic Match**
 - *50% of Employee Deferral*
 - *Up to Maximum 2% of Pay*

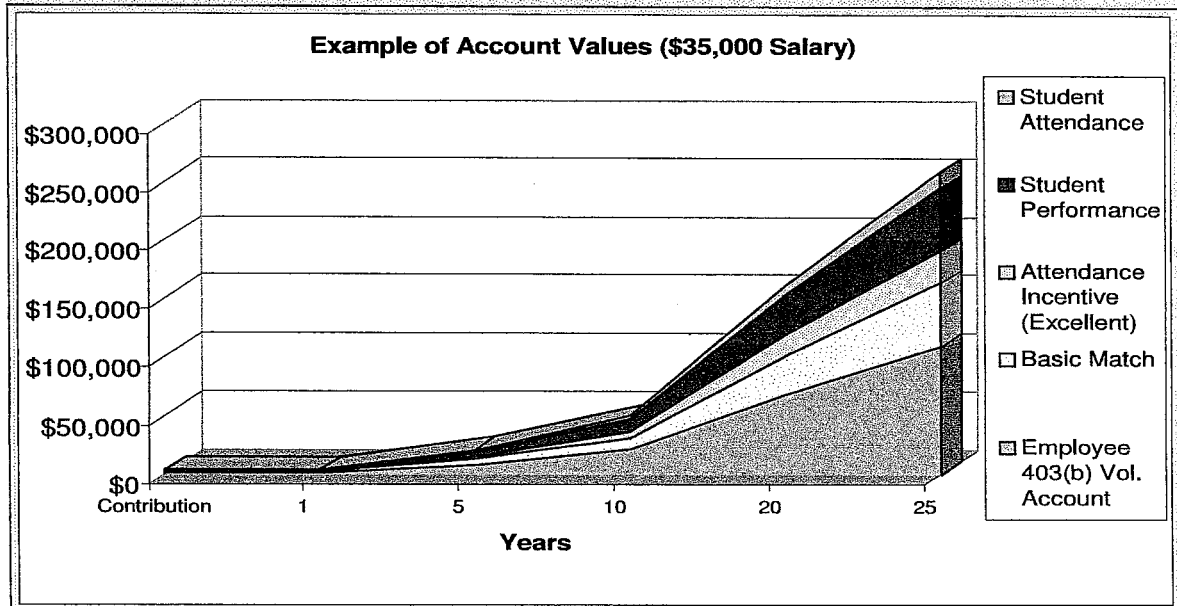
Campus Based Contributions

(100% immediately vested)

- **Campus Performance Ranking**
 - *Based on Campus Performance*
 - *% of Free/Reduced Lunch (FRL)*
- **Employee Attendance Incentive**
 - *2.0% of pay for 0 days missed*
 - *1.5% of pay for 1 day missed*
 - *1.0% of pay for 2 days missed*
 - *.50% of pay for 3 days missed*
 - *.25% of pay for 4 days missed*
- **Campus Student Attendance Incentive**
 - *97% ADA or better = .50% of Pay*
 - *(this is for all employees on that campus)*
- **Campus Performance and Student Attendance**
 - *\$25 annually per Campus that qualifies for each bonus.*
 - *This is for noncampus based employees as well.*

Employee Example

**Match = 50% up to 2.00% of Pay;
Exemplary Campus;
25%-49% FRL; Excellent Attendance**





Fort Worth
INDEPENDENT SCHOOL DISTRICT

2008 – 2009 Teacher Salary Schedule

Classroom Teachers Minimum Salary Schedule

<u>Year</u>	<u>Bachelor</u>	<u>Master</u>	<u>Doctorate</u>
00	\$45,600	\$46,600	\$49,510
01	\$45,835	\$46,865	\$49,863
02	\$46,071	\$47,066	\$50,104
03	\$46,572	\$47,600	\$50,317
04	\$46,893	\$48,010	\$50,598
05	\$47,421	\$48,541	\$50,865
06	\$47,946	\$49,102	\$52,086
07	\$48,270	\$49,411	\$52,339
08	\$48,590	\$49,717	\$52,537
09	\$48,909	\$50,028	\$52,623
10	\$49,227	\$50,772	\$52,704
11	\$49,547	\$50,882	\$53,379
12	\$49,975	\$51,099	\$53,639
13	\$50,299	\$51,466	\$53,766
14	\$50,819	\$52,146	\$53,930
15	\$51,419	\$52,672	\$54,114
16	\$52,659	\$53,659	\$57,018
17	\$52,907	\$54,170	\$57,294
18	\$53,453	\$54,635	\$57,455
19	\$54,213	\$55,404	\$57,637
20*	\$55,567	\$57,293	\$58,360
21	\$56,905	\$57,913	\$61,287
22	\$57,182	\$59,093	\$61,582
23	\$57,919	\$59,222	\$61,693
24	\$58,338	\$59,507	\$61,880
25	\$58,759	\$60,328	\$62,046
26	\$60,616	\$61,584	\$65,090
27**	\$61,371	\$63,011	\$65,906
28	\$61,509	\$63,155	\$66,130
29	\$61,809	\$63,460	\$66,504
30+	\$67,224	\$68,866	\$72,449

* The \$500 longevity stipend is included in the base salary at 20 years of experience.

** Another \$500 longevity stipend is included in the base salary at 27 years of experience.

New hires are required to submit original service records for verification of prior teaching experience to receive additional salary increment.

This salary schedule is based on 187 days for the 2008 – 2009 school year only.

Salary increases are not granted automatically each year; therefore, neither past nor future salaries can be calculated, assumed, or predicted on the basis of this schedule. The Board of Education adopts a new compensation plan each year. Future salaries cannot be assumed or predicted.



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Teacher Pay Scale 2008-2009

Step (Years of Experience)	Teacher Salary Schedule
0	\$38,000
1	\$38,500
2	\$39,000
3	\$39,500
4	\$40,000
5	\$40,500
6	\$41,000
7	\$41,500
8	\$42,000
9	\$42,500
10	\$43,000
11	\$43,500
12	\$44,000
13	\$44,500
14	\$45,000
15	\$45,500
16	\$46,000
17	\$46,500
18	\$47,300
19	\$48,100
20	\$48,900
21	\$49,700
22	\$50,400
23	\$51,100
24	\$51,800
25	\$52,500
26+	\$53,000

Based on: 10 Month Contract
 Professionals' steps equal to complete TEA approved service

Differential pay stipends are paid for the following critical need subject areas, provided the teacher is fully certified for the position and is assigned in the designated subject areas. The stipends are prorated according to the percent of the instructional day that the teacher is teaching in the identified critical need area.

- Math/Physics \$4,000
- Special Education \$1,000
- Special Learning Classrooms \$3,000
- Science \$1,000
- Spanish \$3,000
- Bilingual \$3,000
- ESL \$1,000
- Chemistry \$4,000

Base pay does not include any other stipends or salary supplements.

This schedule is for the 2008-2009 school year only.

Human Resources Department
 501 Franklin Avenue
 Waco, Texas 76701
 (254) 755-9689-Fax
 (254) 755-9592-Job Hot Line
 (254) 754-6161-WISD Helpline

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BEAUMONT INDEPENDENT SCHOOL DISTRICT
Beaumont, Texas

June-08

2008-2009
TEACHER SALARY SCHEDULE

STATE SALARY	EXP	BACHELOR SALARY	MASTER SALARY	DOCTORATE SALARY
27,320	0	40,100	41,600	43,100
27,910	1	40,300	41,800	43,300
28,490	2	40,650	42,150	43,650
29,080	3	40,930	42,430	43,930
30,320	4	41,168	42,668	44,168
31,560	5	41,368	42,868	44,368
32,800	6	41,568	43,068	44,568
33,950	7	41,768	43,268	44,768
35,040	8	41,968	43,468	44,968
36,070	9	42,194	43,694	45,194
37,040	10	42,520	44,020	45,520
37,960	11	42,747	44,247	45,747
38,840	12	43,274	44,774	46,274
39,650	13	43,800	45,300	46,800
40,430	14	44,590	46,090	47,590
41,160	15	45,380	46,880	48,380
41,860	16	46,170	47,670	49,170
42,510	17	46,959	48,459	49,959
43,130	18	47,750	49,330	50,830
43,720	19	48,539	50,382	51,882
44,270	20	49,330	51,436	52,936
44,270	21	50,119	52,489	53,989
44,270	22	50,909	53,542	55,042
44,270	23	51,699	54,595	56,095
44,270	24	52,489	55,649	57,149
44,270	25	54,332	58,544	60,044
44,270	26	54,832	59,044	60,544
44,270	27+	55,332	59,544	61,044

Note:

Only teachers with Masters degree previously on Career Ladder 3 with 22+ years of experience and grandfathered in 1996-97 salary will be \$60,397.

This Salary Schedule is for the 2008-09 school year only.

Projection for future years cannot be determined from this schedule.

UNITED EDUCATORS ASSOCIATION	§	BEFORE THE
	§	
V.	§	COMMISSIONER OF EDUCATION
	§	
ARLINGTON INDEPENDENT SCHOOL DISTRICT	§	THE STATE OF TEXAS

DECISION OF THE DESIGNEE OF THE COMMISSIONER

Statement of the Case

Petitioner, United Educators Association, appeals the denial of its grievance by Respondent, Arlington Independent School District. Joan Stewart was initially appointed as the Administrative Law Judge to preside over this cause. Subsequently, Christopher Maska was appointed to be the substitute Administrative Law Judge. Petitioner is represented by Tom Corbin, Attorney at Law, Fort Worth, Texas. Respondent is represented by Sandra C. Houston, Attorney at Law, Arlington, Texas.

The Administrative Law Judge issued a Proposal for Decision recommending that Petitioner's appeal be denied. Exceptions and replies were timely filed and considered.

Findings of Fact

The following Findings of Fact are supported by substantial evidence and are the Findings of Fact that best support Respondent's decision:

1. Respondent's first day of instruction for the 2002-2003 school year was August 19, 2002.
2. Forty-five days before the first day of instruction for the 2002-2003 school year was July 5, 2002.
3. On August 8, 2002, Respondent's board of trustees adopted the salary schedule for the 2002-2003 school year.

4. The salary schedule for the 2002-2003 school year in many cases provides for less compensation for teachers with the same years of experience than the salary schedule for the 2001-2002 school year.

5. The salary schedule for the 2002-2003 school year provides for a one percent raise over the compensation each teacher actually received under the 2001-2002 salary schedule.

Discussion

The central issue in this case is whether, after the last date that teachers can unilaterally resign from their contracts, Respondent may adopt a salary schedule that provides teachers with more compensation than they received the previous year but less compensation than they would have received if the previous salary schedule had remained in effect.

Compensation

The Commissioner and the courts have repeatedly faced the issue of what compensation a teacher is entitled to if a district has not adopted a salary schedule when teachers can no longer unilaterally withdraw from their contracts. *Bowman v. Lumberton Indep. Sch. Dist.*, 801 S.W.2d 883 (Tex. 1990); *Sierra v. Lake Worth Indep. Sch. Dist.*, 2000 WL 1587652 (Tex. App.-Austin October 26, 2000, no pet.); *Ector County TSTA/NEA v. Alanis*, 2002 WL 31386061 (Tex. App.-Austin October 24, 2002, pet. denied); *Griffin v. Nelson*, 2002 WL 220316 (Tex. App.-Austin February 14, 2002, no pet.); *Weslaco Fed. of Teachers v. Texas Education Agency*, 27 S.W.3d 258 (Tex. App.-Austin 2000, no pet.); *Josh v. Beaumont Independent School District*, Docket No. 240-R3-492 (Comm'r Educ. 1993); *Guier v. Dallas Independent School District*, Docket No. 213-R3-589 (Comm'r Educ. 1993); *San Elizario Educators Assoc. v. San Elizario Independent School District*, Docket No. 222-R3-392 (Comm'r Educ. 1994); *Goedeke v. Smyer Independent School District*, Docket No. 111-R3-1292 (Comm'r Educ. 1997); *Wheeler v. DeSoto Independent School District*, Docket No. 080-R10-300 (Comm'r

Educ. 2001). One reason for this continuing problem is that school districts often do not have good tax revenue projections until near or after the date teachers can withdraw from their contracts. As salaries are a high proportion of school district budgets, it is often difficult for districts to know what salaries they can afford to pay until solid revenue projections are in.

Certification

For teachers, the ability to unilaterally resign is highly significant. It is not merely an issue of contract law. Teachers who resign without a school district's approval at a time after the Education Code allows unilateral resignation could face action by the State Board for Educator Certification against their teaching certificates. TEX. EDUC. CODE §§ 21.105(c), 21.160(c), 21.210(c). In fact, a certification action is perhaps more significant than a contract action. A district could theoretically sue for contract damages a teacher who resigns without permission after the date for unilateral resignation. If this has happened, there is not a reported Texas case. However, in many cases, action has been taken against teachers for abandoning their contracts.

Guier or San Elizario

The Commissioner has issued a number of decisions that limit a district's ability to set compensation after teachers can no longer unilaterally resign from their contracts. From early on there has been an ambiguity in the Commissioner's Decisions. Some decisions indicate that a district cannot reduce compensation. Other decisions indicate that teachers must be paid according to the prior year's salary schedule. The court cases have not resolved the issue.

In *Guier v. Dallas Independent School District*, Docket No. 213-R3-598 (Comm'r Educ. 1991), the district provided Guier with a total compensation of \$37,363 for the 1987-88 school year. However, after Guier could no longer unilaterally withdraw from his contract, the district voted to provide him with only \$35,813 in compensation for the 1988-89 school year. The Commissioner held, based on both contract and estoppel

grounds, that Guier was entitled to be compensated for the 1988-1989 school year at the same rate he received for the 1987-88 school year.

In *San Elizario Educators Association v. San Elizario Independent School District*, Docket No. 222-R3-392 (Comm'r Educ. 1994), the Commissioner held that based on the doctrine of estoppel, a district cannot lower its salary schedule after the last day a teacher can unilaterally withdraw from a contract. The difference between the two holdings is significant and in most cases will lead to different results. The doctrine in *Guier* is that a district cannot reduce total compensation. The doctrine in *San Elizario* is that a district cannot reduce total compensation and must pay at least according to the previous salary schedules. In Texas school districts, salary schedules often increase a teacher's compensation for each year of experience. The result is that if a school district must pay under the previous year's salary schedule, the district must give each teacher a raise because each teacher will have reached a higher level on the salary schedule. In the present case, Petitioner would prevail under the *San Elizario* standards and Respondent would prevail under the *Guier* standards.

Bowman

To determine which standard to use it is helpful to look at the discussion section of each decision. Both decisions are primarily based on *Bowman v. Lumberton Indep. Sch. Dist.*, 801 S.W.2d 883 (Tex. 1990). In *Bowman*, the court held that estoppel could apply against a school district. The particular issue presented to the court was "whether a school district's trustees may adopt a local increment salary schedule lower than the prior year's after the school year has already begun and first month's salaries have already been paid at the prior year's rate." *Id.* at 884. The court noted that August 1, 1985 was the last day that teachers could unilaterally resign and that the board's action setting salaries did not occur until September 16, 1985. *Id.* at 886-887. While the *Bowman* court found that estoppel could apply against a school district, it set a high standard:

Further, there was summary judgment evidence that the actions of paying the Teachers at last year's local increment rate was taken with the knowledge and implicit approval of the board, and that the board indicated to the superintendent its intention to adopt a salary schedule with local increments to justify that action. A subordinate officer in such a case need not have the express approval of the entire board to bind the board through estoppel. Estoppel may apply against a subdivision of government where the governing body is a board or commission, if the evidence clearly indicates that the subordinate officer's act was done with the knowledge of the governing body and was so closely related to the expressed will of the governing body as to constitute his act that of the board or commission itself. *City of Houston v. Hruska*, 155 Tex. 139, 144, 283 S.W.2d 739, 742 (1955); *Hallman v. City of Pampa*, 147 S.W.2d 543, 546-47 (Tex.Civ.App.--Amarillo 1941, writ ref'd).

Id. at 888. The Court did not apply the doctrine of estoppel to the board's adoption of a salary schedule after the last day teachers could unilaterally resign. The only potential estoppel issue found by the Court was whether payment under the previous salary schedule for the first month of the new school year would constitute estoppel. In fact, the Court ruled that based on the record it could not be determined whether the district was estopped. *Id.* at 889-890. *Bowman* does not stand for the proposition that estoppel prohibits a district from lowering salaries or substituting a salary schedule that is less generous after teachers can no longer unilaterally withdraw from their contracts. The Court was faced with that issue and did not so rule. The *San Elizario* and *Guier* decisions are not supported by *Bowman*.

Unilateral Resignation

However, this does not mean that there are no limitations on a district's ability to adopt a salary schedule after teachers can no longer unilaterally withdraw from their contracts. A classroom teacher must be employed under a probationary, term, or continuing contract. TEX. EDUC. CODE § 21.002(a). Each of these types of contracts allows a teacher to unilaterally end an employment relationship if written notice is given no later than the 45th day before the first day of instruction. TEX. EDUC. CODE §§ 21.105, 21.160, 21.210. The purpose of these provisions is to give teachers an annual opportunity to determine whether they wish to continue employment with a district. Without them, a

teacher could only resign with a district's approval. These provisions are remedial. As remedial statutes, they are to be given "the most comprehensive and liberal construction possible." *Burch v. City of San Antonio*, 518 S.W.2d 540, 544 (Tex. 1975).

Compensation is a very significant consideration when one is determining whether one wishes to continue an employment relationship. The Texas Education Code establishes a minimum salary schedule which in all cases sets the least amount a teacher can be paid. TEX. EDUC. CODE § 21.402. However, the opportunity to resign only knowing that compensation must be at least at the level of the minimum salary schedule is not much of an opportunity. In cases that have come before the Commissioner, local supplements have been substantial. In one case, it was as high as \$5,000. *Weslaco Federation of Teachers v. Weslaco Independent School District*, Docket No. 058-R10-1295 (Comm'r Educ. 1998). Not knowing whether one would continue to receive at least the same local supplement places teachers in the position of not having sufficient information to determine whether they wish to maintain a contractual relationship with a school district for another year. The result in the *Guier* decision would solve this problem by prohibiting pay cuts and at least maintaining the same level of compensation after teachers can no longer unilaterally withdraw from their contracts. It gives teachers a real opportunity to determine whether they wish to remain at a school district at the current level of compensation.

It could be argued that the result in *San Elizario* also solves this problem and gives the teachers even more certainty by at least requiring the previous year's salary scale to be continued. However, there is a significant difference between preventing a salary reduction and mandating a raise which would often result from applying the *San Elizario* decision. Normally, raises are not guaranteed unless required by the state minimum salary schedule. TEX. EDUC. CODE § 21.402. It is doubtful that the intention of the Legislature in passing Texas Education Code sections 21.105, 21.160, and 21.210 was

to require raises if a school district failed to set a salary schedule before the last day that a teacher could unilaterally resign from a contract.

Application to the Present Case

Respondent did not adopt a salary schedule until after the date teachers could unilaterally withdraw from their contracts. Under the new salary schedule, teachers received a one percent raise. This raise is less than the teachers would have received under the previous salary schedule. Since no teacher received a salary reduction, the new salary schedule is not unlawful. The teachers will receive a greater amount of compensation.

Conclusion

If a school district does not adopt a new salary schedule until teachers can no longer unilaterally resign from their contracts, it must at a minimum not reduce the amount of each teacher's compensation. Because Respondent did not reduce the amount of compensation its teachers received from the previous year, its 2002-2003 salary schedule is not unlawful.

Conclusions of Law

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

1. The Commissioner has jurisdiction to hear this cause under Texas Education Code section 7.057.
2. A classroom teacher, principal, librarian, nurse, or counselor must be employed under a probationary, term, or continuing contract. TEX. EDUC. CODE § 21.002(a).
3. Texas Education Code sections 21.105, 21.160, and 21.210 allow teachers to unilaterally resign from their contracts by giving written notice not later than the 45th day before the first day of instruction for the following school year.

4. The purpose of Texas Education Code sections 21.105, 21.160, and 21.210 is to give teachers a meaningful opportunity each year to decide whether they wish to continue employment with a district.

5. Texas Education Code sections 21.105, 21.160, and 21.210 are remedial statutes and, therefore, are to be given the most comprehensive and liberal construction possible.

6. If school districts could reduce teachers' compensation after they could no longer unilaterally withdraw from their contracts, teachers would not have a meaningful opportunity to decide whether they wished to continue employment.

7. If a school district does not adopt a new salary schedule until after teachers can no longer unilaterally resign from their contracts, it must at a minimum not reduce the amount of the teachers' compensation below which the teachers actually received for the past school year. TEX. EDUC. CODE §§ 21.105, 21.160, 21.210.

8. Because Respondent did not reduce the amount of compensation, its salary schedule for 2002-2003 is not unlawful.

9. Petitioner's appeal should be 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 Designee of the Commissioner of Education, it is hereby

ORDERED that Petitioner's appeal be, and is hereby, DENIED.

SIGNED AND ISSUED this 21st day of OCTOBER, 2004.

ROBERT SCOTT
CHIEF DEPUTY COMMISSIONER
DESIGNEE OF THE COMMISSIONER
OF EDUCATION