

## Decision

DOCKET NO. 005-R10-10-2019

PARENT A/N/F STUDENT

v.

HURST-EULESS-BEDFORD  
INDEPENDENT SCHOOL DISTRICT

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BEFORE THE

COMMISSIONER OF EDUCATION

THE STATE OF TEXAS

### **DECISION OF THE COMMISSIONER**

#### **STATEMENT OF THE CASE**

Petitioner, Parent a/n/f Student, complains of actions and decisions of Respondent, Hurst-Euleless-Bedford Independent School District (“HEB ISD”). Merle Dover is the Administrative Law Judge appointed by the Commissioner of Education to hear this cause. Petitioner appears *pro se*. Respondent is represented by Lynn Rossi Scott, Attorney at Law, Fort Worth, Texas.

The primary issue in this case concerns jurisdiction. To invoke the Commissioner’s jurisdiction under Texas Education Code section 7.057(a)(2)(A), the Petitioner must allege an action or a decision by a school district board of trustees that violates a school law of Texas. Petitioner was ordered to amend her Petition for Review to provide a brief description of how a school law was violated by Respondents with supporting facts. The Petitioner was warned that a failure to replead in conformity with the order could result in the case being dismissed. Although Petitioner amended her Petition for Review, she failed to state facts in support of the violations alleged. The Administrative Law Judge issued a Proposal for Decision recommending that this case be dismissed for lack of jurisdiction. No exceptions were filed.

#### **FINDINGS OF FACT**

After due consideration of the record and matters officially noticed, it is concluded that the following Findings of Fact are supported by substantial evidence according to the standards set forth in Texas Administrative Code section 157.1073(h):

1. This appeal results from the consolidation of two grievances filed by Petitioner that allege that Student has been discriminated against, harassed, and retaliated against by campus administration since January 29, 2019.

2. The only specific incident referenced in the grievances and in the Petition for Review and in the Amended Petition for Review is the incident that occurred on March 8, 2019.<sup>1</sup>

3. On March 8, 2019, the Friday prior to Spring Break, an HEB ISD Assistant Principal observed Student with his phone out while standing in the campus office in the middle of the school day.

4. The campus handbook prohibits cell phones from being visible during the school day and allows for confiscation of the phone, which parents may retrieve for a fee.

5. The Assistant Principal directed Student to turn over his phone and Student refused, stating that he would rather have one day of In-School Suspension (“ISS”) than turn over his phone.

6. Refusing the directive to turn over the phone results in one day of ISS pursuant to the District Student Code of Conduct.

7. The Assistant Principal advised Petitioner that Student would receive one day of ISS when he returned from Spring Break on March 18, 2019 because he was observed “on his cell phone” and refused to turn it over when requested.

8. Petitioner disputed that Student was “on his phone,” contending that although Student’s phone was “out,” he was not “operating” his phone.

9. This change in verbiage is not material because the campus policy prohibits cell phones from being visible during the school day. Actual operation of the phone is not necessary to constitute an infraction.

10. Student’s disciplinary referral was revised to state that the cell phone was out, instead of stating that Student was on his cell phone.

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<sup>1</sup> One sentence in the Amended Petition for Review states: “Parental grievance filed in November against my son’s Spanish teacher that was verbally and emotionally abusing students and physically throwing objects at students.” This allegation is not addressed because it is not included in the record as the Petition for Review was filed on October 4, 2019, so a grievance filed in November cannot be considered.

11. Petitioner's second grievance alleged that Student was being discriminated against because he is bi-racial and gay and that he is being retaliated against because Parent is a district teacher who had filed a previous grievance.

12. In the second grievance, Parent requested the following remedies:

- a. Stop discriminating.
- b. Stop progressive discipline.
- c. More appropriate consequences that actually teach young people life and social skills.

13. During the Level One hearing, Petitioner added the following requested remedies:

- d. Student's discipline record be accurate.
- e. Student's attendance record be accurate.
- f. Student receive a formal apology.
- g. Student receive positive strategies for self-regulation.
- h. Student receive Section 504 support.<sup>2</sup>
- i. Student have a safe place at L.D. Bell High School (for the next school year) and be connected to Mr. Weidman.
- j. District training and utilization of Trust-Based Relational Intervention (TBRI).
- k. District training and utilization of Love and Logic for Educators and Administrators.
- l. Streamline the grievance process to be more impartial.
- m. An advocate provided by the District (from an outside agency) for students/families when students receive DAEP assignments.

14. As evidence of the alleged pattern of discrimination and retaliation, Petitioner provided Student's discipline record reflecting 15 referrals for class disruptions, disrespect to teachers, inappropriate comments in class, violation of cell phone policy, failure to follow directions, multiple tardies, and disrupting the test environment during end-of-course exams.

15. Petitioner did not provide evidence of different treatment of students with the same infractions.

16. Consequences assigned to student were consistent with campus and district policies.

17. In response to Petitioner's grievances, changes were made to correct Student's disciplinary and attendance records.

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<sup>2</sup> Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

18. Petitioner's requests for positive strategies for self-regulation, a "safe place" in high school, and connection with Mr. Weidman were granted during the grievance process.

### DISCUSSION

#### Texas Education Code Section 1.002

Petitioner alleges that Student was not provided equal opportunity at his school in violation of Texas Education Code section 1.002. Respondent asserts that Petitioner fails to articulate how the denial of her grievance violates this law. Respondent is correct.

Texas Education Code section 1.002(a) mandates that every educational institution shall provide equal opportunities to all individuals within its jurisdiction. Texas Education Code section 1.002(b) states that an educational institution may not deny services to any individual eligible to participate in special education services provided by Texas Education Code section 29.003. Petitioner fails to provide any facts that would show that Student has been denied an equal opportunity of any kind or that Student is eligible for special education services and has been denied. Although Petitioner requests that Student receive Section 504 support, that is not the same as special education services. Section 504 is a federal law that prohibits disability discrimination. Petitioner does not allege facts showing that Student has a disability or is eligible for either Section 504 support or special educational services. Moreover, even if specific facts had been alleged, the Commissioner does not have jurisdiction over claims arising under federal statutes. *McIntyre v. El Paso Ind. Sch. Dist.*, 499 S.W.3d 820, 821 (Tex. 2016), *Maiden v. Texas Educ. Agency and Cypress-Fairbanks Ind. Sch. Dist.*, No. 03-09-00681-CV, 2011 WL 1744963, at \*5 (Tex. App. – Austin May 6, 2011, no pet.). Petitioner's claim of violation of Texas Education Code § 1.002 should be dismissed for lack of jurisdiction due to failure to state a claim for which relief could be granted.

#### Texas Education Code Section 26.001(a)-(c)

Petitioner alleges that the officials at Student's school did not allow her to be a partner in her son's education in violation of Texas Education Code section 26.001(a)-(c). Texas Education Code section 26.001(a)-(c) provide that parents are partners in their children's education, parents

are encouraged to actively participate in creating and implementing programs for their children, and no person may limit parental rights. The only incident Petitioner provides as an example of this alleged violation is the cell phone incident of March 8, 2019. However, in response to Petitioner's grievance, Student's disciplinary referral was changed to indicate that Student's cell phone was "out" rather than "on." Respondent's willingness to work with Petitioner in this way is the essence of allowing a parent to be a partner in their child's education as required by Texas Education Code § 26.001, not a violation of the statute. The Amended Petition for Review did not cure the jurisdictional defect. Petitioner has failed to allege facts supporting Respondent's violation of Texas Education Code section 26.001(a)-(c).

Although not necessary for this decision on jurisdiction, an examination of the record reveals further evidence that shows that Respondent allowed Petitioner to partner in Student's education and granted many of her requested remedies. For example, in response to her grievance regarding the wording of the disciplinary referral about Student's violation of the cell phone policy, the Assistant Principal changed the wording to state that Student's cell phone was "out" instead of stating that Student was "on" his cell phone. In response to the second grievance, many of the requested remedies were granted by the Assistant Superintendent at Level Two of the grievance process. Petitioner objected to Student's attendance record which reflected unexcused absences for illnesses after five absences. When Petitioner made known that she failed to provide doctor's notes because she is a conscientious objector to Western medicine and opts out of vaccinations and doctor visits, the unexcused absences were changed to excused. The requests for positive strategies for self-regulation, a "safe place" in high school, and connection with Mr. Weidman were granted. Mr. Weidman was directed to work with Student on strategies for self-regulation and to meet with student prior to the start of school to assist with the transition to high school. The request for Section 504 services was neither granted nor denied but forwarded to the high school counseling staff for evaluation and consideration by the 504 Committee. The request for a formal apology was neither granted nor denied because an apology is a personal act that is meaningless if performed by mandate. Petitioner's request that district staff be trained in TBRI and Love and

Logic was denied, although Petitioner's request was shared with the Professional Development Office for consideration. Petitioner's request for a more streamlined grievance process was denied because the process follows the guidelines recommended by the Texas Association of School Boards. Petitioner's request for a student advocate from outside the district was denied; however, parents have the right to bring their own advocates to all meetings including meetings associated with DAEP.

Overall, Petitioner's complaints and requested remedies were given serious consideration by the administration and a relatively positive outcome was achieved. Four requested remedies were granted, three were forwarded to the appropriate committees for consideration, two were denied and one (the apology) was neither granted nor denied. Viewed objectively, Petitioner was treated as a partner in Student's education and her requests were treated appropriately according to state law and policy.

#### CONCLUSIONS OF LAW

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

1. To invoke the Commissioner's jurisdiction under Texas Education Code section 7.057(a)(2)(A), the Petition for Review must allege facts that support a violation of a school law of the State of Texas. 19 Tex. Admin. Code § 157.1073(c).

2. Petitioner failed to allege facts to support her claim that Respondent failed to provide equal educational opportunity to Student in violation of Texas Education Code section 1.002.

3. Petitioner failed to allege facts to support her claim that Respondent failed to treat her as a partner in Student's education in violation of Texas Education Code section 26.001(a)-(c).

4. Progressive discipline is lawful under Texas Education Code section 37.002.

5. The Commissioner lacks jurisdiction over claims of violation of federal law. *McIntyre v. El Paso Ind. Sch. Dist.*, 499 S.W.3d 820, 821 (Tex. 2016).

6. This case should be dismissed for lack of jurisdiction.

ORDER

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact and Conclusions of Law, in my capacity as Commissioner of Education, it is hereby ORDERED that the Petitioner's appeal be, and is hereby, DISMISSED for lack of jurisdiction.

SIGNED AND ISSUED this 24th day of April 2020.

A handwritten signature in black ink, appearing to read 'Mike Morath', is written over a horizontal line.

MIKE MORATH  
COMMISSIONER OF EDUCATION

## Proposal for Decision

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## PROPOSAL FOR DECISION

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## FINDINGS OF FACT

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5. The Commissioner lacks jurisdiction over claims of violation of federal law. *McIntyre v. El Paso Ind. Sch. Dist.*, 499 S.W.3d 820, 821 (Tex. 2016).

6. This case should be dismissed for lack of jurisdiction.

RECOMMENDATION

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact and Conclusions of Law, in my capacity as Administrative Law Judge, it is hereby RECOMMENDED that the Commissioner of Education adopt the foregoing Findings of Fact and Conclusions of Law and enter an order consistent therewith.

SIGNED AND ISSUED this 10th day of March 2020.



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MERLE DOVER  
ADMINISTRATIVE LAW JUDGE