

**ANOTHER EXCEPTION FOR PROBATIONARY TEACHERS**

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**Mr. Almeyda's Contract**

- o David Almeyda had a probationary contract as a teacher in the Alief ISD for the 2008-09 school year.
- o He had another probationary contract for the 2009-10 school year.

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**What Happened**

- o On May 5, 2009, Mr. Almeyda was attacked by a student and used force to defend himself.
- o Note the date: this would have been AFTER the deadline for notice of termination of contract (nonrenewal). Therefore it was too late for the district to terminate the contract as of the end of its normal term.
- o Alief would have to continue to employ Mr. Almeyda for another year, or seek to fire him.

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### The Board Decides to Act

- o On August 26, 2009, the board proposed to terminate Mr. Almeyda's contract for good cause. The administration asserted that Mr. Almeyda had used excessive force with the student.
- o Termination during a contract—even for a probationary teacher—requires a hearing before an independent hearing examiner.

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### The Hearing Examiner

- o The Hearing Examiner concluded that Mr. Almeyda's use of force was reasonable—not excessive. Therefore, the Examiner recommended that the contract NOT be terminated.
- o The Board did not fight this recommendation. It adopted the recommendation on December 15, 2009.

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### Where Does This Leave Mr. Almeyda?

- o Mr. Almeyda has saved his job.
- o But remember: he is still on a probationary contract which will run out as of the end of the 2009-10 school year.
- o How much protection do probationary teachers have?????
- o See next slide!!

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## Probationary Contracts

- o The board can terminate the probationary contract at the end of its term if it determines that this is in "the best interests of the district."
- o No further explanation is required. No hearing. No appeal. Just give the teacher notice in a timely fashion and it's a done deal.
- o T.E.C. 21.103(a).

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## So.....

- o So on February 26, 2010, Mr. Almeyda was informed that his contract would be recommended for termination at the end of the contract period.
- o On March 24, 2010, the board voted to terminate Mr. Almeyda's contract at the end of the contract period (end of school year).

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## If This is Not Appealable, Why Are We Talking About It?

- o Another section of the Education Code says that a district cannot "discharge or suspend" a professional employee "or terminate or not renew the employee's term contract" based on the employee's use of physical force against a student to the extent authorized by Section 9.62 of the Penal Code.
- o T.E.C. 22.0512.

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### Mr. Almeyda's Argument

- o You tried to fire me for the use of force.
- o The hearing examiner ruled in my favor and you adopted the hearing officer's recommendation.
- o Now you are trying to terminate my contract again based on the same episode.
- o This is an impermissible reason for terminating my contract.

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### Three Important Rulings from the Commissioner: Number One

- o The Commissioner ruled that he had jurisdiction to hear this case.
- o This is important. It means that an assertion by the teacher that the board's action was motivated by the teacher's reasonable use of force, as permitted by statute, will make the case appealable to the Commissioner.

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### Important Rulings: Number Two

- o The two statutes conflict, but 22.0512 prevails.
- o "A school district cannot terminate a probationary contract at the end of the contract period for the use of force against a student that is justified under Texas Penal Code section 9.62."
- o Therefore, a teacher can not only appeal—the teacher can win.

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### Important Rulings: Number Three

- o But in this case, the teacher has not satisfied the burden of proof.
- o There was no testimony or documentary evidence to show a causal connection between the teacher's use of force and the board's decision.
- o Alief ISD wins.

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### Key Lessons

- o Do not develop a false sense of security in dealing with probationary teachers.
- o They can challenge the board's decision on the theory that it was impermissibly motivated.
- o This case makes it clear that there is now another reason that falls into the category of "impermissible."

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### Impermissible Motivation

- o Discrimination based on a protected status: race, color, national origin, sex, gender, age, religion, disability.
- o Whistleblowing.
- o Retaliation for the exercise of constitutionally protected rights (free speech usually).
- o Use of physical force with a student to the extent allowed under Penal Code.

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