

**Affirmed and Opinion filed November 2, 2000.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-99-00498-CV**  
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**FRAN WILLINGHAM, Appellant**

**V.**

**TEXAS EDUCATION AGENCY, TEXAS COMMISSIONER OF EDUCATION, and the  
HOUSTON INDEPENDENT SCHOOL DISTRICT, Appellees**

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**On Appeal from the 334th District Court  
Harris County, Texas  
Trial Court Cause No. 97-61782**

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**O P I N I O N**

This appeal stems from a district court's review of an administrative agency decision. The district court upheld the decision of the Texas Commissioner of Education in an appeal of a teacher termination decision under Subchapters F and G of the Texas Education Code. *See* TEX. EDUC. CODE ANN. § 21.251 *et seq.* (Vernon 1996). The only issue presented to this court is whether the district court erred in its determination that the decision of the Texas Education Agency Certified Hearing Examiner was supported by the evidence in the administrative record under the substantial evidence rule of review.

Because there exists a reasonable basis in the record for the action taken by the Houston Independent School District Board of Education, we affirm the judgment of the trial court.

## **BACKGROUND**

Appellant worked as a teacher with the Houston I.S.D. since April 28, 1975. During the 1996-1997 school year, she was transferred to Will Rogers Elementary School. Soon thereafter the principal of Rogers Elementary, Mr. Ron Dominy, observed that appellant demonstrated problems supervising her class.

Mr. Dominy attempted to assist appellant in improving her classroom management skills through informal means. After this failed, Mr. Dominy began documenting his efforts to assist appellant. Mr. Dominy noted that few of appellant's students participated in instruction, and that she had trouble controlling students. On several occasions, appellant lost students, failed to attend scheduled conferences, and failed to take students to scheduled classes.

In an effort to aid appellant, Mr. Dominy invited Ms. Diane Borchardt, an instructional specialist in the Central Area Office, to provide Ms. Willingham instructional assistance. In addition to Ms. Borchardt, appellant was provided instructional help from Ms. Montgomery, the Magnet Coordinator, and Ms. Cheryl Jones, the Kindergarten Chair of Rogers Elementary. Mr. Dominy also arranged for appellant to observe a master kindergarten teacher at Woodrow Wilson Elementary for one week. Despite these efforts, Mr. Dominy continued to observe instances of improper classroom management and student supervision.

Based on a request from Mr. Dominy, appellant saw a doctor to ascertain whether her inability to properly focus on the classroom environment was medically based. Her doctor indicated that due to stress at work, appellant needed a twelve-week personal leave of absence. During her absence, a substitute teacher taught appellant's class. The substitute teacher had little difficulty managing and supervising appellant's students. After appellant returned from her leave of absence, Mr. Dominy again began to notice disruptive student behavior in her class.

During the school year appellant identified several students as the cause of much of the disruptive behavior. She requested that they receive counseling to correct their behavioral problems. Ms. Eng, the school counselor, began counseling these children. Ms. Eng observed that these students were no worse than others that she had counseled, that they did not manifest a need for a special education evaluation, and that appellant should have been able to manage these children.

Mr. Dominy issued several memoranda to appellant and had several conferences with appellant in order to outline the deficiencies in her classroom organization skills. After seeing no improvement in appellant's management of her class, Mr. Dominy recommended to the Central Area District Superintendent that appellant's employment as a continuing contract teacher should be terminated. The Superintendent of Schools, Dr. Rod Paige, recommended appellant's termination to the Board of Education. The Board adopted the recommendation of Dr. Paige.

Dr. Paige informed appellant by letter of her proposed termination. By this letter, appellant was notified that her termination was based upon the following: 1) Section 5(d) of her continuing contract (reported failure to comply with official directives and established school board policy); 2) Section 5(f) of her continuing contract (repeated and continuing neglect of duties); and 3) Section 6(g) of her continuing contract (good cause).

## **STANDARD OF REVIEW**

Appellant argues that the decision not to renew her contract was not supported by substantial evidence. In conducting a substantial evidence review, we determine whether the evidence as a whole is such that reasonable minds could have reached the same conclusion as the agency in the disputed action. *See Texas Educ. Agency v. Goodrich Indep. Sch. Dist.*, 898 S.W.2d 954, 957 (Tex. App.—Austin 1995, writ denied). We may not substitute our judgment for that of the agency and may only consider the record on which the agency based its decision. *See id.*; *State v. Public Util. Comm'n*, 883 S.W.2d 190, 203 (Tex. 1994). The true test is not whether the Board of Education reached the correct conclusion, but whether some reasonable basis exists in the record for the action taken by the Board. *See Public Util. Comm'n*, 883 S.W.2d at 204. The findings, inferences, conclusions, and decisions of an

administrative agency are presumed to be supported by substantial evidence, and the burden is on the contestant to prove otherwise. *See id.*

## **DISCUSSION**

The Board of Education recommended appellant's termination on grounds of repeated failure to comply with official directives and established school board policy; repeated and continuing neglect of duties; inefficiency or incompetency in the performance of duties; and good cause. These grounds closely track the language of Ms. Willingham's continuing contract with the Houston Independent School District.<sup>1</sup>

We have generally set forth the applicable factual background, which is summarized immediately hereafter. In the area of failure to comply with official directives and established school board policy, there is evidence that Ms. Willingham received directives relating to her failure to adhere to classroom schedules and directives regarding her failure to adequately supervise and manage her students. Ms. Willingham failed to follow these directives. Regarding Ms. Willingham's repeated and continuing neglect of duties, there was testimony that Ms. Willingham chronically failed to adhere to class schedules, that her students were unruly and moved about during her class, that she missed scheduled meetings and events, and that she lost track of her students. With regard to Ms. Willingham's inefficiency or incompetency in the performance of her duties, there again is evidence in the record that Ms. Willingham could not control her students, had poor classroom management, failed to adhere to class schedules, and failed to maintain the safety of her students. Finally, the Board could reasonably conclude based on the facts summarized above, and based on the complaints of fellow teachers, school staff, and parents alike, that the school district had good cause to discharge Ms. Willingham.

We hold that there is substantial evidence that Ms. Willingham's termination was in conformity with the provisions of her contract and the Texas Education Code. After a close inspection of the entire record,

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<sup>1</sup> Section 21.154(5) of the Texas Education Code states that a teacher may be "discharged for a reason stated in the teacher's contract that existed on or before September 1, 1995, and in accordance with the procedures prescribed by this chapter." The continuing contract with Ms. Willingham was executed on April 28, 1975.

it cannot be concluded that the Board's action was arbitrary, capricious, or without regard to the facts. Appellant has not sustained her burden of showing that the order appealed from was not supported by substantial evidence. We overrule appellant's sole issue on appeal and affirm the judgment of the trial court.

/s/ Maurice Amidei  
Justice

Judgment rendered and Opinion filed November 2, 2000.

Panel consists of Justices Amidei, Anderson and Frost.

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