

DOCKET NO. 007-R10-10-2022

ROBERT E. GRIER,	§	BEFORE THE
Petitioner,	§	
	§	
v.	§	COMMISSIONER OF EDUCATION
	§	
CROCKETT INDEPENDENT SCHOOL	§	
DISTRICT	§	
Respondent.	§	THE STATE OF TEXAS

DECISION OF THE COMMISSIONER

STATEMENT OF THE CASE

Petitioner Robert Grier filed an October 28, 2022 petition for review with the Texas Commissioner of Education. Therein, he asserts that Respondent Crockett Independent School District's board of trustees and its superintendent failed for four years to improve an elementary school's standardized test performance and, during the 2021–2022 school year, failed to maintain an educational environment and to correct campus disciplinary issues. Adrienne Butcher is the Administrative Law Judge assigned to this case. Petitioner proceeds *pro se*. Respondent is represented by its counsel, Trevor B. Hall, of the Powell Law Group, L.L.P., Austin, Texas.

The Administrative Law Judge held a prehearing conference, which both parties attended. Because Petitioner's appeal is untimely, which requires its dismissal, and alternatively because Petitioner fails to establish the Commissioner's jurisdiction, his appeal is dismissed.

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. Petitioner, a taxpayer and "patron" in Respondent's school district, filed a grievance under Respondent's grievance policy complaining about an elementary school's standardized test performance and Respondent's and its superintendent's alleged failure to take corrective action, as well as to correct disciplinary and other campus issues.

2. Respondent's board of trustees heard and denied Petitioner's Level 3 hearing on his grievance on July 25, 2022. Petitioner attended the July 25, 2022 hearing.

3. On October 28, 2022, Petitioner filed his petition for review with the Commissioner, appealing the board's decision. Respondent filed a plea to the jurisdiction.

4. The Administrative Law Judge held a December 12, 2022 prehearing conference. In the conference, Petitioner acknowledged that his appeal was untimely.

5. The Administrative Law Judge issued a Proposal for Decision. No parties filed exceptions.

DISCUSSION

Timeliness of Petitioner's appeal

Petitioner was present at the July 25, 2022 Level 3 grievance hearing when the board denied his grievance. The Agency's rules require petitioners to appeal to the Commissioner within forty-five calendar days of the date the board first communicates its decision to the petitioner. 19 Tex. Admin. Code § 157.1049(a). In all cases, a petitioner's or his or her representative's presence when the board announces its decision constitutes the required communication to the petitioner. *Id.* Failure to meet the 45-day deadline "will result in the dismissal of the case." *Id.* § 157.1049(e).

The forty-fifth calendar day after July 25, 2022 was Thursday, September 8, 2022. Petitioner filed his petition for review on October 28, 2022, more than a month after its deadline. In the prehearing conference, he acknowledged that his appeal was untimely. Although Petitioner is not an attorney and proceeds *pro se*, all procedural requirements apply to *pro se* parties, including deadlines. Agency rules require the appeal's dismissal. *See* 19 Tex. Admin. Code §§ 157.1049(e); 157.1056(a).

Texas Education Code § 7.057(a)(2)(A) jurisdiction

In addition to the foregoing, Petitioner does not establish the Commissioner's jurisdiction over his appeal. The Commissioner has limited, statutory appellate jurisdiction that a petitioner must affirmatively plead. Petitioner did not identify a jurisdictional statute in his pleading but appears to proceed under Texas Education Code § 7.057(a)(2)(A), as he complains about

Respondent's board's actions and does not assert an employment contract or aggrievement by any Texas school laws. The Commissioner has § 7.057(a)(2)(A) jurisdiction to hear appeals of "actions or decisions of any school district board of trustees that violate the school laws of this state," which are defined as titles 1 and 2 of the Texas Education Code and the rules adopted under those titles. *See* Tex. Educ. Code § 7.057(a)(2)(A); (f)(2).

Petitioner identified no Texas school laws in his pleading. He also seeks relief from the Commissioner against the superintendent, over whom the Commissioner lacks § 7.057 jurisdiction. *See Emerine v. Neches Indep. Sch. Dist.*, No. 028-R10-02-2021 (Comm'r Educ. 2021). The Commissioner has jurisdiction to review actions and decisions by Texas public school boards of trustees, not by district personnel, except to the extent school boards, by their actions or decisions, sanction personnel actions, which are then subject to appeal to the Commissioner. *See* Tex. Educ. Code § 7.057(a)(2). Because Petitioner fails to identify any Texas school laws the board allegedly violated, he also fails to establish the Commissioner's jurisdiction over his appeal, which should be dismissed.

Conclusion

Petitioner's appeal is dismissed as untimely and for failure to demonstrate a basis for the Commissioner's jurisdiction. Although the Commissioner generally affords parties an opportunity to replead to cure defects, that would be futile here because Petitioner cannot cure untimeliness.

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. Petitioner's October 28, 2022 petition for review was untimely because it was not filed within forty-five days of July 25, 2022, when Respondent's board first communicated its decision to Petitioner. 19 Tex. Admin. Code § 157.1049(a), (e).
2. Petitioner's appeal is dismissed as untimely. 19 Tex. Admin. Code § 157.1049(e).

3. A petition for review under Texas Education Code § 7.057(a)(2)(A) must assert facts and law that affirmatively establish the Commissioner's appellate jurisdiction. Tex. Educ. Code § 7.057(a)(2)(A).

4. Petitioner's appeal is alternatively dismissed for lack of jurisdiction, as he identifies no Texas school laws that Respondent's board allegedly violated. Tex. Educ. Code § 7.057(a)(2)(A).

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 27 day of January 2023.

Mike Morath

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MIKE MORATH
COMMISSIONER OF EDUCATION