



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-26-00073-CV

FORT WORTH INDEPENDENT SCHOOL DISTRICT, Appellant

V.

JOSEPH PALAZZOLO, Appellee

On Appeal from the 271st District Court
Wise County, Texas
Trial Court No. CV12-07-438

Before Sudderth, C.J.; Kerr and Birdwell, JJ.
Memorandum Opinion by Justice Kerr

MEMORANDUM OPINION

Appellant Fort Worth Independent School District (FWISD) appeals the trial court's denial of its jurisdictional plea to Appellee Joseph Palazzolo's Texas Whistleblower Act claim. *See* Tex. Gov't Code § 554.002. FWISD argues that the trial court erred by denying its plea. First, it argues that Palazzolo did not allege sufficient facts or present sufficient jurisdictional facts on each of his whistleblower-claim elements. Second, it argues that it is entitled to governmental immunity under Section 21.304(f) of the Texas Education Code. We will affirm.

I. Background

For the sixth time in 14 years, we are asked to reengage with the protracted dispute between FWISD and its former employee Palazzolo—a task that conjures an image of someone's attempting to nail Jell-O to a wall. *See Ft. Worth Indep. Sch. Dist. v. Palazzolo (Palazzolo V)*, No. 02-18-00205-CV, 2019 WL 2454866, at *1 n.1 (Tex. App.—Fort Worth June 13, 2019, pet. denied).¹ But we again analyze the issues before us while at times re-explaining what we have already decided and re-stating previously identified, unresolved factual disputes that a jury must decide.

¹*Ft. Worth Indep. Sch. Dist. v. Palazzolo (Palazzolo IV)*, 498 S.W.3d 674 (Tex. App.—Fort Worth 2016, pet. denied); *Palazzolo v. Ft. Worth Indep. Sch. Dist. Bd. of Trustees (Palazzolo III)*, No. 02-15-00302-CV, 2016 WL 741862 (Tex. App.—Fort Worth Feb. 25, 2016, no pet.); *Ft. Worth Indep. Sch. Dist. v. Palazzolo (Palazzolo II)*, No. 02-13-00006-CV, 2014 WL 69889 (Tex. App.—Fort Worth Jan. 9, 2014, no pet.); & *Ft. Worth Indep. Sch. Dist. v. Palazzolo (Palazzolo I)*, No. 02-12-00053-CV, 2012 WL 858632 (Tex. App.—Fort Worth Mar. 15, 2012, no pet.).

Although we need not repeat the dispute's underlying details, having previously done so more than once, *see Palazzolo V*, 2019 WL 2454866, at *1–6; *Palazzolo IV*, 498 S.W.3d at 677–79; *Palazzolo II*, 2014 WL 69889, at *1–2, we offer some factual and procedural context. FWISD placed Palazzolo on paid administrative leave on August 26, 2010, and investigated him. Each side disputed why. On the one hand, Palazzolo claimed retaliation for his reports of FWISD's law violations. On the other, FWISD pointed to Palazzolo's own alleged misdeeds.

Then, on October 26, 2010, FWISD's Board of Trustees voted to notify Palazzolo of his proposed termination, and he invoked his rights under Chapter 21 of the Texas Education Code. *Palazzolo V*, 2019 WL 2454866, at *3. A hearing examiner ruled in FWISD's favor, and Palazzolo appealed to the Texas Commissioner of Education. *Id.* As a result of that process, the Commissioner reversed the hearing examiner's decision. *Id.*

But in lieu of reinstating Palazzolo and having a second Chapter 21 administrative hearing concerning his proposed contract termination, FWISD's Board voted on February 14, 2012, to pay him under Section 21.304(f). *Id.* (citing Tex. Educ. Code § 21.304(f)). FWISD initially mailed two checks to Palazzolo's attorney with no explanation concerning his employment status. Out of caution, Palazzolo filed an internal FWISD grievance on February 23. *Id.* On February 28, FWISD

clarified through another letter that he was no longer an FWISD employee.² *Id.* at *17. FWISD disposed of his grievance on June 8. *Id.* at *18.

On July 6, Palazzolo sued FWISD. *Id.* at *5. In 2014, the parties tried the case, and a jury found in Palazzolo’s favor. *Id.*; *see also Palazzolo IV*, 498 S.W.3d at 678–79.

On appeal, we determined that the trial court had committed charge error by refusing FWISD’s requested submission of its Section 554.004(b) affirmative defense—that it would have taken the same complained-of action against Palazzolo in terminating him based solely on information unrelated to his reporting FWISD’s alleged law violations. *Palazzolo IV*, 498 S.W.3d at 682–86; *see also* Tex. Gov’t Code § 554.004(b). Notably, we rejected FWISD’s argument that “the uncontroverted evidence conclusively establishe[d] that the termination of Palazzolo’s employment in 2012 would have occurred regardless of Palazzolo’s report of wrongful conduct.” *Palazzolo IV*, 498 S.W.3d at 685.

Among the evidence we considered was the testimony of Larry Shaw, a former director of the United Teachers Association, who testified to the following:

Q. So you said as one out of thousands this case stands out to you as blatant retaliation?

A. This one does. A lot of times you look at it and you go, well, I don’t think administration is retaliating; they just want to see change.

²The February 28 letter indicated that FWISD was sending two checks—one for his salary through February 17, 2012, and another for his “final check” for a full year’s salary—and was ending his benefits on February 29, 2012.

This one, to me, was blatant retaliation. They went looking everywhere they could find.

Id. Considering this and other evidence, we refused to render a take-nothing judgment in FWISD’s favor and instead remanded the cause for a new trial, so that a jury could consider Palazzolo’s evidence of alleged retaliation and FWISD’s affirmative-defense evidence and resolve the disputed factual issues. *Id.* at 685–86.

Despite its appellate win—apparently dissatisfied with the new trial that it had requested and obtained—FWISD used its rehearing-motion timeframe to first file in this court a motion to dismiss for lack of jurisdiction based on “Palazzolo’s failure to file his lawsuit within the . . . jurisdictional deadlines and because there ha[d] been no waiver of FWISD’s immunity for Palazzolo’s lawsuit against FWISD.” We denied that motion, and FWISD then petitioned for supreme court review, ignoring this court’s charge-error-based decision in *Palazzolo IV* and challenging instead our denial of the jurisdictional dismissal motion. The supreme court ordered merits briefing but denied review.

When the case returned to the trial court, FWISD raised the issue there, filing a limitations-based jurisdictional plea. *Palazzolo V*, 2019 WL 2454866, at *6. The trial court denied the plea, and FWISD appealed. *Id.* at *1. In *Palazzolo V*, we determined that Palazzolo had timely filed his whistleblower suit and that the trial court had jurisdiction, and we again remanded the cause for further proceedings. *Id.* at *17–18.

FWISD petitioned for review, and the supreme court denied review in February 2020.³

The record before us does not indicate what happened on remand. But the bottom line is that the parties neither pushed the case to trial nor found a way to mutually resolve it. Eventually, around five and a half years after remand, FWISD filed a plea to the jurisdiction raising two (new) main points.

First, it argued that Palazzolo had “failed to allege and ha[d] no evidence to support each of the elements of his whistleblower claim”—that (1) he was a public employee on February 14, 2012, (2) he made a good-faith report of FWISD’s alleged violation of law, (3) he made the report to an appropriate law-enforcement authority in good faith, and (4) he suffered an adverse action that would not have occurred when it did but for his report. [Capitalization modified.] Second, FWISD argued that it was “entitled to governmental immunity from Palazzolo’s claim arising from [its] February 14, 2012 [decision] because the Texas Legislature did not establish a clear

³On remand, FWISD repeatedly argued that we had addressed only the pleadings in resolving its plea in *Palazzolo V*. That is not so. FWISD based its plea on what it claimed were “two undisputed facts” and then attached and relied on over 200 pages of evidence. Palazzolo likewise filed numerous responsive exhibits. Our opinion made clear that we had analyzed the parties’ evidence in affirming the trial court’s denying the limitations-based jurisdictional plea. *Palazzolo V*, 2019 WL 2454866, at *6, 17–18. Presumably, FWISD put its best evidence in the record with its limitations plea, so it would be surprising were FWISD to argue that it has some other evidence that it now contends would somehow yield a different result on its limitations argument than what we concluded on the record before us in *Palazzolo V*.

and unambiguous waiver of governmental immunity for a school district that decides to exercise its available statutory option under [Section] 21.304(f) of the Texas Education Code.”

Palazzolo filed a response with 20-plus exhibits, including part of Shaw’s testimony quoted above and other trial transcripts from 2014. He argued that his pleadings were sufficient and asked for an opportunity to amend if they were deficient. He also argued that he had presented sufficient evidence to support each challenged whistleblower element. Finally, he urged the trial court to reject FWISD’s immunity argument.

In January 2026—during a final pretrial hearing before a February 10 trial date—the trial court considered FWISD’s jurisdictional plea. FWISD offered live testimony from a witness and formally introduced its attached plea exhibits, which the trial court admitted. Palazzolo called no witnesses and did not formally offer any of his response’s attached exhibits. The trial court denied the plea and signed an order stating that it had “considered the [p]lea and any responses and replies thereto.” FWISD brought this interlocutory appeal.

II. Discussion

FWISD complains that the trial court erred by rejecting its jurisdictional challenges to both Palazzolo’s pleadings and his evidence. FWISD also contends that the trial court erred by rejecting its argument that it is immune from Palazzolo’s whistleblower claim because it invoked Section 21.304(f) to end the Chapter

21 administrative proceedings concerning Palazzolo's proposed contract termination. We conclude that the trial court properly denied FWISD's plea.

A. Standard of Review and Applicable Law

A court may not decide a case unless it has subject-matter jurisdiction. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004) (op. on reh'g). We review challenges to a trial court's subject-matter jurisdiction de novo. *Id.* at 228.

1. The Texas Whistleblower Act

"Governmental units, including school districts, are immune from suit unless the state consents." *Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755, 770 (Tex. 2018). The Texas Whistleblower Act (the Act) waives a school district's governmental immunity when a public employee alleges a violation of the statute. Tex. Gov't Code § 554.0035; *State v. Lueck*, 290 S.W.3d 876, 882 (Tex. 2009); *Palazzolo V*, 2019 WL2454866, at *7. Such a plaintiff must show that (1) as a public employee, (2) he made a good-faith report that his employer or another public employee violated the law, (3) to an appropriate law-enforcement authority, (4) and he was terminated, suspended, or suffered an adverse personnel action because of the report. Tex. Gov't Code § 554.002; *City of Fort Worth v. Pridgen*, 653 S.W.3d 176, 182 (Tex. 2022).

A public employee "has the burden to affirmatively demonstrate the trial court's jurisdiction," *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019), and a school district may challenge the trial court's jurisdiction by attacking the plaintiff's pleadings, the existence of jurisdictional facts, or both, *Alamo Heights*,

544 S.W.3d at 770. Because a “jurisdictional plea can take multiple approaches,” *Gordon v. N. Tex. Tollway Auth.*, No. 02-24-00538-CV, 2025 WL 2370936, at *3 (Tex. App.—Fort Worth Aug. 14, 2025, no pet.), “[w]hether the plaintiff bears an evidentiary burden depends on how the government responds to the purported waiver,” *City of Austin v. Powell*, 704 S.W.3d 437, 447 (Tex. 2024).

2. Challenges to Pleadings

When the government challenges the pleadings, it “does not dispute the plaintiff’s factual allegations, and evidence is irrelevant.” *Id.* (quoting *Miranda*, 133 S.W.3d at 226). Rather, “the question is whether the alleged facts affirmatively demonstrate a trial court’s subject[-]matter jurisdiction.” *Id.* (citation modified). “If the plaintiff’s allegations neither establish jurisdiction nor negate it, the plaintiff is given an opportunity to amend its pleadings, but if the allegations negate jurisdiction, the plaintiff as a matter of law cannot establish jurisdiction, so the court must grant the plea.” *Id.* Such a plea is similar, but not identical, to a motion to dismiss under Rule 91a of the Texas Rules of Civil Procedure. *Id.*

3. Challenges to Jurisdictional Facts

The government “may instead ‘challenge[] the existence of jurisdictional facts,’ requiring the trial court to ‘consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised.’” *Id.* (quoting *Miranda*, 133 S.W.3d at 227). This type of jurisdictional plea may resemble a no-evidence, a traditional, or a hybrid summary-judgment motion where both parties attach evidence. *Id.* at 447–48.

“The ‘ultimate issue’ in that instance is . . . ‘whether the nonmovant raised a fact issue to preclude summary judgment.’” *Id.* at 448 (quoting *Fossil Grp., Inc. v. Harris*, 691 S.W.3d 874, 882 (Tex. 2024)).

“[W]e must take as true all evidence favorable to the plaintiff, indulging every reasonable inference and resolving any doubts in the plaintiff’s favor.” *Tex. Health & Hum. Servs. Comm’n v. Pope*, 674 S.W.3d 273, 281 (Tex. 2023) (quoting *Alamo Heights*, 544 S.W.3d at 771. “In doing so, we cannot disregard evidence necessary to show context, and we cannot disregard evidence and inferences unfavorable to the plaintiff if reasonable jurors could not.” *Id.* (citation modified)).

Here, FWISD raised both types of challenges, so we first consider Palazzolo’s pleadings and then his jurisdictional-facts evidence.

B. Palazzolo’s Pleadings

Palazzolo’s live pleading is his First Amended Original Petition. It is the same pleading on which the parties tried this case in 2014 without any jurisdictional complaint from FWISD about its specificity. But 4,529 days after Palazzolo filed his amended complaint—and after one trial on the merits and two appeals—FWISD filed its latest jurisdictional plea claiming that Palazzolo’s amended petition was vague and conclusory and had not alleged any of the elements of a whistleblower claim. The trial court properly rejected FWISD’s pleadings-based jurisdictional plea.

Palazzolo pleaded that he was employed as an assistant principal at Arlington Heights High School and “reported violations of law regarding [FWISD] and its

employees to appropriate law enforcement authorities and [FWISD] ended [his] employment in retaliation.” He alleged that he reported FWISD’s falsification of student attendance records, inappropriate sexual relationships among school officials, school officials’ discrimination toward minority students, and school officials’ misuse of booster-club funds. He alleged that his “reports demonstrated violations of law including the Texas Education Code, federal and state education regulations, the Texas Penal Code, and federal and state laws prohibiting [racial and color] discrimination against students.” He further alleged that he “made such reports to appropriate law[-]enforcement authorities including the Texas Education Agency, Tarrant County [Criminal] District Attorney’s Office, the United States Department of Education[,], and appropriate FWISD officials.”

Palazzolo pleaded about how FWISD officials reacted to his reports and related negative media, claiming that he had embarrassed FWISD’s then superintendent and angered its trustees. In fact, he alleged that one trustee had written a “hostile” email to the superintendent about him. According to Palazzolo’s petition, the Texas Education Agency (TEA) had confirmed through its investigation that FWISD’s attendance records were inaccurate and had required FWISD “to remit \$17,956 in state funding that had been based on the faulty attendance information [FWISD had] submitted.”

He also alleged that a law firm FWISD hired to collect taxes had initiated collection efforts against him before dropping them. Palazzolo further claimed that

FWISD conducted background checks on him about things that he had allegedly not previously disclosed—including an expunged charge and a \$10 “petty” offense “that kept [him] from obtaining or retaining employment.”

Ultimately, Palazzolo pleaded that FWISD “expressed hostility to [his] reports of violations of law[,] . . . failed to follow its own policies in terminating [him,] . . . [and] terminated [him] for false reasons.”⁴ Even though Palazzolo did not plead the exact date of the October 26, 2010 vote, he alleged that “[he] sought a hearing to challenge his proposed termination when it was initially proposed by Superintendent Johnson” and summarized the Chapter 21 proceedings. He then alleged that “[i]nstead of going forward with another hearing that would have resulted in his reinstatement, [FWISD] summarily ended [his] employment on February 14, 2012”—despite also alleging that some FWISD officials disputed whether his employment was ended on that day. He briefly described his grievance, a failed mediation, and FWISD’s rejection of his grievance.

⁴Palazzolo also alleged that FWISD issued him an “unwarranted performance evaluation” and “demoted [him] by transferring him to a lower paying position away from Arlington Heights High School” where his daughter attended before moving him to a position at another school with comparable pay after he complained. We rendered judgment in *Palazzolo II* concerning an earlier whistleblower lawsuit that he take nothing on his transfer and appraisal-report claims, so it is unclear why Palazzolo reurged those allegations in the underlying lawsuit, and we do not consider them as part of our jurisdictional review in this case. 2014 WL 69889, at *6–7 (concluding that the trial court lacked jurisdiction over these claims because Palazzolo failed to produce any evidence that he had complied with Section 554.006’s grievance-initiation requirements concerning such claims).

He alleged that he had “given [FWISD] ample opportunity to review his whistleblower allegations and to do the right thing regarding [his] employment with [FWISD].” He claimed that he sued FWISD after it had terminated his grievance proceeding, and he summarized his lawsuit as follows: “[FWISD] terminated/ended [Palazzolo’s] employment in retaliation for his good[-]faith reports of violations of law to appropriate law[-]enforcement authorities, in violation of [S]ection 554.002 of the Texas Government Code.”

Analyzing the live pleading under the standard similar to that applied to a Rule 91a motion, *see Powell*, 704 S.W.3d at 447, we conclude that Palazzolo pleaded each element of a whistleblower claim, *see Jorolan v. Eads*, No. 02-23-00338-CV, 2025 WL 628340, at *4 (Tex. App.—Fort Worth Feb. 26, 2025, no pet.) (“We apply a fair[-]notice standard under which the pleadings are sufficient if a cause of action can reasonably be inferred from the facts alleged.”). Palazzolo alleged that he was a public employee through his February 14, 2012 termination; claimed that he—in good faith—reported various violations of law to appropriate law-enforcement authorities (including the TEA, which he pleaded had substantiated his report of FWISD’s attendance-records falsification); and enumerated various adverse personnel actions that he claimed FWISD had taken against him because of his reports, including his termination. *See* Tex. Gov’t Code § 554.002; *Pridgen*, 653 S.W.3d at 182.

Although Palazzolo could have pleaded even more facts—for example, quoting the trial testimony, providing an exacting timeline, or dissecting and detailing the

evidence supporting his claim, some of which we will discuss below—more robust allegations were not necessary because his pleadings gave fair notice of the facts underlying his whistleblower claim’s elements. *See Miranda*, 133 S.W.3d at 226 (requiring courts to “construe the pleadings liberally in favor of the plaintiff[] and look to the pleader[’s] intent”); *Jorolan*, 2025 WL 628340, at *4.

Accordingly, we conclude that the trial court soundly rejected FWISD’s pleadings-based jurisdictional attack.⁵ We overrule FWISD’s issue on that point.

D. Palazzolo’s Jurisdictional Facts

FWISD’s plea also attacked the jurisdictional facts, and it argued that Palazzolo had no evidence to support each element of his whistleblower claim.⁶ We disagree.

⁵A plea to the jurisdiction is a “dilatory plea,” *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 635 (Tex. 2012), but attacking pleadings over 12 years after a petition has been filed (and after going to trial on that very petition) and pressing that attack through appeal seems an extreme delay measure. Of course, Palazzolo shares in the responsibility for the case’s delay by not earlier insisting on retrying the case. On this point, the trial court has encouraged the parties “to discuss resolving this case and getting to move on in life”—and we agree with that sentiment—but if the parties cannot do so, they need to request a trial setting to let a jury do it. *See Genie Indus., Inc. v. Matak*, 462 S.W.3d 1, 3 (Tex. 2015) (“The right to trial by jury in civil cases is constitutionally protected because we have, as a polity, determined to lay the resolution of factual disputes at the feet of our peers.”).

⁶At the plea hearing, Palazzolo complained that FWISD’s plea was a “disguised motion for summary judgment” and that he should not be subjected to FWISD’s no-evidence challenge. That is simply an incorrect view of the law. *See City of Arlington v. Cerkez Enters., L.L.C.*, No. 02-25-00406-CV, 2026 WL 71144, at *4 (Tex. App.—Fort Worth Jan. 8, 2026, no pet.) (“A plea to the jurisdiction may be like a no-evidence motion for summary judgment by asserting that the plaintiff has produced no evidence of an element required for the immunity waiver to apply.” (citing *Powell*, 704 S.W.3d at 447)). Had Palazzolo not provided any evidence in

1. Public Employee

On the public-employee element, FWISD argued that Palazzolo had no evidence that he was a public employee on February 14, 2012. FWISD does not dispute that it employed Palazzolo or that it was even paying him on February 14. Rather, it contends that because it had placed Palazzolo on paid administrative leave, after October 26, 2010, he was not being paid to perform services for FWISD, including on February 14, 2012, and did not meet the statutory “public employee” definition. FWISD offers no authority supporting its strained position, and we reject it.

Section 554.002(a) states that a local governmental entity may not suspend, terminate, or take other adverse personnel action against a public employee who in good faith reports his employing governmental agency’s alleged violation of law. Tex. Gov’t Code § 554.002(a). A “public employee” is “an employee or appointed officer other than an independent contractor *who is paid to perform services for a . . . local*

response to FWISD’s plea, he would have faced a formidable barrier to showing that he had met his evidentiary burden. But Palazzolo’s response, which the trial court’s order stated that it had considered, attached evidence that was also before the trial court, and we therefore look to that evidence. *See Miranda*, 133 S.W.3d at 227 (stating that courts must consider the “evidence submitted by the parties”); *City of Fort Worth v. Alvarez*, No. 02-17-00091-CV, 2018 WL 2248481, at *10 (Tex. App.—Fort Worth May 17, 2018, no pet.) (considering evidence attached to plea response); *see also Stavron v. SureTec Ins. Co.*, No. 02-19-00125-CV, 2019 WL 6768125, at *6 (Tex. App.—Fort Worth Dec. 12, 2019, no pet.) (collecting cases stating that when a trial court’s summary-judgment order states that it has considered a response, the order signifies that the trial court also considered any evidence attached to the response).

governmental entity.” Id. § 554.001(4) (emphasis added). Thus, the statute allows “[a] public employee whose employment is suspended or terminated or who is subjected to an adverse personnel action in violation of Section 554.002 . . . to sue.” *Id.* § 554.003.

Although the statute does not specify what time frame courts should consider, the statute must be read to cover an employee who is paid to perform services for the employer at the time of the employee’s reporting of the employer’s violations of law and during the employer’s alleged resulting acts of retaliation that lead to suspension or termination. *Id.* §§ 554.001(4), .002, .003. Here, the parties do not dispute that FWISD employed Palazzolo first as a teacher in 2007 and after that as a high school administrator. He offered evidence that he was employed as a high-school administrator when on August 9, 2010, he reported FWISD’s alleged attendance falsification to the Texas State Auditor’s Office and the TEA.⁷ Palazzolo also provided evidence that he had contacted the Tarrant County Criminal District Attorney’s Office and the United States Department of Education.

Even before these reports, FWISD knew that Palazzolo was accusing FWISD of the alleged attendance violations and other violations of law. And the evidence shows that on August 26, 2010, FWISD placed Palazzolo on paid administrative leave. It claimed to be investigating Palazzolo for various acts of “inappropriate

⁷The evidence shows that on September 9, the TEA responded to Palazzolo, acknowledging receipt of his report.

behavior.” Two months later, on October 26, 2010, FWISD’s Board voted 6–3 to accept the superintendent’s proposed recommendation to terminate Palazzolo, subject to his Chapter 21 rights.

Exercising those rights, Palazzolo disputed that FWISD’s decisions were made because of his alleged misconduct, and he claimed that FWISD had retaliated against him for his reports of FWISD’s violations of law.⁸ As the Chapter 21 process played out, the record does not reflect that Palazzolo’s paid-administrative-leave status ever changed between August 26, 2010, and February 28, 2012, when FWISD’s letter confirmed his termination.⁹

We reject FWISD’s argument that we look solely to February 14, 2012—after FWISD had already placed him on administrative leave to prevent him from performing services like teaching or administering—to conclude that he could not produce evidence that he was a public employee under the Act. Rather, viewing the record evidence in the light most favorable to Palazzolo, we conclude that Palazzolo presented sufficient evidence to raise a genuine issue of material fact that he was a

⁸In short, Palazzolo claims the evidence shows that FWISD retaliated against him for his whistleblower reports, and FWISD contends that it took its employment actions without regard to those reports. We identified this factual dispute in *Palazzolo IV* and ordered a new trial, and now ten years after that decision, the parties have not yet asked a factfinder to resolve the dispute. *See* 498 S.W.3d at 685.

⁹At the plea hearing, a former FWISD trustee testified that FWISD had not paid Palazzolo to perform any work or services since October 26, 2010. One could argue, however, that FWISD was paying him to perform services but would not let him perform those services.

public employee: that is, he presented some evidence that FWISD paid him to perform services as a school administrator when he made his reports to the TEA and State Auditor's Office on August 9, 2010, and when he claims FWISD retaliated against him by placing him on administrative leave on August 26, 2010, which led to his eventual termination in February 2012.

2. Palazzolo's Good-Faith Reporting of FWISD's Alleged Violations of Law to Appropriate Law-Enforcement Authorities

FWISD also argued that Palazzolo had no evidence that (1) he made any good-faith reports of FWISD's alleged violations of law (2) to any appropriate law-enforcement authorities. In looking at both related elements, we conclude that Palazzolo easily met his evidentiary burden.

The Texas Supreme Court has confirmed that the Act "is aimed at 'ferreting out government mismanagement to protect the public,'" and thus "is intended to protect those [reports] that further this purpose." *Pridgen*, 653 S.W.3d at 184 (quoting *Neighborhood Ctrs., Inc. v. Walker*, 544 S.W.3d 744, 748 (Tex. 2018)). A valid report must convey factual information regarding alleged illegal conduct with the "aim to expose, corroborate, or otherwise provide information pertinent to identifying or investigating governmental illegality," *id.* at 187–88, and it "need not identify the statute, ordinance, or rule [t]he believes was violated," *City of Fort Worth v. Van Houten*, No. 05-24-01080-CV, 2025 WL 3465451, at *4 (Tex. App.—Dallas Dec. 2, 2025, no pet.). Additionally, the court has stated that "the Act's structure relies on the report

being made to an ‘appropriate law[-]enforcement authority’ with the power to enforce the law alleged to be violated or to investigate or prosecute criminal violations.” *Pope*, 674 S.W.3d at 283 (quoting Tex. Gov’t Code § 554.002(b)).

As we have already detailed above, among other things, Palazzolo thought that FWISD was falsifying attendance records and reported that concern to the State Auditor’s Office, the TEA, and the Tarrant County Criminal District Attorney’s Office, among others.¹⁰ In response to FWISD’s plea, Palazzolo argued that he did not need to plead the exact statute at issue, *see City of Fort Worth*, 2025 WL 3465451, at *4, but he pointed out that Section 48.270 of the Texas Education Code empowers the TEA to investigate a school district’s alleged deliberate falsification of attendance records and similar violations of the education code and to report its findings “to the State Board of Education, the state auditor, and the appropriate . . . criminal district attorney.” Tex. Educ. Code § 48.270. Palazzolo pointed to his 2014 trial testimony about his attendance-falsification reports and TEA’s confirmation letters showing that it had substantiated his attendance-falsification report and made FWISD adjust what it owed the State.

¹⁰We specifically omit discussing any evidence concerning what Palazzolo internally told FWISD because that evidence does not satisfy the Act. *See Pope*, 674 S.W.3d at 283 (stating that the Act usually “does not protect purely internal reports”); *Univ. of Tex. Sw. Med. Ctr. at Dallas v. Gentilello*, 398 S.W.3d 680, 686 (Tex. 2013) (“[T]he Act protects those who report to authorities that issue legal directives, not authorities that follow them.”).

This evidence is more than enough to raise a genuine issue of material fact that Palazzolo reported in good faith what he believed were FWISD’s violations of law to appropriate law-enforcement authorities that Palazzolo correctly believed were authorized “to regulate under or enforce the law alleged to be violated in [his] report.”¹¹ *See* Tex. Gov’t Code § 554.002(b)(1). We thus conclude that Palazzolo met his evidentiary burden in responding to FWISD’s jurisdictional plea attacking the good-faith-reporting and appropriate-authority elements.

3. Palazzolo’s Suffering an Adverse Action Because of His Reporting

Echoing its rejected argument from ten years before, *see Palazzolo IV*, 498 S.W.3d at 685–86, FWISD argued that Palazzolo had no evidence to establish that he suffered an adverse action that would not have occurred when it did but for his report. This time, however, FWISD narrowed its focus to a single date and a single event—its Board’s February 14, 2012 vote—and argued that it had no retaliatory

¹¹We need not exhaustively discuss Palazzolo’s evidence, but we briefly address his contention that he thought that FWISD’s attendance-falsification conduct constituted tampering with a governmental record, *see* Tex. Penal Code § 37.10, which is why his petition generally referenced the “Texas Penal Code” and why he attached his trial testimony concerning his contacting the “District Attorney.” Such evidence also raised a fact issue on the reporting and appropriate-authority elements. Even though Palazzolo testified that the prosecutor “dropped” the case, the Act does not require a prosecutor to take a case or obtain a conviction; it merely requires that the public employee report a violation of law to an appropriate law-enforcement authority “that the employee in good faith believes is authorized to . . . investigate or prosecute a violation of criminal law.” *See* Tex. Gov’t Code § 554.002(b). And Tarrant County’s Criminal District Attorney certainly has that authority. *See* Tex. Gov’t Code § 44.320(b)(2).

intent when it exercised its option under Section 21.304(f) to pay Palazzolo instead of reinstating him and having a second Chapter 21 hearing.

FWISD claimed that its Board had voted to focus on “educating students,” “to end the administrative proceedings,” and to avoid having to “continue to expend taxpayer funds for a second hearing process” when the first had cost over \$300,000. FWISD thus maintained that there was no evidence that its February 14, 2012 vote had anything to do with Palazzolo’s reports of FWISD’s violations of law. Regardless of what we might think about the parties’ competing evidence and narratives, in reviewing the trial court’s denial of FWISD’s jurisdictional plea, we must review the record evidence in the light most favorable to Palazzolo. *See Pope*, 674 S.W.3d at 281; *Alamo Heights*, 544 S.W.3d at 771.

And Palazzolo produced evidence in support of his version of events. As we noted above, Palazzolo attached and directed the trial court to Larry Shaw’s trial testimony agreeing that Palazzolo’s case stood out as “blatant retaliation.” Palazzolo also included Shaw’s testimony that “[t]hey wanted him gone, and they started, in my opinion, looking for things to get him gone.” Additionally, Palazzolo attached transcripts from other FWISD employees, in which they each testified that FWISD had retaliated against Palazzolo.

He also presented trial testimony from a former trustee who, when asked whether she believed that FWISD had executed “a systematic plan to dig up information so that Mr. Palazzolo could be terminated,” agreed that “[t]hat is very

obvious.” The trustee was asked, “[D]o you think the timing is suspicious with respect to when [FWISD] started looking for whatever it could so that it could terminate Mr. Palazzolo?” She responded, “I don’t think it’s suspicious. I think it’s obvious because, as I said, his personnel file was clean when they started.” She then confirmed that she believed that FWISD’s actions against Palazzolo were retaliatory. She explained that although she had not voted for Palazzolo’s proposed termination, six other board members had, and she testified that the “TEA made us reinstate him.”

Undisputedly, when FWISD opted to pay Palazzolo under Section 21.304(f)—which relieved FWISD of having to reinstate him and having another costly Chapter 21 hearing—that decision ended his chance for reinstatement and resulted in Palazzolo’s actual termination. We are not saying that the evidence conclusively supports what Palazzolo claims concerning FWISD’s retaliatory intent. But neither has FWISD conclusively proven its case. Rather, Palazzolo presented evidence sufficient to raise a genuine issue of material fact that he suffered an adverse employment action—leading to his termination—because of his reports of FWISD’s alleged violations of law.

Accordingly, the trial court did not err by denying FWISD’s challenge to Palazzolo’s jurisdictional facts and trying to get the case before a jury, which can then resolve the parties’ disputed fact issues. *See Palazzolo IV*, 498 S.W.3d at 685–86. We overrule the part of FWISD’s issue challenging Palazzolo’s jurisdictional facts.

E. FWISD's Immunity Defense

In its jurisdictional plea, FWISD also argued that it was entitled to governmental immunity from Palazzolo's whistleblower claim arising from FWISD's Board's unanimous February 14, 2012 decision to exercise its statutory option under Section 21.304(f) to pay its former employee in lieu of reinstating him for further Chapter 21 proceedings on his proposed termination. FWISD maintained that the legislature did not establish a clear and unambiguous waiver of governmental immunity for a school district exercising the Section 21.304(f) option. On appeal, FWISD contends that the trial court improperly rejected this argument. It did not.

It is settled in Texas that for the legislature to waive a school district's governmental immunity, a statute or resolution must contain a clear and unambiguous expression of the waiver. *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 696 (Tex. 2003). "[A] statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language." Tex. Gov't Code § 311.034. Here, there is no dispute that the Act waives a school district's governmental immunity when a public employee alleges a violation of the statute. Tex. Gov't Code § 554.0035; *Lueck*, 290 S.W.3d at 882; *Palazzolo V*, 2019 WL 2454866, at *7.

FWISD has cited no authority suggesting that a school district's exercising its option under Section 21.304(f), *see* Tex. Educ. Code § 21.304(f), results in the district's reimposing its statutorily waived immunity from a former employee's whistleblower

claim, *see* Tex. Gov't Code §§ 554.002, .0035. Nor have we found any such authority. Indeed, we have already stated that “we abhor the thought that a school board could otherwise attempt to buy off a [w]histleblower claim—with its attendant allegations of governmental wrongdoing and retaliation—for the price of a year’s salary under Chapter 21.” *Palazzolo V*, 2019 WL 2454866, at *18 n.28.

And considering the text of the applicable statutes, we do not think that the legislature intended for Section 21.304(f), when exercised, to functionally reimpose a district’s immunity from a whistleblower claim. Chapter 21, Subchapters F and G, of the Texas Education Code governs certain proposed contract terminations and creates a structured hearing process before an independent hearing examiner with appellate review before the Commissioner of Education. *See* Tex. Educ. Code §§ 21.251–.307.

The Texas Whistleblower Act creates a statutory cause of action as we have set forth above. Tex. Gov’t Code Ann. § 554.003. It “has its own statutory remedies and procedures that do not require exhaustion with the Commissioner under the Education Code.” *Palazzolo V*, 2019 WL 2454866, at *9 (quoting *Canutillo ISD v. Farran*, 409 S.W.3d 653, 657 (Tex. 2013)). Nothing in the text of either Chapter 21 of the Texas Education Code or Chapter 554 of the Texas Government Code states that a school district’s exercising its Section 21.304(f) rights concerning an employee’s term contract operates to extinguish the affected employee’s potential whistleblower claim for the employer’s alleged adverse action. *See Allison Publications, LLC v. Doe*,

654 S.W.3d 210, 217 (Tex. App.—Fort Worth 2022, pet. denied) (“The legislature does not alter major areas of law in vague terms or no terms at all—it does not, one might say, hide elephants in mouseholes.” (citation modified)).

We thus conclude that the trial court did not err by denying FWISD’s jurisdictional plea claiming that it was immune from Palazzolo’s whistleblower claim after exercising its Section 21.304(f) option concerning his contract termination. We overrule the part of FWISD’s issue raising this immunity defense.

III. Conclusion

Having overruled the multiple parts of FWISD’s sole issue, we affirm the trial court’s order denying the jurisdictional plea.

/s/ Elizabeth Kerr
Elizabeth Kerr
Justice

Delivered: August 13, 2026