

PARENTS A/N/F STUDENT, Petitioner,	§	BEFORE THE
	§	
	§	
v.	§	COMMISSIONER OF EDUCATION
	§	
ALVARADO INDEPENDENT SCHOOL DISTRICT,	§	
Respondent.	§	THE STATE OF TEXAS

**DECISION OF THE COMMISSIONER**

**STATEMENT OF THE CASE**

Petitioner, Parents, complain about actions and decisions of Respondent, Alvarado Independent School District. Christopher Maska is the Administrative Law Judge appointed by the Commissioner of Education to hear this cause. Petitioners appeared pro se. Respondent is represented by Laura Rodriguez McLean, Attorney at Law, Irving, Texas.

The primary issue in this case is jurisdiction. In particular, the issue is whether Petitioners have stated a potential violation by Respondent’s board of trustees of the school laws of this state. Petitioners assert that a school district policy may not restrict any parent from access from their child, or any programs in which their child is involved, for any reason at any time. Petitioners further assert that Respondent’s policy improperly restricted one of the Petitioners from a school awards ceremony, violating Texas Education Code §§ 1.002, 4.001, and 26.001. However, none of these statutes require the unrestricted access Petitioners assert or were potentially violated when Respondent denied the Petitioner access to the awards ceremony.

The Administrative Law Judge issued a Proposal for Decision recommending that Petitioner’s appeal be dismissed. 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 the record in this case.

1. Petitioners are parents of a child enrolled in Respondent’s schools. One of Petitioners is a registered sex offender under Texas law.

2. On or about August 13, 2022, Petitioners filed their Petition for Review. The petition did not allege that Respondent violated a school law of this state.

3. On or about September 19, 2022, Respondent filed its Plea to the Jurisdiction and Motion to Dismiss.

4. On September 28, 2022, the Administrative Law Judge held a prehearing conference to consider Respondent's Plea to the Jurisdiction and Motion to Dismiss.

5. The Administrative Law Judge issued a September 28, 2022 Order Concerning Prehearing Conference, finding that the Petition for Review failed to invoke the Commissioner's jurisdiction. The Order provided Petitioner an opportunity to replead and provided, "**A failure to replead in conformity with this Order could result in this case being dismissed**" (emphasis in original).

6. Petitioners filed an Amended Petition for Review, contending that a school district policy may not restrict any parent from access to their child or any programs in which the child is involved, for any reason at any time and that Respondent's policy improperly restricted the Petitioner, who is a registered sex offender, from attending the awards ceremony. Petitioners claim Respondent's policy violates Texas Education Code §§ 1.002, 4.001, and 26.001.

#### DISCUSSION

Petitioners claim Respondent's policy, which applies to registered sex offenders and was Respondent's basis to deny one of the Petitioners access to the school awards ceremony, violates the school laws of this state. Respondent denies this and asserts that Petitioners failed to plead a violation of the school laws of this state.

#### Jurisdiction

The Commissioner's jurisdiction under 7.057(a)(1) and (a)(2)(A) is limited to alleged violations of the school laws of this state and violations of written employment contracts that

cause or would cause monetary harm.<sup>1</sup> To invoke the Commissioner’s jurisdiction, more is required than a school board’s denial of a grievance.

### School Laws of This State

The “school laws of this state” are defined as the first two titles of the Texas Education Code and the rules adopted under those titles. Tex. Educ. Code § 7.057(f)(2). The Commissioner has held that the referenced rules are rules adopted by the Commissioner or the State Board of Education. *Reeves v. Aledo Indep. Sch. Dist.*, Docket No. 106-R10-496 (Comm’r Educ. 1999). Under Texas Education Code §§ 7.057(a)(1) and (a)(2)(A), the Commissioner lacks jurisdiction over alleged violations of the United States Constitution. *McIntyre v. El Paso Indep. Sch. Dist.*, 499 S.W.3d 820, 821 (Tex. 2016). Under Texas Education Code §§ 7.057(a)(1) and (a)(2)(A), the Commissioner lacks jurisdiction over alleged violations of school board policies. *Reeves*, No. 106-R10-496. Under Texas Education Code §§ 7.057(a)(1) and (a)(2)(A), the Commissioner lacks jurisdiction over federal statutes. *Page v. Tarleton State Univ.*, Docket No. 023-R8-1205 (Comm’r Educ. 2007).

There was a time when the Commissioner’s jurisdiction was not limited to violations of the school laws of this state. *See Spring Indep. Sch. Dist. v. Dillon*, 683 S.W.2d 832 (Tex. App.—Austin 1984, no writ). However, the 1995 amendments to the Texas Education Code significantly limited the Commissioner’s jurisdiction. *Austin Indep. Sch. Dist. v. Lowery*, 212 S.W.3d 827, 832 (Tex. App. Austin 2006, pet. denied). To plead a violation of the school laws of this state, one needs to identify the school law alleged to be violated and provide a brief description of how the law was violated.

### Texas Education Code § 1.002

Petitioners contend that under Texas Education Code § 1.002, entitled “Equal Educational services or Opportunities,” a school district policy may not restrict any parent from access to their child, or any programs in which the child is involved, for any reason for any time.

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<sup>1</sup> Petitioners did not allege a violation of an employment contract under Texas Education Code § 7.057(a)(2)(B).

Petitioners claim Respondent's policy improperly restricted one of the Petitioners from the awards ceremony. However, Texas Education Code § 1.002 provides:

EQUAL EDUCATIONAL SERVICES OR OPPORTUNITIES. (a) An educational institution undertaking to provide education, services, or activities to any individual within the jurisdiction or geographical boundaries of the educational institution shall provide equal opportunities to all individuals within its jurisdiction or geographical boundaries pursuant to this code.

Tex. Educ. Code § 1.002. This requires equal opportunities, not equal *results*. It does not mean that because one parent can attend a school event, all parents can attend the school event. For example, a parent volunteer may attend the dress rehearsal for a school play because the parent is skilled in scenery changes and has volunteered her time. Section 1.002 does not consequently require that all parents have access to the dress rehearsal, even if they lack the requisite skills or are not volunteers. Section 1.002 does not require that parents who are registered sex offenders have complete access to all programs in which their children are involved. Instead, it requires that individuals in the same circumstances be treated equally. Since Petitioners do not allege that Respondent treated a Petitioner differently than other registered sex offenders, Petitioners have not pled a potential violation of § 1.002.

#### Texas Education Code § 4.001

Petitioners also contend that Texas Education Code § 4.001, entitled "Public Education Mission and Objectives," requires school districts to give parents complete access to their children and that Respondent violated it by denying one of the Petitioners access to the awards ceremony. However, as the Commissioner and the Third Court of Appeals have held:

We agree with the Commissioner's determination that because section 4.001 provides only the mission statement and objectives of public education, it does not set forth a cognizable cause of action that the Commissioner can enforce.

*Maiden v. Tex. Educ. Agency*, No. 03-09-00681-CV, 2011 Tex. App. LEXIS 3452, at \*11–12 (Tex. App.—Austin May 6, 2011, no pet.). Section 4.001 is broad and aspirational; it does not create enforceable standards. If the Commissioner could decide whether any school board action or decision sufficiently complied with § 4.001, he could second-guess virtually every school

board action or decision. This would contradict the Legislature’s narrowing of the Commissioner’s jurisdiction in the 1995 amendments. *See* Tex. Educ. Code § 7.057(a)(2).

Texas Education Code § 26.001

Petitioners further contend that Texas Education Code § 26.001, entitled, “Purpose,” requires that parents be given complete access to their children, and Respondent violated §§ (a), (b), and (c) of this statute by denying one of Petitioners access to the awards ceremony. Section 26.001 provides, in relevant part:

(a) Parents are partners with educators, administrators, and school district boards of trustees in their children’s education. Parents shall be encouraged to actively participate in creating and implementing educational programs for their children.

(b) The rights listed in this chapter are not exclusive. This chapter does not limit a parent’s rights under other law.

(c) Unless otherwise provided by law, a board of trustees, administrator, educator, or other person may not limit parental rights.

Tex. Educ. Code § 26.001(a)–(c).

As to subsection (a), that parents are partners does not mean parents must be given complete access to their child. The Fifth Circuit has held:

We readily acknowledge that parents do have a constitutional right to direct their children’s education, but the Meadows have put forth no caselaw for the proposition that this right extends so far as to include the unfettered right of a parent to visit all areas of a school campus while students are present.

*Meadows v. Lake Travis Indep. Sch. Dist.*, 397 F. App’x 1, 3 (5th Cir. 2010). This is particularly the case here because unlike in the *Meadows* case, one of the Petitioners is a registered sex offender. There is no parental right for parents to be given complete access to their children’s school activities, nor was any parental right violated when school officials directed the Petitioner who was a registered sex offender to leave the awards ceremony.

Petitioners contend that article 62.065 of the Texas Code of Criminal Procedure gives a school two exclusive options when a registered sex offender presents his identification to school officials: let the registered sex offender attend the school activity with or without a chaperone. While § 62.065 does provide that school districts may require chaperones, it does not require school districts to allow registered sex offenders to attend school events. *See* Tex. Code Crim.

Proc. art. 62.065. More specifically, it does not create a parental right to attend school events with chaperones. *See id.* As such, Petitioners did not show that Respondent potentially violated § 26.001(b) or (c), either by having a policy restricting parents' complete access to their children while on school grounds or by directing the Petitioner, who is a registered sex offender, to leave the awards ceremony.

### Conclusion

This case should be dismissed because Petitioners have not pled a potential violation of the school laws of this state, even after repleading.

### 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. The Commissioner lacks jurisdiction over this case under Texas Education Code § 7.057.
2. Texas Education Code § 1.002 requires equal opportunities for school district activities but does not require equal results. Section 1.002 requires that individuals in the same circumstances be treated equally.
3. Petitioners have not plead a potential violation of Texas Education Code § 1.002 because they have not pled that Respondent treated a parent, who is a registered sex offender, differently than the Petitioner denied access to the awards ceremony.
4. Because Texas Education Code § 4.001 provides only the mission statement and objectives of public education, it is aspirational and does not set forth a cognizable cause of action that the Commissioner can enforce.
5. Petitioners have not pled a potential violation of Texas Education Code § 4.001.
6. While Texas Education Code § 26.001(a) encourages active parental participation, there is no unfettered right of a parent to visit all areas of school district property

while students are present, and there is not a right of a parent, who is registered sex offender, to visit all areas of school district property while students are present.

8. Petitioners have not alleged a potential violation of Texas Education Code § 26.001(a)

9. Texas Education Code § 26.001(c) prohibits schools from limiting parents' rights.

10. Petitioners have not pled a potential violation of Texas Education Code § 26.001(c) because there is not an unfettered right of a parent to visit all areas of school district property while students are present and there is not a right of a parent who is registered sex offender to visit all areas of school district property while students are present.

11. This case should be dismissed because Petitioners have failed to plead a potential violation of the school laws of this state after being given an opportunity to plead.

#### 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 16 day of February 2023.

**Mike Morath** Digitally signed by Mike Morath  
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MIKE MORATH  
COMMISSIONER OF EDUCATION