

SAMUEL HALL,	§	BEFORE THE
Petitioner,	§	
	§	
v.	§	COMMISSIONER OF EDUCATION
	§	
MCKINNEY INDEPENDENT SCHOOL DISTRICT	§	
Respondent.	§	THE STATE OF TEXAS

PROPOSAL FOR DECISION

STATEMENT OF THE CASE

Petitioner, Samuel Hall, complains of Respondent McKinney Independent School District’s actions and decisions. Christopher Maska is the Administrative Law Judge appointed by the Commissioner of Education to hear this cause. Petitioner is represented by Debra Liva. Respondent is represented by Rebecca L. Bradley and Lucas C. Henry, Attorneys at Law, McKinney, Texas.

The primary issues in this case are whether (1) Petitioner was given an appropriate warning before a school resource officer issued him a criminal trespass warning and (2) the two-year ban of Petitioner from all school district property violates his parental rights. As the school resource officer never gave Petitioner a verbal warning that his behavior was inappropriate for a school setting before ejecting Petitioner from school property and, hence, Petitioner could not have persisted in the inappropriate behavior after being warned, the criminal trespass warning is invalid. As the two-year ban severely impairs Petitioner’s ability to be a partner in his children’s education and to attend school board meetings, particularly when Petitioner threatened no one, did not disrupt a school activity, and the criminal trespass warning does not otherwise comply with Texas Education Code § 37.105, the criminal trespass warning violates Petitioner’s parental rights.

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:

1. On May 17, 2022, when Petitioner was attempting to attend a school board meeting, a school resource officer issued him a written criminal trespass warning that he was not allowed to be on Respondent's properties. Before issuing Petitioner the criminal trespass warning, the school resource officer had not warned Petitioner that his behavior was inappropriate for a school setting.

2. Petitioner is the father of children who attend Respondent's schools.

3. While the written criminal trespass warning states no time limitation, Respondent has stated that it applies for two years.

4. On April 26, 2022, at a school board meeting, Petitioner cursed. However, the chair did not correct Petitioner and the meeting continued uninterrupted.

DISCUSSION

Petitioner contends Respondent issued him a criminal trespass warning that violates Texas Education Code §§ 26.001(d), 26.007, and 37.105. Respondent denies this and maintains that Petitioner did not raise claims based on Texas Education Code chapter 26 before the school board.

Waiver

Respondent contends that Petitioner did not raise his claims concerning Texas Education Code § 26.001 before the school board and thus waived those claims. As the Commissioner has held, a motion's proponent carries the burden of proof. *Neild v. Beaumont Independent School District*, Docket No. 024-R10-1110 (Comm'r Educ. 2012). Respondent fails to meet its burden because the local record lacks the recording of the school board hearing, which is a required part of the record. 19 Tex. Admin. Code § 157.1073(d)(7). It is the school district's responsibility to file the record. 19 Tex. Admin. Code § 157.1073(e). Because a required portion of the record is missing, the Commissioner cannot determine whether Petitioner failed to raise the claims concerning Texas Education Code §§ 26.001(d) and 26.011. Accordingly, Respondent's exhaustion argument is overruled.

Texas Education Code § 37.105

Texas Education Code § 37.105 sets out the procedure for a school resource officer to eject a person from school property for up to two years:

(a) A school administrator, school resource officer, or school district peace officer of a school district may refuse to allow a person to enter on or may eject a person from property under the district's control if the person refuses to leave peaceably on request and:

(1) the person poses a substantial risk of harm to any person; or
(2) the person behaves in a manner that is inappropriate for a school setting and:

(A) the administrator, resource officer, or peace officer issues a verbal warning to the person that the person's behavior is inappropriate and may result in the person's refusal of entry or ejection; and

(B) the person persists in that behavior.

A school resource officer may eject an individual for up to two years if the person refuses to leave peacefully on request, the person poses a substantial risk of harm to a person or behaves inappropriately, and the person persists in the behavior after a school resource officer issues an initial warning and the person persists in inappropriate behavior. The ejection from school property may not exceed two years. Tex. Educ. Code § 37.105(f).

In the present case, the school resource officer never issued Petitioner a warning about his conduct, so Petitioner did not act inappropriately after receiving such a warning. Nonetheless, the school resource officer issued Petitioner a criminal trespass warning and informed Petitioner that he would be arrested if he did not leave the school property within three minutes. The actions of the school resource officer did not comply with Texas Education Code § 37.105's requirements. Hence, the criminal trespass warning that Respondent gave Petitioner is invalid.

Salinas

Respondent, relying on *Salinas v. Webb Consolidated Independent School District*, Docket No. 034-R10-08-2017 (Comm'r Educ. 2018), argues that the criminal trespass warning was proper. However, *Salinas* is distinguishable because no school resource officer, administrator, or school peace office ejected Salinas from district property. Salinas was a

member of the board of trustees of Webb Consolidated Independent School District. At a board meeting, the school board voted to exclude Salinas from district property, with certain exceptions.¹ The Commissioner found that Texas Education Code § 37.105 did not apply to Salinas because no school resource officer, administrator, or school peace officer ejected him from district property.

Here, by contrast, a school resource officer ejected Petitioner from school property, so § 37.105 does apply. However, the school resource officer did not first verbally warn Petitioner that his behavior was inappropriate and could result in exclusion from school property; Petitioner could not have persisted in the inappropriate behavior after receiving such a warning. Respondent contends Petitioner received such a warning because, at a prior school board meeting where Respondent contends Petitioner acted inappropriately, the school board chair began the meeting with a lengthy, general verbal warning that inappropriate behavior would not be tolerated. The chair's warning does not comply with § 37.105, which requires warnings to be issued by an administrator, school resource officer, or school peace officer. The warning must also address an individual's behavior, and the individual can only be ejected from school property if he or she persists in the behavior that was the subject of the warning. The chair's warning fails to meet the requirements of Texas Education Code § 37.105 because the board chair is not an administrator, school resource officer, or school peace officer; the board chair's warning was not about Petitioner's behavior specifically but a general warning to all attendees; and Petitioner did not persist in inappropriate behavior after receiving a warning concerning that behavior.

Texas Education Code § 26.007

Texas Education Code § 26.007 provides that parents are "entitled to complete access to any meeting of the board of trustees," except for closed meetings. Petitioner contends that no parent can be excluded from board meetings. Thus, there appears to be a conflict between §

¹ Salinas was allowed to attend school board meetings and parent teacher conferences. Salinas did not raise any issues of violations of Texas Education Code chapter 26.

26.007 and § 37.105. The Commissioner in *Salinas* held that school districts generally have the same rights as other property owners to exclude individuals from their property. However, in *Salinas*, parents' rights to attend school board meetings was not an issue. Since parents are entitled to complete access to board meetings, school districts do not have the same rights as other property owners to exclude others from their property as they, at least, generally may not exclude parents from school board meetings. While there is a conflict between the two sections, it is not irreconcilable, as effect can be given to both statutes. It is, therefore, determined that a parent can only be excluded from a school board meeting if the requirements of § 37.105 are met.² This protects parents' rights to be at school board meetings but allows for the removal of a parent when there is a risk of harm or when a parent persistently refuses to behave appropriately after receiving a warning about the parent's behavior. Petitioner was wrongly excluded from board meetings because he was not a threat to anyone, he did not persistently refuse to behave appropriately after receiving a warning about his behavior, and the requirements of Texas Education Code § 37.105 were not met.

Texas Education Code § 26.001

Texas Education Code § 26.001(a) provides:

- (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.

Respondent correctly points out that the Commissioner has mostly considered this provision as aspirational. Not feeling that one is being treated as a partner by a school district does not state a potential violation of Texas Education Code § 26.001. However, the Commissioner has found that Texas Education Code § 26.001 when paired with another section of chapter 26 may constitute a school law of the state that may be violated by a school district. *Parents as Next Friends of Student*, Docket No. 015-R10-12-2021 (Comm'r Educ. 2022). Hence, in the present

² To the extent that the holding of a closed session of a school board meeting under the Texas Open Meetings Act might be described as excluding parents, a school board may hold an executive session in compliance with the Open Meetings Act that does not include all parents at the meeting.

case, one could say Respondent violated both Texas Education Code § 26.001 paired with § 26.007. However, in this case of first impression an issue is raised that excluding a parent from school property, not including board meetings, for two years, may in itself violate Texas Education Code § 26.001.

By issuing the criminal trespass warning, Respondent excluded Petitioner from any in-person participation in his children's education on school property for two years. Parental participation in a child's education benefits not only the parent-child relationship but also the child's education. The two-year ban also prohibited Petitioner from participating in Parent Teacher Association meetings and athletic, informational, and cultural events on school property. The two-year ban severely hampered Petitioner's ability to be treated as a partner in his children's education. In this issue of first impression, it is held that at a minimum, a parent cannot be excluded from all school property for a period of time unless a parent poses a substantial risk of harm to any person or disrupts a school activity. A violation of Texas Education Code § 26.001 occurs if a parent is excluded from school events that are open to similarly qualified parents unless the requirements of Texas Education Code § 37.105 have been satisfied. In the present case, Petitioner posed no harm to any person. While he used a curse word, Petitioner did not disrupt the school board meeting. The school board meeting continued uninterrupted. Further, as noted above, the requirements of Texas Education Code § 37.105 were not satisfied. Respondent violated Texas Education Code § 26.001(a) by excluding Petitioner from all school property for two years when Petitioner was not a threat to anyone, did not disrupt a school activity, and the requirements of Texas Education Code § 37.105 were not satisfied.

Conclusion

The criminal trespass warning is invalid, as it violates Texas Education Code §§ 26.001, 26.007, and 37.105.

CONCLUSIONS OF LAW

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

1. The Commissioner has jurisdiction over this case under Texas Education Code § 7.057(a)(2).
2. The proponent of a motion has the burden of proof on the motion.
3. Respondent's argument that Petitioner waived his Texas Education Code chapter 26 arguments fails because the record does not establish that Petitioner did not raise such arguments before the school board. The record, which is the school district's responsibility to create and file, lacks a recording of the grievance hearing before the school board. From the record that Respondent filed with the Commissioner, it cannot be determined whether Petitioner raised arguments about Texas Education Code chapter 26.
4. Texas Education Code § 37.105 applies to this case because Petitioner was ejected from school property and given a criminal trespass warning by a school resource officer.
5. Under Texas Education Code § 37.105, a school resource officer may eject an individual from school property for up to two years if the person refuses to leave school property peacefully on request, the person poses a substantial risk of harm to a person or behaves inappropriately for a school setting, and the school resource officer first issued the person a warning about the inappropriate behavior and the possibility of ejection, yet the person persisted in the behavior.
6. Petitioner was wrongly ejected from school property and given a criminal trespass warning, as the school resource officer did not first verbally warn Petitioner that his behavior was inappropriate and, hence, Petitioner did not persist in inappropriate behavior after being warned.
7. A parent has a right to attend school board meetings. Tex. Educ. Code § 26.007.

8. Because a parent has a right to attend school board meetings, a parent can only be excluded from school board meetings if the requirements of Texas Education Code § 37.105 are met.

9. The criminal trespass warning violates Texas Education Code § 26.007, as it prohibits Petitioner from attending school board meetings when the requirements of Texas Education Code § 37.105 were not satisfied.

10. Parents are partners with educators, administrators, and school district boards of trustees in their children's education. Tex. Educ. Code § 26.001. A violation of Texas Education Code § 26.001 occurs if a parent is excluded from school events that are open to similarly qualified parents unless the requirements of Texas Education Code § 37.105 have been satisfied.

11. Petitioner's criminal trespass warning violates Texas Education Code § 26.001, as it prohibits him from attending school board meetings when the requirements of Texas Education Code § 37.105 were not satisfied.

12. Because the criminal trespass warning Respondent issued to Petitioner violates Texas Education Code §§ 26.001, 26.007, and 37.105, it is invalid.

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 18th day of April 2023.

**Christopher
Maska**

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Maska
Date: 2023.04.18 10:38:48 -05'00'

CHRISTOPHER MASKA
ADMINISTRATIVE LAW JUDGE