

BONNIE WALLACE,
Petitioner,

v.

LLANO INDEPENDENT SCHOOL
DISTRICT,
Respondent.

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BEFORE THE

COMMISSIONER OF EDUCATION

THE STATE OF TEXAS

DECISION OF THE COMMISSIONER

STATEMENT OF THE CASE

Petitioner Bonnie Wallace, as a member of the public asserting residence within the boundaries of Respondent Llano Independent School District, appeals to the Commissioner of Education under Texas Education Code section 7.057(a)(2)(A). In her appeal, Petitioner complains about Respondent’s school board’s denial of her Level 3 grievance seeking removal of a book from Respondent’s high school library. Respondent denies error and asserts that Petitioner has not established standing or ripeness to support the Commissioner’s jurisdiction in this appeal.

Christopher Maska was the Administrative Law Judge originally assigned to this case. On Judge Maska’s retirement, this case was reassigned to Administrative Law Judge Adrienne Butcher. Petitioner is represented by her counsel, Janelle L. Davis, of Janelle L. Davis Law, PLLC, in Prosper, Texas. Respondent is represented by its counsel, Blake Powell and Trevor Hall, of the Powell Law Group, L.L.C, in Austin, Texas.

Administrative Law Judge Maska issued a December 9, 2024 Order requesting that the Parties brief the issues of standing and ripeness. Because Petitioner fails to establish standing and ripeness in this appeal, Judge Butcher issued a Proposal for Decision recommending its dismissal for lack of jurisdiction. *See* 19 Tex. Admin. Code § 157.1056(a). Petitioner filed exceptions to the Proposal for Decision, and Respondent filed a response. All filings were considered.

FINDINGS OF FACT

After due consideration of the record and matters officially noticed, I find that the pleadings and record in this case establish the following Findings of Fact:

1. Petitioner is a resident of Respondent's school district whose student previously graduated from Respondent's schools. Petitioner has no student currently enrolled in any of Respondent's schools.

2. Petitioner filed a complaint under Respondent's Policy FNG (Local), complaining that Respondent's library contained the book *Crank* by Ellen Hopkins. Respondent purchased *Crank* in 2009 and maintains it in an "opt in" section of the high school library that requires parent permission for minor students' access. Petitioner asked Respondent to remove the book from its library entirely.

3. Respondent's school board heard and denied Petitioner's grievance appeal on August 26, 2024.

4. Petitioner timely appealed to the Commissioner on October 10, 2024. In her appeal, she asserts that Respondent violated House Bill 900, the Texas State Libraries and Archives Commission (TSLAC) standards, and Texas Education Code section 33.021.

5. After a prehearing conference, Judge Maska issued a December 9, 2024 Order requesting briefing on standing and ripeness and setting a briefing schedule.

6. The parties submitted briefs on standing and ripeness.

DISCUSSION

Petitioner appeals to the Commissioner under Texas Education Code section 7.057(a)(2)(A), complaining that Respondent's board violated Texas school laws when it denied her grievance complaining that it improperly retained the book *Crank* by Ellen Hopkins in its high school library. Under section 7.057(a)(2)(A), the Commissioner may hear appeals from school board actions or decisions that an aggrieved party claims violates the school laws of this state, which are statutorily defined as Titles 1 and 2 of the Texas Education Code and the rules adopted under those titles. *Id.* § 7.057(f)(2). Petitioner claims Respondent violated Texas Education Code section 33.021 and the standards adopted by the Texas State Libraries and Archives Commission (TSLAC) standards.

Standing

Standing is an aspect of subject-matter jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445–46 (Tex. 1993). The general test for standing is whether there is a real controversy between the parties that will be determined by the judicial relief sought. Petitioner is a member of the public and does not have a student enrolled in Respondent's schools. Petitioner asserts that she has standing to bring this appeal under two theories: because (1) Respondent allowed her to present her complaint to the board through its grievance process for members of the public and thus should be estopped from alleging lack of standing in this appeal to the Commissioner and (2) she has taxpayer standing.

Regarding the first theory, Petitioner argues that Respondent's Policy EF (Local) permits parents, students, and district residents to complain about instructional resources, and because Respondent did not dismiss her grievance for lack of standing, it acquiesced to standing. Respondent correctly argues that a party does not acquire standing by estoppel. *See Student v. Mesquite Indep. Sch. Dist.*, No. 006-R8-905 (Comm'r Educ. 2007) (rejecting such an argument) (citing *Wilmer-Hutchins Indep. Sch. Dist. v. Sullivan*, 51 S.W.3d 293, 294 (Tex. 2001); and *Tex. Ass'n of Bus.*, 852 S.W.2d at 445–46)). The fact that Respondent allowed Petitioner to present a grievance to its school board as a member of the public does not preclude Respondent from challenging her standing as a petitioner in this appeal. *See id.* Petitioner must still establish standing in this appeal, independent of Respondent's policies allowing members of the public to complain to the board.

As a general rule, citizens lack standing to challenge governmental acts, except where either a statute specifically confers standing on a party¹ or there is “a particularized injury distinct from the general public.” *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555–56 (Tex. 2000);

¹ At the time of this Decision, the Legislature had just passed Senate Bill 13 and sent it to the Governor for signature. The Bill adds section 33.027 to the Texas Education Code. Section 33.027(a)(1) would give school district residents the statutory right to submit written challenges to library books to school districts using an Agency adopted form and to appeal to school boards. This appears to create standing for school district residents to challenge books. However, if signed by the Governor, section 33.027 will not be effective until September 1, 2025. Before the new section becomes effective, existing law controls. If section 33.027 is signed, then on or after September 1, 2025, Petitioner may submit a written challenge to the book under that section.

see also Andrade v. NAACP of Austin, 345 S.W.3d 1, 6 (Tex. 2011). The reason for this limitation is that governmental operations would be severely hamstrung if any citizen who happened to disagree with any governmental actions had standing to file suit challenging those actions. Petitioner relies on a narrow, judicially created exception to this rule: taxpayer standing. Under that exception, a taxpayer has standing to sue to enjoin illegal expenditure of public funds, and the taxpayer need not demonstrate a particularized injury. However, taxpayer standing is a very limited exception to the general standing rule, and a petitioner asserting taxpayer standing has the burden of alleging facts that affirmatively demonstrate it. *Andrade*, 372 S.W.3d at 138.

To establish taxpayer standing, a petitioner must establish that (1) he or she is a taxpayer and (2) public funds are expended on the alleged illegal activity. *Williams v. Lara*, 52 S.W.3d 171, 179 (Tex. 2001). To show the requisite expenditure of funds on an illegal activity, a petitioner must:

1. Plead facts showing the government is actually spending money on the alleged illegal activity, not on a related legal activity;
2. Show that the expenditure is a measurable, added expenditure, not one that would have been made in spite of the allegedly illegal activity;
3. Show that the government's challenged activity is supported by any separate tax or paid for from any particular appropriation or that it adds any sum whatever to the cost of conducting the challenged activity; and
4. Show that the expenditure is not *de minimis*; it must be significant.

Andrade, 372 S.W.3d at 138 (citing *Williams*, 52 S.W.3d at 183). Unless these requirements are met, there is no pecuniary injury sufficient to taxpayers generally, and the pecuniary interest is not sufficiently direct to maintain the suit. *Id.*

Accepting Petitioner's assertion that she is a taxpayer in Respondent's district, Petitioner cannot meet the second prong regarding expenditure of funds. She has not pled any actual governmental expenditure through tax funds on the alleged illegal activity, which is Respondent's retention of *Crank* in the "opt in" section of its high school library. Petitioner also does not show that Respondent is making any measurable expenditures on the book, aside from its purchase price in 2009,² that can be distinguished from funds that Respondent spends on its legal activity of

² Respondent asserts that it purchased *Crank* in 2009. Petitioner does not refute Respondent's assertion. To establish taxpayer standing, a petitioner must show existing expenditures, not a remote expenditure.

maintaining its high school library. Petitioner also shows no special expenditure on *Crank* as a library item from a separate tax or particular appropriation, and she fails to show that Respondent’s possession of the book adds to the sum of Respondent’s library maintenance costs.

Moreover, even if Petitioner had shown that Respondent spent any funds, which she has not, the cost of a single book is *de minimis* and lacks sufficient significance for taxpayer standing.³ Having met none of the *Andrade* and *Williams* factors, Petitioner has not established taxpayer standing in this appeal.

Ripeness

Like standing, ripeness is a component of subject-matter jurisdiction. It addresses whether the facts establish that an injury has occurred or is likely to occur rather than being contingent or remote. An injury cannot be based on hypothetical facts. *See Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851–52 (Tex. 2000).

Respondent argues that Petitioner fails to establish ripeness. Petitioner does not establish a concrete injury to her that is based on Respondent’s maintenance of *Crank* in its parent opt-in section of the high school library. As addressed above, Petitioner has no student enrolled in Respondent’s schools. Petitioner asserts that she “is being harmed by the use of her tax dollars,” but she has failed to establish an active, concrete injury to herself. In addition, Petitioner has not demonstrated that this case is capable of repetition, yet evading review.

Conclusion

Petitioner’s appeal is dismissed for lack of standing and ripeness. 19 Tex. Admin. Code § 157.1056(a).

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 fails to establish standing to bring this appeal.

³ Petitioner noted in her briefing on standing and ripeness that there are “other library materials beyond the one at issue in this matter.” In this case, there is one book at issue.

2. Standing and ripeness are components of subject-matter jurisdiction.
 3. A party does not acquire jurisdiction by estoppel. The fact that Respondent allowed Petitioner to present a complaint to the board does not waive standing objections in an appeal to the Commissioner.
 4. Petitioner has not met the standard for taxpayer standing.
 5. Petitioner has not established a concrete injury and has not established ripeness.
 6. This appeal is dismissed without a merits hearing for lack of standing and ripeness.
- 19 Tex. Admin. Code § 157.1056(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.

SIGNED AND ISSUED this 5th day of June 2025.

Mike Morath Digitally signed by Mike Morath
Date: 2025.06.05 14:38:41 -05'00'

MIKE MORATH
COMMISSIONER OF EDUCATION