

IN THE SUPREME COURT OF TEXAS

No. 99-0859

THE MONTGOMERY INDEPENDENT SCHOOL DISTRICT, PETITIONER

v.

JOANNE DAVIS, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE NINTH DISTRICT OF TEXAS

Argued on April 5, 2000

JUSTICE OWEN, joined by JUSTICE HECHT and JUSTICE ABBOTT, dissenting.

The net effect of the Court's decision is that it allows a state hearing examiner to make policy decisions that the Legislature intended local school boards to make. The Court's decision discourages school boards from using hearing examiners because if they do, they risk ceding their legitimate policy-making authority. While the Court gives lip service to the primacy of school boards in making policy decisions, the Court does not apply that principle in a meaningful way. Instead of reviewing the school board's policy determination in this case to see if it was supported by substantial evidence, the Court instead reviews the hearing examiner's ultimate conclusion, which was rejected by the school board and the Commissioner of Education, to see if the hearing examiner's conclusion was supported by substantial evidence. This is an improper application of the Education Code.

The Montgomery Independent School District decided that Joanne Davis' teaching contract should not be renewed because she "failed to maintain an effective working relationship, or maintain good rapport, with parents, the community, or colleagues." The undisputed facts the Board cited as underpinning this conclusion were that 1) Davis referred to a student using a crude, pejorative term, 2) there were more requests for transfers from her classes than from any other teacher's, and 3) there were more complaints about her classes than any other teacher's. Because there was substantial evidence to support the Board's conclusions and, accordingly, substantial evidence to support the decision of the Commissioner of Education, I dissent.

I

When Joanne Davis was told that her contract would not be renewed, Montgomery Independent School District had in place a written policy that set forth twenty-six bases on which a teacher's contract might not be renewed. The reasons for non-renewal included "[f]ailure to maintain an effective working relationship, or maintain good rapport, with parents, the community, or colleagues."

The Court and I agree that the question of whether Davis failed to maintain an effective working relationship or to maintain good rapport was a legal conclusion. ___ S.W.3d at ___. That determination is necessarily a policy-laden one, and the ultimate call was for the Montgomery Independent School District's board of trustees, not a state hearing examiner, as long as the Board's decision was not "arbitrary, capricious, or unlawful" and was supported by substantial evidence. TEX. EDUC. CODE § 21.303(a). The issue in this case is what evidence the Board can rely on to support its conclusion of law.

At Davis' hearing, the School District requested the hearing examiner to make certain findings of fact based on undisputed evidence. The hearing examiner refused to do so. Accordingly, in reviewing the hearing examiner's findings and recommendation, the Board made additional findings of fact that (1) were based on undisputed evidence and (2) were not contrary to any findings made by the hearing examiner.

The Education Code provides that when a school board elects to allow a state hearing examiner to conduct a hearing on the non-renewal of a teacher's contract, the board nevertheless must make findings of fact and conclusions of law, and the board may reject or change an examiner's fact-findings if they are not supported by substantial evidence:

§ 21.259. Decision of Board of Trustees or Board Subcommittee

(a) [T]he board of trustees or board subcommittee shall announce a decision that:

- (1) includes findings of fact and conclusions of law; and
- (2) may include a grant of relief.

(b) The board of trustees or board subcommittee may adopt, reject, or change the hearing examiner's:

- (1) conclusions of law; or
- (2) proposal for granting relief.

(c) The board of trustees or board subcommittee may reject or change a finding of fact made by the hearing examiner only after reviewing the record of the proceedings before the hearing examiner and only if the finding of fact is not supported by substantial evidence.

(d) The board of trustees or board subcommittee shall state in writing the reason and legal basis for a change or rejection made under this section.

TEX. EDUC. CODE § 21.259.

The fact that the Code specifically provides that a school board may reject or change a finding of fact if it is not supported by substantial evidence is critical in properly applying the Code. *See Id.* § 21.259(c). It makes no sense to say, as the Court does today, that when a hearing examiner refuses to make a finding regarding facts in the record, the board is powerless to rely on those facts.¹ In this case, if the hearing examiner had made express findings that there were not more requests for transfers from Davis' classes than from any other teacher's or that there were not more complaints concerning Davis' classes than any other teacher's, the Board could have rejected or changed those findings if they were not supported by substantial evidence. *Id.* If a school board can reject or change a finding of fact and rely on a finding as changed, then it necessarily follows that a school board is entitled to make a finding of fact that is supported by the evidence when the examiner has refused to address that matter, as long as the school board's finding does not conflict with a finding by the hearing examiner that is supported by substantial evidence. The hearing examiner cannot wrench the power to reject or change findings from the Board by refusing to make a finding.

The upshot of the Court's decision is this: a hearing examiner will now be able to make findings of fact about matters that support his or her ultimate recommendation and can ignore parts of the record that do not support those recommendations. Under the Court's interpretation of the Code, the hearing examiner can preclude a school board, the Commissioner of Education, and reviewing courts, from relying on record evidence simply by failing to make findings on those parts of the factual record. A straightforward reading of the Code does not support this result.

¹ The Court says, "the Board was entitled to determine that Davis' contract should not be renewed based on the facts that were found by the hearing examiner, so long as the Board's determination, in the commissioner's view, was not arbitrary, capricious, or unlawful, and was supported by substantial evidence." __ S.W.3d at __.

The Board's conclusion and its findings should be upheld based on the record in this case, to which I turn.

II

The Board reached the ultimate conclusion, after reviewing the record, that: “[t]he Administration proved by a preponderance of the evidence that Davis failed to maintain an effective working relationship, or maintain good rapport, with parents, the community, or colleagues.” In support of this conclusion, the Board made findings about the number of requests for transfer out of Davis' classes and the number of complaints about Davis:

42. It is undisputed that there were more requests for transfers from Joanne Davis' classes than from any other teacher's classes at Montgomery Junior High School.
43. It is undisputed that there were more complaints concerning Joanne Davis's classes than any other teacher's classes at Montgomery Junior High School. (Record citations omitted.)

The Commissioner of Education was required to uphold the Board's judgment in this matter unless its decision was arbitrary, capricious, or unlawful, or was not supported by substantial evidence. TEX. EDUC. CODE § 21.303(a). Since the Commissioner did uphold the Board's determination, this Court should review the Commissioner's decision under the substantial evidence rule, and we may not reverse that decision unless it was not supported by substantial evidence or unless the Commissioner's conclusions of law were wrong. *Id.* at § 21.307(e), (f). The record reflects that the Commissioner's decision to uphold the Board's decision was supported by substantial evidence and was not contrary to any findings of fact made by the hearing examiner.

The Court says that “the Board admits that the hearing examiner's findings of fact in this case are supported by substantial evidence.” __ S.W.3d at __. This is true, but that is not what this case

is about. The Board's complaint is that the hearing examiner should have made additional findings in light of the undisputed evidence. The hearing examiner instead made selective findings. The Board explained in its decision rejecting the hearing examiner's recommendation that the hearing examiner chose to ignore undisputed, substantial evidence that supported the Board's decision not to renew Davis' contract:

Although the Hearing Examiner prepared the record, he failed to make *any* findings of fact regarding undisputed evidence of several serious issues. In the absence of any findings of fact by the Hearing Examiner concerning the allegation that Ms. Davis failed to maintain working relationships or good rapport with parents, the community, or colleagues, we adopt these additional findings of fact. They are not inconsistent with any findings of fact made by the independent Hearing Examiner and are based on undisputed evidence. Proposed findings of fact similar to these were submitted by Montgomery ISD to the independent Hearing Examiner prior to his decision, but rather than making findings of fact based on the undisputed evidence, including testimony from Davis' own witnesses, he failed to address this evidence in any way and did not acknowledge this evidence in the record. (Emphasis in original.)

The hearing examiner did not make any findings that address the three additional findings that the Board made, which were that (1) there were more requests for transfers from Davis' classes than any other teacher, (2) there were more complaints about Davis than any other teacher, and (3) Davis referred to a student using a crude, derogatory term. Since the Court has chosen to disregard entirely the evidence that supports the Board's findings and conclusions, I think it is helpful to detail that evidence before I turn to a more specific discussion of the mischaracterizations the Court makes regarding the record.

At the beginning of the 1995-1996 school year, Montgomery Junior High School held an open house to which all parents were invited. There was testimony at the hearing that one purpose of the open house was to put the school's "best foot forward." For each class that a teacher would be teaching, he or she held a ten-minute session with parents. Michael Anderson, the assistant

principal, testified that after each of Davis' ten-minute sessions, there were lines of parents who were asking that their children be transferred out of Davis' classes. He said that "literally, each setting—after each segment that presentations were given, there was a line of parents; and one of them would say something, and then they'd all chime in and talk about, you know, they wanted to get their kid out of Ms. Davis's class." Anderson testified that parents of at least twenty students requested transfer forms. According to Anderson, nothing like this had ever happened before, and this incident was highly unusual. His recollection of typical comments parents had made were that "[t]hey were unhappy about the gruffness of the teacher, they perceived somewhat of a condescending attitude of the teacher to the parents in the room—and about their kids." No comments of this nature were received about any other teacher. Joan Boswell, a counselor at the school, testified that about "two to three, maybe four" parents also came up to her the night of the open house and requested scheduling changes to move their children out of Davis' classes.

The testimony of school officials about what happened at this open house was corroborated by a parent's letter, which said:

Near the end of the evening we had the honor of meeting Ms. Davis. My husband & I and other parents were very unimpressed. She insulted my son, my husband & I. As I have relayed the incident to Mr. Hatch on several occasions by phone [sic].

Ms. Davis stood in front of a classroom full of Parents & New Students to MJH School and made clear her Student (will do's & wents [sic]). She then lowered herself to walk over to our Son and say "And some students think I'm a Witch. Right Michael?"

Had my husband & I not been so taken aback, we would have vacated the room at once. . . . Other parents had concerns & not so kind comments about the teacher as we exited the class room.

This letter was written later in the school year, in November, and the open-house incident was one of the reasons this parent gave for requesting that her son be transferred to another class. That

request was honored. The hearing examiner's comments about this parent's concerns were, "Radican- Parent mis-perception of comment at open house. Resolved by transfer of student at mid-semester." The hearing examiner made no other findings about the open house incident.

Apparently, not all of the parents who had requested transfer forms on the night of the open house ultimately turned them in. However, after the open house, as the school year progressed, the record reflects that requests for transfers from Davis' classes, other than Radican's, were made. Boswell testified that during the fall of 1995, she recalled that six to eight written requests for schedule changes were received. Boswell also testified that over the two and one-half years that she had been a counselor at Montgomery Junior High, there were between fifteen and twenty written requests for transfers from Davis' classes and an additional thirty to forty verbal requests. There was only one other teacher who had "close to that many." No "other teacher [was] close to that number." The principal of the school, Paul Hatch, confirmed this. None of the hearing examiner's findings contradicted, much less rejected, this evidence.

Written requests for transfer and written parent complaints are in the record. There were several in October of 1995. Some of the complaints were similar. One parent wrote that Davis' explanation about his son's poor performance during the first six weeks of 1995 was not credible. This father said in his letter that at a parent-teacher conference, Davis told him that she had given his son three zero's that brought his 97 average down to 72, and that Davis also "assured [the father] that [his son] fell apart the very last week of the 6 weeks." The father complained that Davis actually gave his son "a 0 at the three week mark," and that "lead[s] [me] to question Mrs. Davis's ability to know what student she is talking about at any given time." The father also wrote that if his son "had a 0 at the three week mark, I should have been notified then, not the Saturday after the end of the first

six weeks. Mrs. Davis never attempted to contact me prior to this time, nor did she contact my wife who works on the campus.” The letter closed by saying:

I have always been supportive of my sons’ teachers. In fact, I teach my children that if there is a problem at school, I will take the teachers [sic] word over theirs. This is the first time since my sons started school that I have not been able to do this.

During this same time, in early October 1995, a parent wrote that her child had received a 41 on a test at the beginning of the first six-week period. The parent’s letter says that she “made a point to talk to Mrs. Davis on parent night” about the grade and asked Davis to call if there were any future problems with her son’s grades. This parent did not receive a call from Davis until after the six-weeks grades were posted. She was then told that her son had failed. The letter says, “I feel very uncomfortable about this teacher If there is another Science teacher he could be changed to for 8th period I would welcome the change. [My son] is happy and doing well in all of his other classes and does not want to change his other classes.”

Later that month, this same parent again wrote to the principal about Davis, pressing for the transfer of her child to another science class. The parent said:

As you know through our many conversations since the first six weeks of school, [I] am very concerned about [my son’s] Science teacher, Mrs. Davis. I believe a teacher has a great influence in a child’s life and can leave a lasting impression whether it be good or bad. I believe we have a bad situation here. I have always been one that gives people chances if we have any problems, but under the circumstances, knowing what I know about this teacher, I feel that it would be in my son’s best interest to change him out of Mrs. Davis’ Science class If you can, please make this change as soon as possible. I am tired of my son coming home upset from school I don’t want this teacher ruining [my son’s] attitude about school.

This mother also testified at the hearing. She reiterated what her letter had said, which was that she had met with Davis after her child received a 41 on a test and specifically asked that Davis call if there were any other problems. Davis did not call before the next report card came, on which

this child received an F in Davis' class and an "N" regarding his conduct in that class. The parent testified that she was "totally blown away" that Davis had not called and that she was "just very concerned because I had never had an experience like this with any of my other children" or their teachers. This student was "very happy in all of his other classes" but was "stressed" in Davis' class. This student was transferred from Davis' class to another science class, and the child had no difficulties with teachers the rest of the year. The mother noticed a change for the better in her child's behavior after the transfer.

The hearing examiner's comment regarding this parent's complaints was: "Parrish-Dispute between teacher and student about when test was taken up. Student received 41 on test. Student was having difficult year and failed other classes. Student was transferred at semester break. Testimony revealed the student was willing to continue to deal with teacher, the parent was not." This comment does not conflict with the conclusion that Davis failed to maintain rapport with this parent.

In October 1995, another parent asked that her son be transferred from Davis' class "due to a lack of communication." Notes from a school official indicate that this student had not had conduct problems in other classes, and he had never failed before. The hearing examiner's comment about this situation was, "Solomon-Schedule change requested by parent. Student seems to be passing now. No evidence whether problem was resolved."

In another request for transfer, a parent wrote that in a telephone conversation, Davis was "rude and snotty" when discussing a student's failing grade. The parent had complaints about other matters as well, writing:

Obviously, Ms. Davis hasn't mastered the art of discretion and she truly is quite rude most of the time. I don't want to deal with a teacher that I can't converse with or one

who is obviously either incompetent in her job or is to [sic] disorganized to keep up with the kids [sic] work appropriately.

This same letter said:

I have spoken with other parents who have had the exact same problem with their kids in Ms. Davis [sic] class. I was speaking with [another mother] at the grocery store and She [sic] said that her daughter had recieved [sic] many zeros only to find the papers graded in her note book. Another mother standing in line said she had the same situation.

After this letter was received by the school, Davis recognized that she had mistakenly given this student a zero for failing to turn in a paper even though the paper was in the student's notebook and Davis had graded the paper with an 83. Davis corrected the student's overall grade, as the hearing examiner noted. But that does not change the fact that the letter is evidence that Davis did not maintain good rapport with parents.

Another parent testified at the hearing before the hearing examiner. That parent, whose letter to the school is discussed above, related that one of the "worst incident[s]" leading to his son's transfer out of Davis' class was when his son had lost his textbook. This student's mother was also a teacher at Davis' school. The student found his lost book, but he heard Davis say to another teacher in the hall that his mother had lied about the lost book. The student was very upset and went to his mother's class crying. After this incident, this student's parents requested a meeting with the principal, and the student was transferred from Davis' class at mid-term.

The father of this student testified that although Davis "was always willing to have meetings any time," meetings with Davis did not resolve the problem. His child was transferred at mid-term, and the father was satisfied with the new teacher. The only comment that the hearing examiner had about this family's problems with Davis was "Doucet-Parents requested and received schedule change for what they believed to be to everyone's benefit. Parents had problem with disciplinary action for gum chewing."

There is considerable evidence about parent complaints in years prior to the 1995-96 school year. I relate only a few of those complaints. A parent wrote to Davis about the fact that her daughter's textbook had been stolen, and she could not afford a new one. The letter complained that Davis "confronted [the student] *in front* of the class (her peers) about not being able to afford the book. This is a private matter not to be discussed amongst the entire class. This was embarrassing for [my child] & totally unnecessary." (Emphasis in original.) The hearing examiner's comment regarding this matter was "Brown-Leatham-Dispute over lost book with no evidence of whether the situation was ever resolved one way or the other."

Another parent wrote a letter to the principal requesting that her son be removed from Davis' class. She related that although her child's records reflected that he was a good student and science had been one of his favorite subjects, he was failing in Davis' class. Her son had complained to her that he was "confused with Mrs. Davis in what she does at times." And this parent said, "I feel that another teacher with different teaching methods would make a big difference in his Science grades and attitude." The hearing examiner's comments were, "Medina-Evidence of schedule change. No evidence as to whether transfer or subsequent problems occurred."

Another student's parents wrote to the principal that although their son had been diagnosed with Attention Deficit Hyperactivity Disorder, he was not having trouble in classes other than Davis'. They wrote that Davis "has a very negative attitude when speaking to us concerning [our son]." They continued, "[w]e do not feel [our son] is experiencing a successful year in this particular science class and have asked the counselor, Ms. Boswell, on two separate occasions to have his schedule changed to include a different science teacher. We are greatly troubled with [his] loss of self-esteem." The hearing examiner's only comment was, "Student has ADHD."

Complaints about Davis were made by students as well. The head of the Science department, Ann Taylor, testified that approximately ten students came to her about Davis. These students said, “they’d prefer to be in another class because they don’t feel like they know what’s going on.” Taylor had never received similar complaints about other science teachers. She said that it was unusual to receive complaints of this nature. Taylor and another teacher tutored these students to help them with their science studies in Davis’ class. The hearing examiner made no findings about these student complaints or the need for other teachers to step in to supplement Davis’ teaching.

The record also contains a memorandum from one of Davis’ colleagues to the principal. Davis, who had three student aides, had requested the librarian’s student aide to make copies of some materials. The librarian complained to Davis about this, and apparently there was a confrontation. The librarian’s memo says, “I do admit I was exasperated because this was just one more of several times that she [Davis] has used an overbearing tone or attitude and many of the people who deal with her have voiced the same concern.” The librarian wrote a note to Davis apologizing for being rude, but also expressing to Davis that “sometimes your approach is a little overbearing.” Again, the hearing examiner made no findings about this or other complaints from Davis’ colleagues.

These are just some of the complaints and requests for transfers that are in the record. There are others.

There is also another finding of fact made by the Board that supports its conclusion that Davis failed to maintain an effective working relationship or to maintain a good rapport with parents or colleagues. The Board found that Davis had used a pejorative term in speaking about a student.²

² The finding was:

41. It is undisputed that Joanne Davis referred to students as “little shits” at school, during the

The evidence reflects that one day at school, Davis was very upset about the principal, Hatch. Anderson, the assistant principal, took Davis to his office to try to calm her down. At some point she referred to a student as a “little shit.” After the incident Davis wrote a memo to Anderson in which she said:

In regard to me referring to a student as a “little shit,” I apologize if it offended you. The fact of the matter is that I really do like the student in question and used that terminology in an endearing way. Frankly, I have referred to my own children in the same manner—both in their presence and in their absence.

However, at the hearing, Anderson said that based on his observation of Davis when she was making the statement, she had not used the term as one of endearment. Thus the evidence about the tenor of the comment was conflicting. The hearing examiner made no findings whatsoever regarding this incident. The Board could reasonably have concluded that this was another indication that Davis had a negative attitude toward her students and another indication of her inability to establish a rapport with a significant number of her students or their parents. Viewed in connection with all the other evidence of problems that Davis encountered when she dealt with others, this was not an isolated incident, as the Court suggests. The Board could have concluded that this incident had a “material connection” to Davis’ ability to maintain an effective working relationship or good rapport, the Court’s assertion to the contrary notwithstanding, ___ S.W.3d at ___.

III

school day, and in the presence of other educators. In fact, Davis never apologized for using the phrase (she only said she was sorry that it offended Mr. Anderson) and said that she used the phrase as a term of endearment. Every educator who testified about the issue, including those who appeared on behalf of Davis, described such conduct as unprofessional. (Record citations omitted.)

Instead of focusing on whether the Board's findings of fact and legal conclusions were supported by substantial evidence, the Court defends the hearing examiner's findings. The Court's first line of defense is that the hearing examiner *might* not have considered evidence about these areas "credible or material to the issue of rapport." ___ S.W.3d at ___. But when a hearing examiner makes no findings at all about particular matters raised by the evidence, a court cannot speculate about what he *might* or *might not* have found. Nor can a court simply assume from a hearing examiner's silence that he rejected all testimony on a subject as lacking in credibility. Yet, that is what the Court does.

The Court says with regard to transfer requests that "the record reveals inconsistencies and conflicts in the evidence that may have led the hearing examiner to discount their [Boswell's and Hatch's] testimony." ___ S.W.3d at ___. The Court concedes that Joan Boswell said that there were at least six to eight requests for transfer out of Davis' classes during the first half of the 1995-96 school year. ___ S.W.3d at ___. If, as the Court speculates, the hearing examiner rejected Boswell's testimony, then we are left with the testimony of Anderson, the assistant principal, that there were at least twenty requests for transfer on a single night, after the open house. Other evidence about transfer requests came from the testimony of parents and letters from parents that were introduced into evidence. But even setting aside that evidence for the moment, the fact remains that the hearing examiner did not make any finding contrary to the Board's finding that there were more requests for transfer from Davis' classes, whatever the number of requests might have been, than there were from any other teacher's classes.

The Court says that the hearing examiner made a specific finding that Hatch's testimony was not credible because it was contradicted by three other people. ___ S.W.3d at ___. But here again,

even if Hatch's testimony is discarded in its entirety, the record is replete with other evidence about requests for transfer and complaints about Davis. The hearing examiner did not discount that large body of evidence, which consisted of written letters from parents; the testimony of parents; the testimony of the assistant principal, a school counselor, and the teacher who was the head of the science department; and a memorandum from another of Davis' colleagues. The hearing examiner accepted that there were numerous complaints and requests for transfer. Indeed, he made specific findings that there were transfers out of Davis' class because parents complained, and the examiner made specific findings that there were a number of complaints from parents.

The Court says that there were three pages in the hearing examiner's decision that addressed rapport. That is true. But the Court does not and cannot cite a single line from the hearing examiner's decision in which he found that there were not more complaints about Davis than any other teacher or that there were not more requests for transfer from Davis' classes than any others.

The hearing examiner did make certain factual observations in support of his legal conclusion that Davis did not fail to maintain an effective working relationship or good rapport. But he said only that the number of actual transfers out of her class during the 1995-1996 school year did not "appear to be an unreasonably large number since, clearly, it is impossible to please everyone." He further observed that there "is no evidence of *any* parent complaints during the second semester of 1995-96." (Emphasis in original.) He also stated:

The evidence is overwhelming that the teacher maintained constant contact with the parents and students, to an even greater degree than was required by the district. For example, she sent progress reports at the three week mark to every student, not just the student's [sic] who were in danger of failing, as required by the school district. In addition, she regularly met with problem students, both before and after school, and maintained telephone contact with parents. (Record citations omitted.)

Finally, the hearing examiner notes that the principal, Hatch, said in Davis' 1993-94 evaluation that Davis "exceeds expectations" in the category of "maintains a professional relationship with all colleagues, students, parents, and community." Hatch gave Davis a rating of "meets expectations" in the same category for the 1994-95 school year.

None of the foregoing observations or findings preclude the Board from concluding that Davis failed to maintain an *effective* working relationship and failed to maintain *good rapport* with parents or colleagues. Whether the number of *actual transfers* out of Davis' classes was "reasonable" does not address the question of whether the number of requests for transfers and the number of complaints were more than the school received about any other teacher. Nor does the hearing examiner's conclusion about what was a "reasonable" number of actual transfers undercut the Board's ability to conclude that Davis had failed to maintain an effective working relationship and rapport based on the sheer number of requests for transfer and complaints, their tenor, and the amount of time and energy that the school had to expend to deal with them.

The fact that there was no evidence of complaints in the second half of the 1995-96 school year does not mean that the Board was foreclosed from considering the many complaints about Davis in the preceding semester or preceding school years. Similarly, the fact that Davis had frequent communication with parents says nothing about the quality or effectiveness of those communications. The record was replete with evidence that when Davis communicated with parents, she alienated many of them. Nor do the ratings that Hatch gave to Davis in the two years preceding the year in which her contract was not renewed preclude the Board from concluding that, although Hatch thought Davis maintained a "professional" relationship, that relationship was not an effective one, or that Davis failed to maintain good rapport.

More importantly, as detailed above, there is substantial evidence that supports the Board's conclusion that is untouched by the hearing examiner's findings. In the final analysis, the hearing examiner reached an ultimate legal conclusion based on the facts in the record. But the Board was entitled to reach a different legal conclusion based on those same facts as long as that legal conclusion was supported by substantial evidence. Control of schools should remain where the Legislature has placed it, with local school boards.

* * * * *

Because there was substantial evidence to support the school board's conclusion that Davis failed to maintain an effective working relationship or good rapport with parents or colleagues, and because the Court has misinterpreted the Education Code, I dissent.

Priscilla R. Owen
Justice

OPINION DELIVERED: December 7, 2000