

DOCKET NO. 051-R10-07-2022

PARENT ON BEHALF OF STUDENT, Petitioner,	§	BEFORE THE
	§	
v.	§	COMMISSIONER OF EDUCATION
	§	
HEARNE INDEPENDENT SCHOOL DISTRICT,	§	
Respondent.	§	THE STATE OF TEXAS

DECISION OF THE COMMISSIONER

STATEMENT OF THE CASE

Petitioner, appearing as next friend of a student enrolled with Respondent Hearne Independent School District, filed an appeal with the Texas Commissioner of Education complaining that Respondent did not provide the student with consistent or adequate special education services during the 2021–2022 school year or subsequently during a 2022 summer enrichment program. Adrienne Butcher is the Administrative Law Judge assigned to this case. Petitioner proceeds *pro se*. Respondent is represented by its counsel, Todd A. Clark, of Walsh Gallegos Treviño Kyle & Robinson P.C.

Because Petitioner presents the same five claims that the Agency addressed in a special education complaint Petitioner filed against Respondent in April 2022, which resulted in a final report over which the Agency retains compliance oversight, and further because all but one claim Petitioner asserts concern federal regulations over which the Commissioner lacks jurisdiction, and her one school law claim is moot, Petitioner’s appeal is dismissed.¹

FINDINGS OF FACT

After due consideration of the record and matters officially noticed, it is concluded that the following Findings of Fact are established by the record and file in this case in accordance with 19 Tex. Admin. Code § 157.1072(i):

¹ The Administrative Law Judge issued a Proposal for Decision recommending dismissal of Petitioner’s appeal. No parties filed exceptions.

1. Petitioner is the parent of a student enrolled at all relevant times in Respondent's schools.

2. On or about April 14, 2022, Petitioner filed a special education complaint against Respondent with the Texas Education Agency ("Agency"). In five allegations, Petitioner complained that Respondent violated Code of Federal Regulations Title 34, §§ 300.304, 300.320, 300.323, 300.324, and 300.504. She also alleged Respondent violated Texas Education Code § 28.0211.

3. The Agency's Complaints Division investigated Petitioner's complaint and issued a June 6, 2022 final Special Education Complaint Investigative Report ("Investigative Report"), contained in the local record. In its Investigative Report, the Complaints Division sustained two of Petitioner's allegations and found the other three unsubstantiated. The Investigative Report's final page provides,

Further intervention by TEA may result if the LEA does not provide the requested information or respond within the required timeline. In accordance with 34 CFR §300.600(e), TEA must ensure that the LEA corrects identified noncompliance "as soon as possible, and in no case later than one year after the State's identification of the noncompliance." Therefore, all required corrective actions must be completed no later than June 6, 2023. Failure to correct the cited noncompliance by this date will result in an additional finding of noncompliance under 34 CFR §300.600(e) and may result in additional sanctions against the LEA as outlined in 19 TAC §89.1076.

4. Shortly before filing her April 2022 special education complaint with the Agency, Petitioner filed a grievance with Respondent complaining about its provision of special education services. After Respondent's board of trustees decided Petitioner's grievance, granting her partial relief, Petitioner filed this appeal with the Commissioner. In this appeal, Petitioner presents the same claims as in her April 2022 complaint and further asserts that Respondent did not correct the allegations she raised, which she alleges continued through the summer of 2022.

5. The Administrative Law Judge held a prehearing conference to address jurisdiction. After the conference, she issued an Order Providing Notice of Intent to Dismiss and Opportunity for Response. Petitioner did not file a response.

DISCUSSION

The Commissioner's appellate jurisdiction

The Commissioner has limited jurisdiction, provided by statute, to hear appeals by parties who allege they are aggrieved by certain school board actions or decisions. *See* Tex. Educ. Code § 7.057(a)(2). A petitioner so appealing has the burden of establishing the Commissioner's jurisdiction over the appeal.

Pleadings must contain a statement of jurisdiction and the legal basis for the claim. 19 Tex. Admin. Code §§ 157.1051(a), 157.1073(c). Although Petitioner did not make a jurisdictional statement, she appears to proceed under Texas Education Code § 7.057(a)(2)(A), as she does not assert any employment contract violations. Under section 7.057(a)(2)(A), the Commissioner has jurisdiction to hear appeals by persons aggrieved by Texas public school board actions or decisions that violate the school laws of this state, defined as titles 1 and 2 of the Texas Education Code and the administrative rules adopted under them. *See* Tex. Educ. Code § 7.057(a)(2)(A), (f)(2). The Commissioner has no jurisdiction over appeals of alleged violations of laws other than Texas school laws, including alleged violations of federal laws and regulations, as these are not the school laws of this state. *See* Tex. Educ. Code § 7.057(f)(2).

Petitioner's special education complaint to the Agency

On or about April 14, 2022, Petitioner filed her special education complaint with the Agency, raising the same allegations she now asserts in this appeal. The Agency's Complaints Division investigated Petitioner's complaint and issued its June 6, 2022 Investigative Report, which is contained in the local record and is jurisdictionally relevant. *See Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226–27 (Tex. 2002). Therein, the Complaints Division sustained two allegations and found the other three unsubstantiated. The Investigative Report's final page provides,

Further intervention by TEA may result if the LEA does not provide the requested information or respond within the required timeline. In accordance with 34 CFR §300.600(e), TEA must ensure that the LEA corrects identified noncompliance “as soon as possible, and in no case later than one year after the State's identification of the noncompliance.” Therefore, all required corrective actions must be

completed no later than June 6, 2023. Failure to correct the cited noncompliance by this date will result in an additional finding of noncompliance under 34 CFR §300.600(e) and may result in additional sanctions against the LEA as outlined in 19 TAC §89.1076.

Thus, the Complaints Division retains oversight, with sanctioning authority, over Respondent's timely compliance with its Investigative Report.

Petitioner's claims before the Commissioner

In her pleading, Petitioner reasserts as appellate claims the same five allegations the Agency addressed in its Investigative Report. An administrative appeal under section 7.057(a)(2)(A) is not a viable avenue to relitigate these claims with the Commissioner, and it unnecessarily duplicates proceedings. The Commissioner cannot address these claims without risking different potential outcomes, which is also problematic because the Complaints Division retains compliance oversight over its Investigative Report. Regarding Petitioner's claim that Respondent failed to remedy the alleged special education violations over the summer of 2022, the Investigative Report provides compliance deadlines for the two sustained allegations, which accord with federal regulations. *See* 34 C.F.R. § 300.600(e). Moreover, claims about special education services provided in the summer of 2022, after Petitioner filed her grievance, have not been presented to the board of trustees for action or decision and are not properly before the Commissioner. *See* Tex. Educ. Code § 7.057(a)(2)(A).

School laws of this state

In addition to the foregoing, Petitioner does not establish the Commissioner's jurisdiction under section 7.057(a)(2)(A), which authorizes appeals of violations by school boards of Texas school laws. *See* Tex. Educ. Code § 7.057(a)(2)(A). All but one of Petitioner's claims involve federal regulations; Petitioner claims Respondent violated Code of Federal Regulations Title 34, §§ 300.304, 300.320, 300.323, 300.324, and 300.504. None of these are Texas school laws. *See* Tex. Educ. Code § 7.057(f)(2). Thus, even if Petitioner had not submitted her special education complaint to the Agency in April 2022, the Commissioner could not address these federal claims

because he lacks jurisdiction over alleged federal regulation violations.² For this additional reason, Petitioner's claims of federal regulation violations are dismissed for lack of jurisdiction. *Id.*

Texas Education Code § 28.0211

Petitioner alleges one Texas school law violation in her petition for review: Texas Education Code § 28.0211. This statute sets out requirements for accelerated learning committees and instruction, based on student assessment test performance. Petitioner claims that Respondent violated this statute by not having an accelerated services plan of instruction documented at the Admission, Review, and Dismissal (ARD) meeting held after the student's 2021 test results.

The local record reflects that the Agency investigated this allegation as part of Petitioner's April 2022 special education complaint. In its Investigative Report, the Agency determined that this allegation was unsubstantiated, based on its finding that Respondent demonstrated it timely provided accelerated services in the summer of 2021 and subsequently documented the accelerated services plan in September 2021 and again in February 2022. The Agency noted that while the student's special education team should have documented the plan earlier, it had cured the deficiency. This corrective action and the absence of other alleged section 28.0211 violations leave no remaining controversy regarding section 28.0211, which is therefore moot. Mootness is a component of subject-matter jurisdiction; if a matter is moot, the Commissioner lacks jurisdiction over it. *See Lehr v. Ector County Indep. Sch. Dist.*, No. 003-R3-0908 (Comm'r Educ. 2011) (citing *State Bar of Tex. v. Gomez*, 891 S.W.2d 243, 244 (Tex. 1994)). The Commissioner may dismiss a case for mootness and for unnecessary duplication of proceedings. 19 Tex. Admin. Code § 157.1056(a). Petitioner's section 28.0211 claim, which the Agency already addressed, is dismissed because it unnecessarily duplicates proceedings and further because it is moot.

Conclusion

Petitioner's appeal is dismissed for lack of jurisdiction, unnecessary duplication of proceedings, and mootness.

² Complaints that school districts are not complying with special education rules or taking required corrective actions may be addressed by submitting special education complaints to the Agency (such as the one Petitioner submitted) or through special education due process proceedings.

CONCLUSIONS OF LAW

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

1. A party who appeals to the Commissioner of Education, as the party seeking relief, has the burden of establishing the Commissioner's jurisdiction over the appeal.

2. A petition for review under Texas Education Code § 7.057(a)(2)(A) must identify a school law of this state that the respondent school board of trustees allegedly violated. *See* Tex. Educ. Code § 7.057(a)(2)(A).

3. To the extent Petitioner's petition for review contends that Respondent violated Code of Federal Regulations Title 34, §§ 300.304, 300.320, 300.323, 300.324, and 300.504, the Commissioner lacks jurisdiction over these claims because they are not the school laws of this state. *See* Tex. Educ. Code § 7.057(f)(2).

4. The Commissioner may dismiss a case for mootness or unnecessary duplication of proceedings. 19 Tex. Admin. Code § 157.1056(a).

5. Petitioner's appeal relitigates the allegations she raised in her April 2022 special education complaint to the Texas Education Agency's Complaints Division and is dismissed, as it unnecessarily duplicates proceedings. 19 Tex. Admin. Code § 157.1056(a).

6. Petitioner's claim that Respondent violated Texas Education Code § 28.0211 is her only claim involving a school law of this state. The Agency addressed this allegation in its Investigative Report in response to Petitioner's April 2022 special education complaint, finding it unsubstantiated because Respondent had taken corrective action. This claim is dismissed because it unnecessarily duplicates proceedings. It is also dismissed because it is moot. 19 Tex. Admin. Code § 157.1056(a).

7. Petitioner's appeal is dismissed for lack of jurisdiction, unnecessary duplication of the proceedings, and mootness.

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.

SIGNED AND ISSUED this 15th day of December 2022.

Mike Morath Digitally signed by Mike Morath
Date: 2022.12.15 10:24:40
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MIKE MORATH
COMMISSIONER OF EDUCATION

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PROPOSAL FOR DECISION

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Petitioner raises one Texas school law in her petition for review: Texas Education Code § 28.0211. This statute sets out requirements for accelerated learning committees and instruction,

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based on student assessment test performance. Petitioner claims Respondent violated this statute by not having an accelerated services plan of instruction documented at the Admission, Review, and Dismissal (ARD) meeting held after the student's 2021 test results.

The local record reflects that the Agency's Complaints Division investigated this allegation as part of Petitioner's April 2022 special education complaint. In its Investigative Report, the Agency found this allegation unsubstantiated, finding that Respondent had demonstrated timely provision of accelerated services in the summer of 2021 and subsequent documentation of the accelerated services plan in September 2021 and again in February 2022. The Agency observed that while the student's special education team should have documented the accelerated services plan earlier, it had cured the deficiency. This corrective action and the absence of other alleged section 28.0211 violations leaves no remaining controversy regarding section 28.0211, which is therefore moot. Mootness is a component of subject-matter jurisdiction; if a matter is moot, the Commissioner lacks jurisdiction over it. *See Lehr v. Ector County Indep. Sch. Dist.*, No. 003-R3-0908 (Comm'r Educ. 2011) (citing *State Bar of Tex. v. Gomez*, 891 S.W.2d 243, 244 (Tex. 1994)). The Commissioner may dismiss a case for mootness and for unnecessary duplication of proceedings. 19 Tex. Admin. Code § 157.1056(a).

Petitioner's section 28.0211 claim, which the Complaints Division has already addressed, is dismissed because it unnecessarily duplicates proceedings and further because it is moot.

Conclusion.

Petitioner's appeal is dismissed for lack of jurisdiction, unnecessary duplication of proceedings, and mootness.

CONCLUSIONS OF LAW

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1. A party who appeals to the Commissioner of Education, as the party seeking relief, has the burden of establishing the Commissioner's jurisdiction over the appeal.

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7. Petitioner's appeal is dismissed for lack of jurisdiction, unnecessary duplication of the proceedings, and mootness.

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, I hereby RECOMMEND 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 18th day of October 2022.

Adrienne Butcher Digitally signed by Adrienne
Butcher
Date: 2022.10.18 12:07:38 -05'00'

ADRIENNE BUTCHER
ADMINISTRATIVE LAW JUDGE