

CAUSE NO. 471-02669-2023

**Samuel Hall**

*Plaintiff,*

VS.

**McKinney Independent School District,  
Farrel Ritchie, Robert Montgomery,  
Shawn Pratt, and Amy Dankel,**

*Defendants.*

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**IN THE DISTRICT COURT**

**\_\_\_\_ JUDICIAL DISTRICT**

**COLLIN COUNTY, TEXAS**

**PLAINTIFF’S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff Samuel Hall, by and through his attorney of record, Janelle L. Davis Law, PLLC and files this Original Petition. In the wake of the National School Boards Association labeling parents speaking at school board meetings as “domestic terrorists,” school districts across Collin County and the State have increasingly acted with impunity to deprive parents of their constitutional rights and suppress free speech that they do not like.<sup>1</sup> Plaintiff is yet another victim of these unlawful and unconstitutional behaviors by school district officials.

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<sup>1</sup> See, e.g., *When This Uvalde Parent Complained About a New Police Hire He Was Banned From School Property* (May 16, 2023) available at <https://reason.com/2023/05/16/when-this-uvalde-parent-complained-about-a-new-police-hire-he-was-banned-from-school-property/>; *Texas Association of School Boards President and Frisco ISD Board President Conspire to Censor Parents; Labels Them Hate Crowd* (Mar. 8, 2023) available at <https://www.thegatewaypundit.com/2023/03/texas-association-of-school-boards-president-and-frisco-isd-board-president-conspire-to-censor-parents-labels-them-hate-crowd/>; *Texas dads arrested after getting vocal at school board meetings say superintendent aims to 'silence' them* (Dec. 8, 2021) available at <https://www.foxnews.com/politics/texas-dads-arrested-school-board-meetings-superintendent>; *Texas Education Conference Hosts Presentation on 'How to Respond' to 'Controversies in the Classroom'* (Sept. 21, 2022) available at <https://texasscorecard.com/state/texas-education-conference-hosts-presentation-on-how-to-respond-to-controversies-in-the-classroom/> (highlighting a presentation of Prosper ISD officials regarding how to deal with parent “disruptions” and “ongoing attacks on social media regarding the district’s work”); *Fort Worth mom's mic cut during board meeting about kids getting dropped off at wrong bus stop* (Sept. 28, 2022) available at <https://www.wfaa.com/article/news/education/fort-worth-isd-fwisd-school-bus-wrong-stops-school-board-meeting-microphone-cut-off/287-ff039fbc-70a8-4326-b80f-f131c502bc33>; *Mother Reprimanded for Reading Aloud a Book with Underage Sex Scenes in a School Library* (Dec. 19, 2022) available at <https://voz.us/mother-reprimanded-for-reading-aloud-a-book-with-underage-sex-scenes-in-a-school-library/?lang=en>; *Parents Escorted out of Plainview School Board*

Specifically, Defendants acted in concert to deprive Plaintiff of his constitutionally protected First Amendment rights because they did not like the content of his speech related to the availability of sexually explicit books in McKinney ISD schools. They further acted in concert to deprive Plaintiff of his rights to be a full participant in the education of his two sons. Plaintiff would show the Court the following:

### I. DISCOVERY CONTROL PLAN

1. This case shall be governed by Discovery Plan Level III.

### II. PARTIES

2. Plaintiff Samuel Hall is a resident of Collin County, Texas. He is represented by his attorney of record in this matter, Janelle L. Davis Law, PLLC.

3. Defendant McKinney Independent School District is a public school district located in and operating in Collin County, Texas. It may be served with process by serving its Superintendent of Schools, Shawn Pratt, at 1 Duvall Street, McKinney, Texas 75069 or wherever he may be found. *Issuance of citation is requested at this time.*

4. Defendant Farrel Ritchie is a Sergeant and School Resource Officer for McKinney ISD. He may be served with process at 2200 Taylor Burk Dr., McKinney, Texas 75071 or wherever he may be found. *Issuance of citation is requested at this time.*

5. Defendant Robert Montgomery is the Director of Safety & Security for McKinney ISD. He may be served with process at 1 Duvall Street, McKinney, Texas 75069 or wherever he may be found. *Issuance of citation is requested at this time.*

6. Defendant Shawn Pratt is the superintendent of McKinney ISD. He was involved in the unlawful and unconstitutional decision to issue a criminal trespass warning to Plaintiff. He

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*Meeting Following Sexual Assault* (May 18, 2023) available at <https://www.youtube.com/watch?v=iit8DMRVfEk>.

also served as the Level 1 administrator who unlawfully upheld the Defendants' unconstitutional actions in Plaintiff's grievance. He may be served with process at 1 Duvall Street, McKinney, Texas 75069 or wherever he may be found. *Issuance of citation is requested at this time.*

7. Defendant Amy Dankel is an elected Trustee and President of the McKinney ISD Board of Trustees who may be served with process at 1504 Windsor Dr., McKinney, Texas 75072 or wherever she may be found. *Issuance of citation is requested at this time.*

### **III. JURISDICTION AND VENUE**

8. The subject matter in controversy is within the jurisdictional limits of this court. This court has jurisdiction over the parties because Defendants are in Collin County, Texas and the acts in question occurred in Collin County, Texas.

9. Plaintiff seeks monetary relief within the jurisdictional limits of this Court.

10. Venue is proper in Collin County because Defendants are located in Collin County, and the events giving rise to this lawsuit took place in Collin County, Texas.

### **IV. FACTS**

11. Plaintiff Samuel Hall is a resident of McKinney, Texas and the parent of two McKinney ISD students.

12. On April 26, 2022 Plaintiff attended the public school board meeting of McKinney ISD. He addressed the McKinney ISD School Board during public comment where he shared his criticism of the McKinney ISD school board's lack of action to remove sexually explicit books from McKinney ISD schools. His public comments were completed without incident.

13. As he was leaving the meeting, Plaintiff voiced his frustration as a member of the public read excerpts from a sexually explicit book. His comments did not disrupt the meeting's continuation and they did not threaten anyone or put anyone in harm's way. Plaintiff was not warned about his comments, and he ultimately left the meeting on his own accord. As Plaintiff

was leaving the meeting, a group of individuals cheered, clapped, and shouted insults at Plaintiff. These individuals were allowed to remain at the meeting and, upon information and belief, were not served with any criminal trespass warnings preventing them from entering any McKinney ISD property similar to Plaintiff.

14. The following month, when Plaintiff arrived at the McKinney ISD school board meeting he was approached in the parking lot by Defendant Sergeant Ritchie and the McKinney ISD Director of Safety and Security – Defendant Robert Montgomery. These individuals informed him that he was receiving a criminal trespass warning and would be arrested if he did not leave McKinney ISD property within three minutes.

15. Sergeant Ritchie issued the criminal trespass warning. The criminal trespass barred Plaintiff from all McKinney ISD properties forever.

16. Section 37.105 of the Texas Education Code does provide authority to refuse to allow a person to enter school property or to eject a person from school property, but only if certain conditions are met. These conditions were blatantly ignored by Defendants because they did not like the content of Plaintiff’s constitutionally protected speech at a public school board meeting. Plaintiff never presented any substantial risk of harm to any person and did not otherwise meet any of the requirements for being ejected from school district property. The law also prohibits a criminal trespass warning in excess of two years, which was blatantly ignored by Defendants.

17. In documents obtained through Plaintiff’s grievance against Defendant McKinney ISD, Sergeant Ritchie acknowledged that he had criminal trespass warnings “already filled out for those individuals who caused problems from previous School Board Meetings.” In other words, Defendants predetermined that they were going to issue a criminal trespass warning in violation of Texas Education Code § 37.105. Defendants also selectively issued criminal trespass warnings

to Plaintiff and others who held similar beliefs – making their actions unconstitutional violations of the First Amendment.

18. The issuance of the criminal trespass warning was allegedly because Plaintiff made derogatory comments to other individuals at the April meeting. These allegations were never substantiated. In reality, Plaintiff was being targeted because of his personal viewpoint and opinion of Defendants and their failure to remove sexually explicit books from McKinney ISD schools. Defendants have a history of enforcing the rules of decorum at board meetings in a discriminatory manner against certain viewpoints only.

19. After receiving the criminal trespass warning, Plaintiff used Defendant McKinney ISD's local grievance procedure to try to rectify the situation. For more than 5 months, Plaintiff went through the grievance process where Defendants further doubled down on their unconstitutional actions. In addition, for several months while Plaintiff navigated the grievance process, Defendants conspired to withhold the "evidence" they were relying on to deny Plaintiff his constitutional rights. This impaired Plaintiff's ability to defend against the false allegations being made against him by officials from Defendant McKinney ISD.

20. When Plaintiff finally received the "evidence" being relied on by Defendants, he saw several false statements being made against him by Defendants and others employed by McKinney Independent School District and the McKinney Police Department.

21. Ultimately, Plaintiff appealed Defendants' actions to the Texas Education Agency ("TEA"). On April 18, 2022, Administrative Law Judge Christopher Maska issued the attached Proposed for Decision finding that "[P]laintiff was wrongful ejected from school property and given a criminal trespass warning, as the school resource officer did not first verbally warn [Plaintiff] that his behavior was inappropriate and, hence, [Plaintiff] did not persist in inappropriate behavior after being warned." Exhibit 1.

22. Judge Maska also found that the criminal trespass warning issued to Plaintiff violated Texas Education Code §§ 26.001, 26.007 by keeping Plaintiff from participation in school events with his child.

23. The actions of Defendants in this case demonstrate a willful disregard for the constitutional rights of the residents and parents in McKinney ISD. Defendant McKinney ISD and Defendant Dankel have a history of such behavior against citizens and their own fellow Trustee, Chad Green – using the McKinney Police Department to carry out their unlawful and unconstitutional actions. *See McKinney School Board President Sued for Squelching Free Speech* (May 18, 2022), available at <https://texasscorecard.com/local/mckinney-school-board-president-sued-for-squelching-free-speech/>; *McKinney School Board Continues ‘Witch Hunt’ Against Conservative Trustee* (May 27, 2022), available at <https://texasscorecard.com/local/mckinney-school-board-continues-witch-hunt-against-conservative-trustee/>.

24. After her unconstitutional actions, Defendant Dankel herself has acknowledged that she received a number of questions regarding free speech at McKinney ISD board meetings, that she would “try to be fair,” and that she “got into the gray area a little bit on that.”

25. Because of Defendants’ unlawful and unconstitutional actions, Plaintiff was denied his First Amendment rights, he missed several school events for his sons, and suffered additional damages.

## **V. CAUSES OF ACTION**

### **COUNT 1: CONSPIRACY**

26. Plaintiff incorporates the above paragraphs by reference as though set forth fully herein.

27. Defendants were members and a member of a combination of two or more persons.

28. The object of the combination was to accomplish an unlawful and unconstitutional purpose and to use unlawful means.

29. The members had a meeting of the minds on the object or course of action.

30. Defendants committed an unlawful, overt act to further the object or the course of action.

### **COUNT 2: ULTRA VIRES**

31. Plaintiff incorporates the above paragraphs by reference as though set forth fully herein.

32. Defendants are liable for ultra vires conduct, in which each individual actor has no lawful authority and they are individually acting outside of their official duties.

33. The Defendant actors are governmental employees and they are acting without legal authority.

34. Each Defendant acted without a justifiable purpose or any probable cause, any warrant, and without meeting the requirements of the Texas Education Code for the issuance of a criminal trespass warning.

### **COUNT 3: 42 U.S.C. § 1983 – Conspiracy and conduct to deprive of free speech rights guaranteed by the First Amendment because of viewpoint.**

35. Plaintiff incorporates the above paragraphs by reference as though set forth fully herein.

36. “[E]ven if a limitation on speech is a reasonable time, place, and manner restriction, there is a First Amendment violation if the defendant applied the restriction because of the speaker’s viewpoint.” *Galena v. Leone*, 638 F.3d 186, 199 (3d Cir. 2011).

37. At the McKinney ISD Board meeting, Plaintiff was a private citizen who spoke as to the presence of sexually explicit books in McKinney ISD school libraries, which is a matter of public concern, at a meeting held by local government officials where citizens are allowed to

peaceably assemble, associate, and engage in free speech as to matters of public concern regarding McKinney ISD.

38. Plaintiff exercised his clearly established First Amendment rights to free speech, peaceable assembly, freedom of association, and/or to petition the government for a redress of grievances as applied to state action by the Fourteenth Amendment.

39. Plaintiff did not disrupt the meeting, did not cause anyone any harm, was never warned about his comments, and left the meeting on April 26, 2022 on his own accord.

40. Defendants acted in concert and conspired to deprive Plaintiff of his protected First Amendment rights by selectively enforcing rules of decorum set by Dankel because of Plaintiff's viewpoints and criticism of Defendants.

41. Defendants acted in concert and conspired to deprive Plaintiff of his First Amendment rights because of his viewpoint of wanting sexually explicit books removed from the McKinney school libraries and the viewpoint that Defendant Dankel and others should be arrested for distribution of child pornography because of their failure to remove sexually explicit books from McKinney ISD schools.

42. Defendants knew that Plaintiff had the viewpoint of wanting sexually explicit books removed from the McKinney school libraries because he had previously expressed his viewpoint at the April 26 meeting.

43. Though it was open and obvious that both those who support and those who oppose Dankel's position on the books violated Dankel's time, place, and means rules, Defendants acted in concert and conspired to only enforce these rules against those who opposed Dankel's viewpoint, including Plaintiff.

44. Montgomery and Ritchie selectively enforced Dankel's rules on Dankel's behalf by only pointing out members of the public whose viewpoint opposed Dankel's viewpoint.



45. Defendants selectively enforced Dankel's rules by conspiring to issue criminal trespass warrants to anyone who was removed from the April 26 Board meeting because of their viewpoints, including Plaintiff.

46. Defendant Ritchie and Defendant Montgomery carried out this conspiracy and further violated Plaintiff's First Amendment rights by issuing a criminal trespass citation to Plaintiff when he entered the parking lot to attend the next Board meeting, which had the effect of permanently banning him from future Board meetings and any McKinney ISD events or property.

47. Defendants' actions would deter a person of ordinary firmness from continuing to engage in protected First Amendment rights.

48. Defendants' decisions to act in concert and conspire to violate Plaintiff's clearly establish constitutional rights was not objectively reasonable in light of the circumstances because it was obvious that the rules were not being applied evenly to Plaintiff on the basis of his viewpoint.

49. Dankel's time, place, and manner rules were not content-neutral, as applied, because Defendants unevenly applied them to Plaintiff because of Plaintiff's viewpoint.

50. "It is clearly established that when a public official excludes an elected representative or a citizen from a public meeting, she must conform her conduct to the requirements of the First Amendment." *Monteiro v. City of Elizabeth*, 436 F.3d 397, 404 (3d Cir. 2006) (collecting cases).

51. Where public officials act "with an intent to suppress speech . . . on the basis of viewpoint," the public officials are "not entitled to qualified immunity" because they have "violated clearly established law." *Id.*

52. "[I]t can never be objectively reasonable for a government official to act with the intent that is prohibited by law." *Id.* (quoting *Locurto v. Safir*, 264 F.3d 154, 169 (2d Cir. 2001)).

53. Defendants are not entitled to qualified immunity because they have acted in concert and conspired to exclude Plaintiff from future Board meetings and all McKinney ISD properties in violation of Plaintiff's constitutional rights.

54. Defendants acted intentionally, willfully, deliberately, maliciously, or with reckless indifference with regard to Plaintiff's First Amendment rights.

55. Defendants acted under color of the laws and regulations of the State of Texas, the McKinney Board, and the City of McKinney in carrying out the deprivations of First Amendment rights described herein. Defendants were all acting within the course of scope of their duties as employees of McKinney ISD, the McKinney Police Department, or as Trustees of the McKinney ISD School Board.

56. Even after Plaintiff used the local grievance process to appeal the Defendants' unlawful and unconstitutional actions, Defendants Pratt and Dankel acted in concert to further deprive Plaintiff of his constitutional rights by upholding the Defendants' unconstitutional actions in the grievance process.

### **RESPONDEAT SUPERIOR**

57. Plaintiff incorporates the above paragraphs by reference as though set forth fully herein.

58. The unconstitutional and unlawful behavior of Defendant McKinney ISD and its employees and agents proximately caused Plaintiff's damages. At all times material to this action, Defendants were acting in the course and scope of their employment or work as Trustees for Defendant McKinney ISD. Accordingly, McKinney ISD may be held responsible for its employees' and agents' unconstitutional and unlawful conduct under the doctrine of respondent superior.

## **DAMAGES**

59. Plaintiff incorporates the above paragraphs by reference as though set forth fully herein.

60. As a direct and proximate cause of Defendants' unconstitutional actions and conspiracy to deprive Plaintiff of his constitutional rights, Plaintiff has suffered mental anguish, pain, humiliation, emotional distress, reputational damages, deprivation of his First Amendment rights, and the deprivation of his right to be a full participant in the education of his two sons who are students in McKinney ISD.

61. Defendants are also liable to Plaintiff for punitive damages for their recklessness and/or callous indifference to Plaintiff's constitutional rights.

### **VI. NOTICE PURSUANT TO TRCP 193**

62. Plaintiff provides notice to Defendants pursuant to Rule 193.7 of the Texas Rules of Civil Procedure that he may utilize as evidence during the trial of this lawsuit all documents exchanged by the parties in written discovery.

### **VII. REQUESTS FOR DISCLOSURE**

63. Pursuant to Rule 194.1 of the Texas Rules of Civil Procedure, Defendants are requested to disclose the initial disclosures described in Rule 194.2(b).

### **VIII. DEMAND FOR JURY TRIAL**

64. Plaintiff hereby demands that a jury of his peers be empaneled to hear and decide the issues presented in this case.

### **IX. ATTORNEYS' FEES AND COSTS**

65. Plaintiff is entitled to an award of attorneys' fees and costs under 42 U.S.C. § 1988(b).

## PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Samuel Hall respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants for damages in an amount within the jurisdictional limits of the Court, including but not limited to:

- a. An award of nominal, compensatory, and punitive damages to Plaintiff from all Defendants, jointly and severally, for their conduct and conspiracy to deprive Plaintiff of his constitutional rights;
- b. Reasonable and necessary attorneys' fees, costs, and expenses;
- c. Permanent injunctive relief restraining Defendants from content-based restrictions on free speech at McKinney ISD School Board meetings;
- d. Permanent injunctive relief restraining Defendants from their ongoing conspiracy and conduct to prohibit Plaintiff's attendance at future McKinney ISD school board meetings based on Plaintiff's viewpoint in connection with the events of April 26, 2022 or his viewpoints related to the actions of the McKinney ISD school board actions in general;
- e. Permanent injunctive relief restraining Defendants from their ongoing conspiracy and conduct to prohibit Plaintiff's attendance at events on McKinney ISD property, including the events related to the education of his two sons; and
- f. All other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,



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**ATTORNEY FOR PLAINTIFF**

# EXHIBIT 1

DOCKET NO. 009-R10-10-2022

SAMUEL HALL, Petitioner,	§	BEFORE THE
	§	
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:

# EXHIBIT 1

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.

# EXHIBIT 1

## 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 officer ejected Salinas from district property. Salinas was a

# EXHIBIT 1

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.<sup>1</sup> 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 §

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<sup>1</sup> 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.



# EXHIBIT 1

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.<sup>2</sup> 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

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<sup>2</sup> 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.

# EXHIBIT 1

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.

# EXHIBIT 1

## 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.

# EXHIBIT 1

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**

Digitally signed by Christopher  
Maska  
Date: 2023.04.18 10:38:48 -05'00'

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CHRISTOPHER MASKA  
ADMINISTRATIVE LAW JUDGE