



Respondent's uniform requirement based upon his bona fide philosophical beliefs. The Commissioner granted the appeal, holding that Petitioner's philosophical beliefs were bona fide, and that Petitioner should be granted an exemption from Respondent's mandatory uniform requirement. *Benjamin B. b/n/f/ Kirk B. v. Natalia Independent School District*, Docket No. 008-R5-901 (Comm'r Educ. 2002). Respondent determined that the Commissioner's decision applied retroactively to the 2001-2002 school year. Respondent has no policy in place regarding an annual request for an exemption; however, Petitioner was required to re-apply and request a waiver for the 2002-2003 school year. Petitioner has done so, and this appeal is based on the denial of that request. Respondent argues that Petitioner's religious and philosophical beliefs are not bona fide. Respondent states that the audio tape of the hearing before the board of trustees is substantial evidence that Petitioner testified that his son wears a uniform for "only sports." Respondent argues that Petitioner's testimony is substantial evidence supporting its decision to deny Petitioner's request for an exemption from Respondent's uniform requirement. Petitioner argues that the transcript of the August 26, 2002 meeting before the board of trustees did not accurately state his testimony. Petitioner filed a Motion to Strike the transcript wherein he argued that there were 33 transcription errors in the first 29 pages. Petitioner's Motion to Strike was granted in part and denied in part. The transcript was used for the limited purpose of indicating the location of the testimony on the audio tape. The transcript was not used for the determination of testimony, the clarification of testimony, or for any other purpose whatsoever. Petitioner additionally argues that the audio tape is inaudible in relevant portions, and that he did not say that his son wears a uniform in "only sports." Petitioner argues that his son does not participate in sports, that there is no evidence indicating that his son participates in sports, and that he never testified that his son participates in sports. Petitioner argues that his beliefs are philosophical in nature, religious in nature, and that they are bona fide. Petitioner also argues that Respondent

has violated sections 4.001, 11.011 of the Texas Education Code. Respondent states that Petitioner did not bring these issues before the board of trustees and that Petitioner has thereby failed to exhaust administrative remedies in regard to these elements of his claim. Petitioner argues that Respondent has violated section 26.001(a) and (c) of the Texas Education Code. Respondent argues that these provisions have no relevance to the issue involving the Board's decision under section 11.162 of the Texas Education Code.

### Discussion

#### Failure to Exhaust Administrative Remedies

Petitioner argues that Respondent has violated sections 4.001 and 11.011 of the Texas Education Code. These elements of Petitioner's claim were not brought before the board of trustees. As set forth in the Texas Education Code, Petitioner must exhaust administrative remedies before bringing an appeal before the Commissioner. These elements of Petitioner's appeal must therefore be dismissed for failure to exhaust administrative remedies.

#### Section 26.001 of the Texas Education Code

Petitioner alleges that because Respondent has again denied his requested exemption that the Respondent has violated section 26.001(a) and (c) of the Texas Education Code which provide in pertinent part as follows:

##### § 26.001. Purpose

(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.

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

The facts as alleged by Petitioner do not substantiate a violation of section 26.001 of the Texas Education Code.

### School Uniforms

The Texas Education Code allows school districts under certain circumstances to require school uniforms. TEX. EDUC. CODE § 11.162. The Texas Education Code also provides that students shall be exempted if their parents state in writing "a bona fide religious or philosophical objection to the requirement." TEX. EDUC. CODE § 11.162(c). The central issue in this case is the determination of whether or not Petitioner's philosophical and religious beliefs are bona fide in regard to his objection to a uniform requirement for his son.

### Substantial Evidence Review of the Local Record

In *City of Alvin v. Public Utility Comm'n of Texas*, 876 S.W.2d 346, 355 (Tex.App.-Austin 1993, judgment set aside in accordance with settlement agreement, 893 S.W.2d 450), the court held:

In *City of League City v. Texas Water Commission*, 777 S.W.2d 802 (Tex. App.-Austin 1989, no writ), we summarized the substantial evidence test: (1) the findings, inferences, conclusions, and decisions of an agency are presumed to be supported by substantial evidence, and the burden is on the party contesting the order to prove otherwise; (2) in applying the test, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence of questions committed to agency discretion; (3) substantial evidence is more than a scintilla, but the evidence in the record may preponderate against the decision of the agency and nonetheless amount to substantial evidence; (4) the true test is not whether the agency reached the correct conclusion, but whether some reasonable basis exists in the record for the action taken by the agency; and (5) the agency's action will be sustained if the evidence is such that reasonable minds could have reached the conclusion that the agency must have reached in order to justify its action. *Id.* at 805 (citing *Texas Health Facilities Comm'n v. Charter Medical-Dallas Inc.*, 665 S.W.2d 446, 452-53 (Tex.1984)).

### Philosophical Objection

The Commissioner has previously concluded that Petitioner provided a written statement which explained his bona fide philosophical objections to Respondent's uniform policy. *Benjamin B. b/n/f Kirk B. v. Natalia Independent School District*,

Docket No. 008-R5-901 (Comm'r Educ. 2002). Petitioner has again submitted written objections based upon his philosophical beliefs.

Religious Objection

Petitioner bases his objections to the requirement for uniforms on his interpretation of the Old and New Testaments of the Bible. The objections based on Petitioner's biblical beliefs are deemed to be religious objections. *Kaytie T., b/n/f/ William and Norma T., v. Forney Independent School District*, Docket No. 040-R5-101 (Comm'r Educ. 2002).

Bona Fide

To qualify for a uniform exemption the objection must not only be religious or philosophical, it must also be bona fide. "Bona fide" as used in Texas Education Code section 11.162(c) means honestly, openly, and sincerely. For a written statement to successfully invoke an exemption, it must sincerely state an objection that is rooted in either religion or philosophy. *Kaytie T. b/n/f/ William and Norma T. v. Forney Independent School District*, Docket No. 040-R5-101 (Comm'r Educ. 2002). By stating philosophical and religious objections to the uniform policy, Petitioner made a *prima facie* showing of sincerity. *Witmer v. United States*, 348 U.S. 381-382, 75 S.Ct. 392, 99 L.Ed. 428, 434 (1955). Such a *prima facie* showing is, of course, subject to challenge. In *Benjamin B., b/n/f/ Kirk B. v. Natalia Independent School District*, Docket No. 008-R5-901, (Comm'r Educ. 2002), the Commissioner held that Petitioner's objections were based on bona fide philosophical beliefs. Respondent argues that Petitioner's philosophical and religious beliefs are not bona fide because there is now evidence that Petitioner's son wears a uniform while participating in sports. In the present case there is a dispute as to the audio-tape record of the hearing before the board of trustees. A Motion to Strike the transcription of the audio tape has been granted due to numerous inaccuracies therein. However, for purposes of

elucidating the controversy regarding Petitioner's testimony before the board of trustees, the transcription of the disputed dialogue is provided as follows:

UNIDENTIFIED MALE: Does your son wear another type of uniform, Mr. B. at this time?

MR.B.: Only Sports.

[Transcript page 4 lines 13-15].

The tape reflects that there was no further questioning of Petitioner and the hearing was terminated at that point. Petitioner states that he did not say "only sports", but that he in fact said, "No sir, he doesn't." Petitioner additionally argues that his son does not participate in sports and that his son does not wear a uniform in that or any other setting. Respondent argues that Petitioner did say the words "only sports," and that the audio tape is clear and audible. This segment of the audio recording is not clear. There are two voices heard during the time that Petitioner is answering the question that has been put forth and it is unclear what the Petitioner actually said. Petitioner may have said the words, "only sports." But Petitioner may indeed have said, "No sir, he doesn't," or Petitioner may have said something else entirely. This portion of the audio recording lacks sufficient audibility and clarity to determine Petitioner's response to the question that was presented. Section 7.057(c) which provides as follows:

(c) In an appeal against a school district, the commissioner shall issue a decision based on a review of the record developed at the district level under a substantial evidence standard of review.

The issue is not whether the finder of fact reached the correct findings, but whether some reasonable basis exists in the record for the findings. See *Railroad Comm'n v. Torch Operating Co.*, 912 S.W.2d 790, 792 (Tex. 1995). There is no evidence in the local record that would indicate that Petitioner's religious or philosophical beliefs are not bona fide. An unclear and partially inaudible tape recording is not a reasonable basis upon which Respondent can base its findings. It is concluded based on a

substantial evidence review of the record that Respondent could not have reasonably concluded<sup>1</sup> that Petitioner's philosophical and religious beliefs are not bona fide in regard to a uniform requirement. Substantial evidence does not exist to support the board's decision to deny Petitioner's request from Respondent's uniform requirement. Respondent's decision to deny Petitioner's requested exemption is therefore arbitrary, capricious and unlawful. Petitioner should be granted an exemption from Respondent's uniform requirement based on Petitioner's bona fide philosophical and religious beliefs. Respondent does not have a policy in place requiring the annual application for an exemption from its uniform requirement. Petitioner's exemption from Respondent's uniform requirement should therefore be granted through at least the school year following the year in which a Final Decision of the Commissioner is issued in this appeal.

#### Conclusion

Petitioner has failed to exhaust administrative remedies in regard to allegations that Respondent violated sections 4.011, 11.011 of the Texas Education Code. These elements of Petitioner's appeal should be dismissed. Petitioner alleges a violation of section 26.001. The facts as alleged by Petitioner do not support a violation of section 26.001. There is no evidence to support Respondent's determination that Petitioner's philosophical and religious beliefs are not bona fide in regard to the uniform requirement of the district. Petitioner's appeal in regard to this element should, therefore, be granted. Respondent does not have a policy requiring the annual resubmission of an application for exemption. Petitioner's exemption from Respondent's uniform requirement should be granted at least through the school year

<sup>1</sup> Unlike teacher contract cases heard by certified hearing examiners, there is no requirement that a school board make findings of fact and conclusions of law when deciding a grievance. TEX. EDUC. CODE §§ 7.057, 21.259. In such cases, the Commissioner determines whether hypothetical findings of fact and conclusions of law are supported by the record. *Gragg v. Hill*, 58 S.W.2d 150, 152 (Tex. Civ. App.-Waco 1933, error ref'd); *Wilson v. Board of Educ. of Fort Worth Indep. Sch. Dist.*, 511 S.W.2d 551 (Tex. Civ. App.-Fort Worth, writ ref'd n.r.e.).

following the year in which a Final Decision of the Commissioner is issued in this appeal.

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 to hear this case under Texas Education Code section 7.057(a)(2)(A).
2. Petitioner has failed to exhaust administrative remedies in regard to allegations that Respondent violated sections 4.011, 11.011 of the Texas Education Code.
3. Petitioner has failed to allege facts that would establish a violation of section 26.001 of the Texas Education Code.
4. As used in Texas Education Code section 11.162(c), the phrase "bona fide" means in or with good faith; honestly, openly, sincerely; without deceit or fraud. Truly; actually; without simulation or pretense. Innocently; in an attitude of trust and confidence; without notice of fraud. Real, actual, genuine, and not feigned.
5. As used in Texas Education Code section 11.162(c), the word "philosophical" means of or relating to the principles of conduct governing an individual or a group.
6. When a parent provides a written statement that states a philosophical objection to a uniform policy, the parent makes a *prima facie* showing of sincerity.
7. When a parent provides a written statement that states a religious objection to a uniform policy, the parent makes a *prima facie* showing of sincerity.
8. Respondent's decision to deny Petitioner's exemption from its uniform requirement is not supported by substantial evidence and is, therefore, arbitrary, capricious and unlawful.

9. Petitioner's exemption from Respondent's uniform requirement should be granted at least through the school year following the year in which a Final Decision of the Commissioner is issued in this appeal.

10. Petitioner's appeal should be granted.

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 6<sup>th</sup> day of May, 2003.

  
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JOAN STEWART  
ADMINISTRATIVE LAW JUDGE

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