

DOCKET NO. 101-R10-07-2025

MARTIESA SMITH,	§	BEFORE THE
Petitioner,	§	
	§	
v.	§	COMMISSIONER OF EDUCATION
	§	
WHARTON INDEPENDENT	§	
SCHOOL DISTRICT,	§	
Respondent.	§	THE STATE OF TEXAS

DECISION OF THE COMMISSIONER

Petitioner Martiesa Smith, a former employee of Respondent Wharton Independent School District, appeals to the Commissioner of Education asserting that Respondent violated Texas Education Code section 21.405 by denying her a duty-free lunch in the Fall of 2024 and Spring of 2025. Respondent denies error and asserts that because Petitioner is no longer a district employee, this case has become moot. Respondent also argues that Petitioner asserts claims outside the Commissioner's jurisdiction, seeks relief the Commissioner cannot grant her, failed to exhaust her administrative remedies, and raises untimely claims.

Adrienne Butcher is the Administrative Law Judge assigned to this case. Petitioner proceeds *pro se*. Respondent is represented by its counsel, Cristin Pacher, of Walsh Gallegos Kyle Robinson & De Los Santos P.C., in Houston, Texas.

Because Petitioner's appeal is moot and because she failed to exhaust her administrative remedies before Respondent's school board, the Commissioner dismisses this appeal without a merits hearing. 19 Tex. Admin. Code § 157.1056(a).

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. Respondent employed Petitioner as a special education teacher under a term contract for the 2024–2025 school year. Respondent reassigned Petitioner to a Human Resources position on April 8, 2025.

2. Respondent has a local grievance policy for employee complaints, Policy DGBA (Local). Petitioner filed several grievances under that policy on April 9–11, 2025, complaining about her reassignment and other employment issues. The remedies she sought included:

- (1) relevant camera footage reviewed;
- (2) clarification of employment status;
- (3) reason for reassignment; and
- (4) no negative information spread to other districts.

3. Respondent consolidated and heard the grievances starting at Level 2. The grievance hearing officer issued a May 12, 2025 decision granting Petitioner’s requested relief other than her request to review video camera footage, finding that that relief pertained to a previously dismissed grievance.

4. On May 13, 2025, Petitioner filed a Level 3 appeal to Respondent’s board of trustees. In her grievance, she raised a number of complaints about her employment conditions, including discrimination, retaliation, harassment, unfair treatment, inappropriate reassignment, intentional false reporting to her alternative certification program, unjust discipline, hostile work environment, vehicular damage, being called a liar, and “unethical concerns.”

5. The board heard Petitioner’s grievance at a May 13, 2025 meeting and, at its next meeting on June 26, 2025, voted to affirm the Level 2 decision.

6. Petitioner timely appealed to the Commissioner on July 8, 2025. Respondent filed a July 30, 2025 Plea to the Jurisdiction and Motion to Dismiss. The Administrative Law Judge held a prehearing conference and, on October 29, 2025, issued an Order giving Petitioner an opportunity to replead.

7. Petitioner filed a November 20, 2025 amended pleading. In her amended pleading, Petitioner asserts that Respondent violated Texas Education Code section 21.405 by denying her a duty-free lunch in the Fall of 2024 through the Spring of 2025.

8. Respondent filed a December 5, 2025 Plea to the Jurisdiction or, in the Alternative, Motion to Dismiss and Answer to Petitioner’s Amended Petition for Review. Petitioner filed a

December 8, 2025 “Opposed Response to Respondent’s Plea to the Jurisdiction and Motion to Dismiss.”

9. The Administrative Law Judge issued a Proposal for Decision recommending dismissal of Petitioner’s appeal. Petitioner timely filed exceptions to the Proposal for Decision, which were considered.

DISCUSSION

The Commissioner’s jurisdiction

Petitioner asserts jurisdiction under Texas Education Code section 7.057(a)(2)(A), which gives the Commissioner jurisdiction over school board violations that are alleged to violate a school law of this state. *See* Tex. Educ. Code § 7.057(a)(2)(A). Petitioner’s appeal is premised on the board’s alleged violation of Texas Education Code section 21.405. Petitioner did not assert an employment contract violation by the board under Education Code section 7.057(a)(2)(B).

Mootness

Respondent asserts this appeal has become moot because it no longer employs Petitioner, and the Commissioner cannot grant her any relief regarding duty-free lunches.

Mootness is a component of subject matter jurisdiction. In addressing whether a case is moot, the question is whether a real, live controversy exists that the requested relief can resolve. *See Alphonso Crutch Life Support Ctr., Inc. v. Morath*, No. 03-15-00509-CV, 2016 LEXIS 9923, at *7–8 (Tex. App.—Austin Sept. 7, 2016, pet. denied); *In re Kellogg Brown & Root, Inc.*, 166 S.W.3d 732, 737 (Tex. 2005) (“A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings, *including the appeal*.” (emphasis added)); *Empower Texans, Inc. v. Tex. Ethics Comm’n*, No. 03-16-00872, 2018 Tex. App. LEXIS 6072, at *5–6 (Tex. App.—Austin Aug. 3, 2018, no pet.). A case becomes moot when (1) it appears that one seeks to obtain a judgment on some controversy when none exists or (2) when one seeks judgment on some matter which, then rendered for any reason, cannot have a practical legal effect on a then-existing controversy. *See Morath*, 2016 Tex. App. LEXIS 9923, at *7. When this occurs, even if the party

originally had standing to bring the claim, the party loses standing to maintain it, and the claim is subject to dismissal. *Id.*

Petitioner complains that Respondent violated Texas Education Code section 21.405 by failing to give her a duty-free lunch between October 15, 2024, and April 3, 2025. However, Respondent no longer employs Petitioner. The Commissioner has previously found that a teacher's claim based on a section 21.405 violation is moot when the school district no longer employs the teacher. *Foster v. Aldine Indep. Sch. Dist.*, No. 087-R10-703 (Comm'r Educ. 2004) (finding section 7.057(a)(2)(A) claim based on denial of duty-free lunch moot where district no longer employed teacher).

In her Opposed Response to Respondent's Plea to the Jurisdiction and in her exceptions to the Proposal for Decision, Petitioner argues that her section 21.405 claim is not moot because the challenged action "remains on record" and she continues to suffer unspecified "reputational or professional harm." These claims are somewhat vague, but more significantly, they do not state claims on which Petitioner could prevail, as Texas school laws do not address reputational or professional harm.

Petitioner also argues that Respondent's denial of duty-free lunches is not moot because it is capable of repetition, yet evading review, noting that this is "a recurring employment issue affecting classroom teachers statewide." Petitioner lacks standing to assert claims on behalf of other teachers who may be denied duty-free lunches, as standing requires a particularized injury to the party asserting the claim. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 9Tex. 2000). Regarding the mootness issue, section 21.204 violations are not susceptible to the "capable of repetition, yet evading review" mootness exception that Petitioner asserts. The Texas Supreme Court has recognized that this exception applies "only in rare circumstances." *McClelland v. Weatherford Indep. Sch. Dist.*, No. 032-R10-02-2024 (Comm'r Educ. 2024) (citing *Williams v. Huff*, 52 S.W.3d 171, 184 (Tex. 2002)). To invoke the exception, a party must establish that (1) the challenged action was too short in duration to be litigated fully before the action ceased or expired and (2) a reasonable expectation exists that the same complaining party will be subjected

to the same action again. *Id.* Petitioner asserts neither of these elements and only makes a sweeping claim that school districts across the state routinely violate section 21.204, which does not resolve her mootness issue.

Petitioner fails to establish a live controversy with Respondent, as she is no longer its employee and has no surviving, actual controversy with Respondent regarding duty-free lunches. Because this issue has become moot, the Commissioner lacks jurisdiction to decide it, as that would elicit an advisory opinion with no legal effect on any existing controversy between the parties. Accordingly, Petitioner's appeal is dismissed as moot. 19 Tex. Admin. Code § 157.1056(a).

Failure to exhaust

In addition to mootness, Petitioner's appeal is dismissed because she did not exhaust her administrative remedies on her section 21.405 claim before the school board. Petitioner's initial grievances primarily addressed her reassignment and did not clearly address a denial of a duty-free lunch. The relief she requested also did not address duty-free lunches.

In her Level 3 grievance form, Petitioner listed her issues before the board to include (1) discrimination, (2) retaliation, (3) harassment, (4) unfair treatment, (5) inappropriate reassignment, (6) "intentional false reporting to [her] alternative certification program," (7) unjust disciplinary action, (8) hostile work environment, (9) vehicular damage, (10) being called a liar, and (11) "unethical concerns." In addition to these claims, Petitioner listed "additional concerns" that included a reference to "denial of lunch breaks," but she did not further elaborate this claim or seek relief regarding it.

As Petitioner notes in her exceptions, grievants are not necessarily required to cite statutes by section number to exhaust their administrative remedies. However, for a school board to be found to have violated a school law in hearing a grievance appeal, the issue must have been fairly raised to notify the board of a potential school law violation that it must correct. Petitioner addressed a number of concerns about the conditions of her employment in her grievance, which primarily related to her reassignment. By only including a brief reference to denial of lunch breaks

among myriad other issues and seeking no relief for that complaint, Petitioner did not fairly notify the board of a section 21.405 violation it that it needed to correct.

On appeal, by contrast, Petitioner cites section 21.405 and provides a date span of alleged violations, from October 15, 2024, through April 3, 2025. As addressed above, the board did not decide this issue, which was not fairly raised before it, and Petitioner only clearly raised it for the first time on appeal. Thus, this claim is dismissed for failure to exhaust administrative remedies. 19 Tex. Admin. Code § 157.1056(a).

Conclusion

Petitioner's claim regarding duty-free lunches has become moot, as Petitioner no longer Respondent's employee, and there is no existing, live controversy between the parties for the Commissioner to resolve in any practical way. In addition, Petitioner failed to exhaust her administrative remedies by fairly raising her section 21.405 claim before Respondent's board. For these reasons, Petitioner's section 21.405 claim is dismissed without a hearing on the merits. 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. The Commissioner has jurisdiction over this appeal. *See* Tex. Educ. Code § 7.057(a)(2)(A); 11.1511(b)(13).

2. Petitioner's claim based on a denial of duty-free lunches under Texas Education Code section 21.405 has become moot, as Petitioner no longer works for Respondent. *See Alphonso Crutch Life Support Ctr., Inc. v. Morath*, No. 03-15-00509-CV, 2016 LEXIS 9923 (Tex. App.—Austin Sept. 7, 2016, pet. denied); *In re Kellogg Brown & Root, Inc.*, 166 S.W.3d 732, 737 (Tex. 2005); *Empower Texans, Inc. v. Tex. Ethics Comm'n*, No. 03-16-00872, 2018 Tex. App. LEXIS 6072 (Tex. App.—Austin Aug. 3, 2018, no pet.).

3. Petitioner failed to exhaust her administrative remedies regarding her Texas Education Code section 21.405 claim.

4. Petitioner's appeal is dismissed without a merits hearing. 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 15th day of April 2026.

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