

No. 03-20-00025-CV

**In the Court of Appeals
for the Third Judicial District
Austin, Texas**

FILED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS
1/14/2020 6:16:34 PM
JEFFREY D. KYLE
Clerk

THE TEXAS EDUCATION AGENCY; MIKE MORATH,
COMMISSIONER OF EDUCATION IN HIS OFFICIAL CAPACITY; AND
DORIS DELANEY, IN HER OFFICIAL CAPACITY,
Appellants,

v.

HOUSTON INDEPENDENT SCHOOL DISTRICT,
Appellee.

On Appeal from the
459th Judicial District Court, Travis County

**RULE 24.4 MOTION TO VACATE COUNTER-
SUPERSEDEAS ORDER**

TO THE HONORABLE THIRD COURT OF APPEALS:

In light of failing schools and persistent mismanagement by members of the board of trustees of the Houston Independent School District (HISD), the Texas Education Agency (TEA) sought to exercise its statutory authority to improve student achievement through the installation of new leadership. But HISD filed suit to prevent the TEA and Commissioner Mike Morath from rendering a final decision that would, among other things, establish a board of managers to oversee the district's operations. The trial court granted a temporary injunction prohibiting the

TEA, its commissioner, and its appointed conservator from taking further action involving HISD. In addition, the court denied Commissioner Morath his right to supersede the judgment pending interlocutory appeal. Because Texas Rule of Appellate Procedure 24.2(a)(3) prohibits the trial court from granting counter-supersedeas in this case, the trial court's order was an abuse of discretion. Pursuant to Texas Rule of Appellate Procedure 24.4(a), the TEA and Commissioner Morath move that this Court vacate the counter-supersedeas order.

BACKGROUND

After receiving reports of mismanagement and illegal conduct by members of the HISD board of trustees, the TEA launched a Special Accreditation Investigation. Appx. Tab C at 1-2, 4-6. This investigation found that board members had committed several violations of the Texas Education Code. *Id.* at 2. In November 2019, Mike Morath, the commissioner of education, notified HISD that he was lowering its accreditation status and would be appointing a board of managers to ensure appropriate governance of the district. *Id.* at 2-3. Commissioner Morath's letter to HISD also explained that the TEA's intervention was required because Wheatley High School had received seven consecutive unacceptable academic accountability ratings. *Id.* at 3-5.

In response to the investigation, HISD sued the TEA and Commissioner Morath in a Travis County district court. HISD sought an injunction preventing the TEA from taking any action against the district or its board of trustees. The case was removed to a federal district court. Judge Lee Yeakel dismissed HISD's federal claims with prejudice but remanded its state-law claims. Appx. Tab B.

On remand, the trial court issued a temporary injunction prohibiting the TEA and Commissioner Morath from appointing a board of managers to oversee HISD's operations and from imposing any sanctions or interventions on the district. Appx. Tab A at 4. The court also enjoined Dolores Delaney, whom the TEA had appointed as a conservator in 2016, from implementing plans to improve low-performing campuses. *Id.* Finally, the order denied Commissioner Morath's right to supersede the temporary injunction during the appeal. *Id.* at 5.

But the law is clear—“When the judgment debtor is the state, a department of this state, or the head of a department of this state, the trial court *must* permit a judgment to be superseded except in a matter arising from a contested case in an administrative enforcement action.” Tex. R. App. P. 24.2(a)(3) (emphasis added). Here, the TEA is a department of the State, Commissioner Morath is the head of a department, and this is not a matter arising from a contested case. Therefore, the trial court abused its discretion in granting counter-supersedeas, and this Court should vacate its order.

ARGUMENT

I. A Counter-Supersedeas Order May be Challenged in the Court of Appeals.

A party may seek review of the trial court's “determination whether to permit suspension of enforcement” of the judgment “by motion filed in the court of appeals with jurisdiction or potential jurisdiction over the appeal from the judgment in the case.” *Id.* R. 24.4(a)(4). This motion “must be heard at the earliest practicable

time.” *Id.* R. 24.4(d). This Court reviews the trial court’s order for an abuse of discretion. *See Mason v. Mason*, No. 03-17-00546-CV, 2018 WL 1420217, at *1 (Tex. App.—Austin Mar. 6, 2018, no pet.) (order) (per curiam); *AME & FE Invs., Ltd. v. NEC Networks, LLC*, 582 S.W.3d 294, 297 (Tex. App.—San Antonio 2017, pet. denied). “But a trial court has no discretion in determining what the law is or applying law to facts.” *Pressley v. Casar*, 567 S.W.3d 327, 333 (Tex. 2019) (per curiam) (internal quotation marks omitted); *accord Brubaker v. Brubaker*, No. 03-18-00273-CV, 2019 WL 6205518, at *2 (Tex. App.—Austin Nov. 21, 2019, no pet. h.) (mem. op.).

II. The Trial Court Abused its Discretion in Granting Counter-Supersedeas.

Generally, a trial court has discretion to grant counter-supersedeas when the judgment is not for the recovery of money or property. Tex. R. App. P. 24.2(a)(3). And, in the past, that discretion extended to cases in which the State or its departments were a party. *See In re State Bd. for Educator Certification*, 452 S.W.3d 802, 809 (Tex. 2014) (orig. proceeding); *McNeely v. Watertight Endeavors, Inc.*, No. 03-18-00166-CV, 2018 WL 1576866, at *2 (Tex. App.—Austin Mar. 23, 2018, no pet.) (order) (per curiam).

But recent amendments to the Texas Government Code and the Rules of Appellate Procedure have removed that discretion in cases such as this one. The law is now clear that “[w]hen the judgment debtor is the state, a department of this state, or the head of a department of this state, the trial court must permit a judgment to be superseded except in a matter arising from a contested case in an administrative

enforcement action.” Tex. R. App. P. 24.2(a)(3). Because the trial court ignored this provision, it abused its discretion in granting counter-supersedeas.

A. Courts have no discretion to grant counter-supersedeas when the judgment debtor is a department of the State and the matter does not arise from a contested case.

“Since 1838, the State and its departments have been exempt from filing a bond to appeal an adverse judgment.” *In re State Bd. for Educator Certification*, 452 S.W.3d at 804. “Before 1984 the State’s right to suspend a final judgment during appeal was close to absolute.” *In re State Bd. for Educator Certification*, 411 S.W.3d 576, 577 (Tex. App.—Austin 2013, org. proceeding) (Jones, C.J., concurring). This is “because the law in effect before 1984 had only one prerequisite for suspending any final judgment: filing a supersedeas bond.” *Id.* “This single prerequisite applied not only to judgments for the recovery of money or property, but also to ‘other judgments.’” *Id.* And “[s]ince the State was exempt from having to file a supersedeas bond, the filing of a notice of appeal was sufficient to automatically suspend any judgment.” *Id.*

In 1984, the rules were amended to give the trial court discretion whether to allow a supersedeas bond when the judgment did not involve money, property, or foreclosure. *See id.* Under the new rule, the trial court could, within its discretion, decline to permit the judgment to be superseded if the plaintiff-appellee posted a bond deemed sufficient to “secure the defendant in any loss or damage occasioned by any relief granted if it is determined on final disposition that such relief was improper.” *Id.* For thirty years between 1984 and 2014, the interplay between this new rule and the longstanding state exemption from a bond created uncertainty and split

appellate authorities regarding whether a trial court had discretion to deny supersedeas to a state defendant entitled to automatic supersedeas upon perfecting an appeal. *See id.* at 578.

In December 2014, the Texas Supreme Court resolved this question by holding that trial courts had discretion, under Rule 24.2(a)(3), to deny supersedeas to state defendants upon sufficient bond posted by the plaintiff-appellee. *In re State Bd. for Educator Certification*, 452 S.W.3d at 803.

In response to this ruling, the 85th Texas Legislature passed House Bill 2776, which directed the Texas Supreme Court to “adopt rules to provide that the right of an appellant under Section 6.001(b)(1), (2), or (3), Civil Practice and Remedies Code, to supersede a judgment or order on appeal is not subject to being counter-superseded under Rule 24.2(a)(3), Texas Rules of Appellate Procedure, or any other rule.” Tex. Gov’t Code 22.004(i). On April 12, 2018, the Texas Supreme Court amended Rule 24.2 of the Texas Rules of Appellate Procedure to provide that

When the judgment debtor is the state, a department of this state, or the head of a department of this state, the trial court *must* permit a judgment to be superseded except in a matter arising from a contested case in an administrative enforcement action.

Misc. Docket No. 18-9061 (“Order Adopting Amendments to Texas Rule of Appellate Procedure 24.2”) (emphasis added); Tex. R. App. P. 24.2(a)(3) (effective May 1, 2018).

B. Because the judgment debtor in this appeal is a department of the State and the matter does not arise from a contested case, the trial court lacked discretion to grant counter-supersedeas.

1. The temporary injunction is an “other judgment” involving neither recovery of money nor recovery of property.

Rule 24.2(a)(3) applies to judgments that are neither for recovery of money nor recovery of property. Tex. R. App. P. 24(a)(3). Here, the trial court enjoined the TEA and Commissioner Morath from taking certain actions until further order of the Court or until a final judgment. Appx. Tab A at 4. It is well-established that a temporary injunction is a judgment to which Rule 24.2(a)(3) applies. *See, e.g., Klein Indep. Sch. Dist. v. Fourteenth Court of Appeals*, 720 S.W.2d 87, 88 (Tex. 1986) (orig. proceeding) (explaining that “supersedeas of the injunctive portion of the judgment” was governed by the “Other Judgment” rule); *McNeely*, 2018 WL 1576866, at *2 (applying Rule 24.2(a)(3) to a temporary injunction); *In re K.K.W.*, No. 05-16-00795-CV, 2018 WL 1477533, at *3 (Tex. App.—Dallas Mar. 27, 2018, no pet.) (mem. op. on motion) (“Rule 24.2(a)(3) is routinely applied to judgments that are declaratory or injunctive in nature.”) (collecting cases).

2. The TEA and Commissioner Morath are “judgment debtors.”

Because a temporary injunction is a judgment in the context of Rule 24.2(a)(3), it follows that the TEA and Commissioner Morath are judgment debtors and HISD is the judgment creditor. It would be self-defeating for HISD to dispute this, because, if it is not the judgment creditor and the TEA and Commissioner Morath are not judgment debtors, Rule 24.2(a)(3) would not authorize the trial court to grant counter-supersedeas. *See* Tex. R. App. P. 24.2(a)(3) (“But the trial court may decline to

permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor . . .”).

3. The TEA is a department of the State, and Commissioner Morath is the head of a department of the State.

Rule 24.2(a)(3) protects the TEA and Commissioner Morath from the possibility of counter-supersedeas because they are, respectively, a department of the State and the head of a department of the State. *See* Tex. Educ. Code § 7.021 (describing the TEA’s powers and duties); *id.* § 7.055 (describing the commissioner of education’s powers and duties).

4. This matter does not arise from a contested case in an administrative enforcement action.

“Contested case” is a term of art that appears in the Texas Administrative Procedures Act (APA). The APA defines a “contested case” as: “a proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.” Tex. Gov’t Code § 2001.003(1). This lawsuit does not “arise” from a “contested case,” because the underlying investigation and report was not an “adjudicative hearing” to determine “legal rights, duties, or privileges” of HISD. Moreover, a contested case arises only from a final decision “after an adjudicative hearing,” and the very purpose of HISD’s suit is to stop Commissioner Morath’s decision from becoming final. *See Rutherford Oil Corp. v. Gen. Land Office of State of Tex.*, 776 S.W.2d 232, 234 (Tex. App.—Austin 1989, no writ) (“An adjudicatory

hearing is one that decides legal rights, duties or privileges and which ‘in the absence of an appeal therefrom will be a final and binding decree with respect to any such legal rights, duties or privileges.’”) (quoting *Big D Bamboo, Inc. v. State*, 567 S.W.2d 915, 918 (Tex. App.—Beaumont 1978, no writ)). HISD’s lawsuit does not arise from a contested case.

* * *

Rule 24.2(a)(3), as amended in 2018, no longer provides trial courts with discretion to grant counter-supersedeas when the judgment is not for the recovery of money or property, the judgment debtor is a department of the State or the head of a department, and the matter does not arise out of a contested case. Each of those elements is present in this case. Accordingly, the trial court abused its discretion when it denied Commissioner Morath his right to supersede the temporary injunction pending appeal.

III. The Court Should Grant This Motion and Vacate the Counter-Supersedeas Order as Soon as Possible.

Rule 24.4 requires appellate courts to hear motions challenging supersedeas decisions “at the earliest practicable time.” Tex. R. App. P. 24.4(d). In addition, the facts of this case merit the Court’s swift disposition.

First, the TEA is concerned that, without the intervention of the conservator or a board of managers, HISD may move forward with seeking and hiring an interim superintendent. Appx. Tab D at 102–03. This search process could “potentially put the district on the hook for \$1 million.” *Id.* at 103.

Second, unless the TEA appoints the board of managers by “mid-March,” the managers will not be able to participate in developing the budget for the next school year. *Id.* at 108–09. Because the trial court denied Commissioner Morath his right to supersede the temporary injunction, TEA is unable to appoint the managers.

Finally, in more general terms, the trial court’s injunction is preventing the TEA from pursuing its goal of improving student achievement at struggling campuses and ensuring competent governance of the district. HISD students should not have to wait any longer for ethical and effective leadership. This Court should act as quickly as possible to vacate the trial court’s counter-supersedeas order so that the TEA and Commissioner Morath can continue their work of improving students’ lives in this large and consequential school district.

PRAYER

The Court should vacate the counter-supersedeas order.

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

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Solicitor General

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CERTIFICATE OF CONFERENCE

I certify that on January 14, 2020, I contacted David J. Campbell, lead counsel for Houston Independent School District. Counsel opposes this motion.

/s/ Kyle D. Highful
KYLE D. HIGHFUL

CERTIFICATE OF SERVICE

On January 14, 2020, this document was served electronically on David J. Campbell, lead counsel for Houston Independent School District, via dcampbell@808west.com.

/s/ Kyle D. Highful
KYLE D. HIGHFUL

No. 03-20-00025-CV
In the Court of Appeals
for the Third Judicial District
Austin, Texas

THE TEXAS EDUCATION AGENCY; MIKE MORATH,
COMMISSIONER OF EDUCATION IN HIS OFFICIAL CAPACITY; AND
DORIS DELANEY, IN HER OFFICIAL CAPACITY,

Appellants,

v.

HOUSTON INDEPENDENT SCHOOL DISTRICT,

Appellee.

On Appeal from the
459th Judicial District Court, Travis County

APPENDIX

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TAB A: TRIAL COURT'S ORDER

Filed in The District Court
of Travis County, Texas
JAN - 8 2020 JC
At 5:40 M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-19-003695

**HOUSTON INDEPENDENT SCHOOL
DISTRICT
Plaintiff**

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IN THE DISTRICT COURT

v.

**THE TEXAS EDUCATION AGENCY
and MIKE MORATH, COMMISSIONER
OF EDUCATION, in his official capacity;
and DORIS DELANEY, in her official
capacity
Defendants**

459TH JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

**ORDER GRANTING TEMPORARY INJUNCTION AND DENYING SUPERSEDEAS
IN CASE OF AN APPEAL OF THIS INJUNCTIVE RELIEF**

Having heard the application of Houston Independent School District (“Houston ISD”) for a temporary injunction prohibiting (1) Defendant Mike Morath, Commissioner of Education, from appointing a board of managers; (2) Dolores Delaney from acting outside her lawful authority to ensure and oversee district-level support to low-performing campuses and the implementation of the updated targeted improvement plan on those campuses; and (3) Defendant Mike Morath, Commissioner of Education, from imposing any sanctions or interventions on Houston ISD based on Special Accreditation Investigation (SAI # INV2019-10-034), until further order of this Court, or until this Court issues a final judgment in the above-styled and numbered action, the Court renders the following order:

1. Plaintiff appeared through counsel and announced ready for a hearing on its application for temporary injunction. Defendants appeared through counsel and announced ready on the Plaintiff’s application for temporary injunction.

2. The Court considered the documentary and witness testimony evidence presented by the parties at this hearing, along with all written and oral arguments submitted by the parties

and counsel. The Court is of the opinion that the Plaintiff has met its burden to show its probable right of recovery on its claims against Defendant Mike Morath, Commissioner of Education, in his official capacity, and Defendant Dolores Delaney asserting that Defendant's conduct and/or threatened conduct is without legal authority and are *ultra vires* acts.

3. The Court finds that Plaintiff has made a sufficient showing of a probable right to recovery on its contention that under a proper construction of the applicable provisions of Texas Education Code, Defendant Mike Morath, Commissioner of Education, in his official capacity is not authorized to remove the elected Board of Trustees of Plaintiff and replace it with a board of managers appointed by Defendant Commissioner; Defendant Dolores Delaney, in her official capacity, is not authorized to exercise authority over Houston ISD under Subchapter A of Chapter 39A of the Texas Education Code; and Defendant Mike Morath, Commissioner of Education, in his official capacity is not authorized to impose any sanctions or interventions on Houston ISD based on the SAI.

4. The Court finds that Plaintiff has made a sufficient showing that the above-discussed *ultra vires* conduct would cause irreparable harm to Houston ISD because once Defendant Mike Morath, Commissioner of Education, in his official capacity, takes a final administrative act, even if that act is *ultra vires*, no future final judgment could be entered holding that the removal of the board of trustees and installation of a board of managers was not authorized by law. *See Morath v. Progreso Indep. Sch. Dist.*, No. 03-16-00254-CV, 2017 WL 6273192, 2017 Tex. App. LEXIS 11329, *9–10 (Tex. App.—Austin 2017, pet. denied).

5. For the reasons set forth above, the Court finds that Plaintiff will have no adequate remedy at law unless (1) Defendant Mike Morath, Commissioner of Education, is temporarily enjoined from appointing a board of managers; (2) Dolores Delaney is temporarily enjoined from

acting outside her lawful authority to ensure and oversee district-level support to low-performing campuses and the implementation of the updated targeted improvement plan on those campuses; and (3) Defendant Mike Morath, Commissioner of Education, is temporarily enjoined from imposing any sanctions or interventions on Houston ISD based on Special Accreditation Investigation (SAI # INV2019-10-034), pending further order of this court, or final trial on the merits of this suit, whichever event should first occur.

6. The Court finds that the issuance of a temporary injunction will maintain the status quo between the parties during the pendency of such order.

7. The Court finds that the balance of potential, irreparable harm to Plaintiff that would be caused by a denial of the requested temporary injunction, outweighs the potential harm, if any, to Defendants and that the public interest is served by granting this temporary injunction.

8. The Court finds that Plaintiff seeks only declaratory and prospective injunctive relief against Defendants based on the allegations that Defendants' actions and proposed actions are without legal authority and are *ultra vires*.

9. The Court finds that the \$200.00, previously deposited by Plaintiff with the Travis County District Clerk, constitutes sufficient security, in lieu of bond, for any foreseeable harm or compensable damages that may result from the granting of this Temporary Injunction, until further order of this Court or final judgment on the merits.

10. The Court finds that if it does not deny supersedeas on appeal, the filing of a Notice of Appeal by Defendant Mike Morath, Commissioner of Education, in his official capacity could automatically supersede the temporary injunction on appeal and Defendant would be free to engage in *ultra vires* conduct.

11. This Temporary Injunction shall become effective immediately.

12. **IT IS THEREFORE ORDERED** that Defendant Mike Morath, Commissioner of Education, in his official capacity and his agents, servants, representatives, employees, designees, and officials acting in concert with him, is prohibited from appointing a board of managers to oversee operations of Houston ISD, until further order of this Court, or until this Court issues a final judgment in the above-styled and numbered action, whichever event occurs first;

13. **IT IS FURTHER ORDERED** that Defendant Dolores Delaney, in her official capacity and her agents, servants, representatives, employees, designees, and officials acting in concert with, is prohibited from acting outside her lawful authority to ensure and oversee district-level support to low-performing campuses and the implementation of the updated targeted improvement plan on those campuses, until further order of this Court, or until this Court issues a final judgment in the above-styled and numbered action, whichever event occurs first;

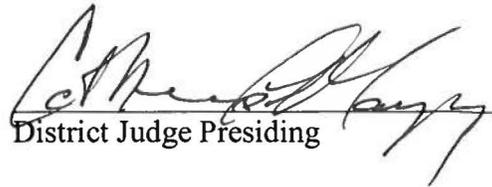
14. **IT IS FURTHER ORDERED** that Defendant Mike Morath, Commissioner of Education, in his official capacity and his agents, servants, representatives, employees, designees, and officials acting in concert with him, is prohibited from imposing any sanctions or interventions on Houston ISD based on Special Accreditation Investigation (SAI # INV2019-10-034), until further order of this Court, or until this Court issues a final judgment in the above-styled and numbered action, whichever event occurs first;

15. **IT IS FURTHER ORDERED** that trial on the merits of this case is set for June 22, 2020, at 9:00 o'clock a.m. in Travis County, Texas.

16. **IT IS FURTHER ORDERED** that the clerk of this Court shall forthwith, issue this Order Granting Temporary Injunction and Denying Supersedeas in Case of an Appeal of this Injunctive Relief and Writ of Temporary Injunction in conformity with the law and the terms of this Order.

17. **IT IS FURTHER ORDERED** that Defendant Mike Morath, Commissioner of Education, in his official capacity, is denied the right to supersede on interlocutory appeal, the temporary injunction granted by this Court.

Signed and Entered on this the 8th day of January, 2020 at 5:05 P.M., in Travis County, Texas.


District Judge Presiding

TAB B: FEDERAL DISTRICT COURT'S FINAL JUDGMENT

Having resolved all matters in this cause, and pursuant to Federal Rule of Civil Procedure

58,

IT IS FINALLY ORDERED that this case is **CLOSED**.

SIGNED this 18th day of December, 2019.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE

TAB C: LETTER FROM COMMISSIONER MORATH TO HISD



Commissioner Mike Morath

1701 North Congress Avenue • Austin, Texas 78701-1494 • 512 463-9734 • 512 463-9838 FAX • tea.texas.gov

**Certified Mail
& Regular Mail**

101-912
2019-2020

November 6, 2019

Dr. Grenita Lathan, Superintendent
Ms. Diana Davila, Board President
Houston Independent School District
4400 W. 18th St.
Houston, TX 77092

RE: Appointment of Board of Managers Due to Special Accreditation Investigation and Lowered Accreditation, Campus Performance Ratings, and the Conservator Appointment

Dear Dr. Lathan and Ms. Davila:

The purpose of this correspondence is to provide Houston Independent School District ("ISD" or "district") with official notification regarding my determination to lower the district's 2018-2019 accreditation status based on the results of a Special Accreditation Investigation. This action is authorized by Texas Education Code (Tex. Educ. Code) §§39.052(d) and 39.057(d), and 19 Texas Administrative Code (Tex. Admin. Code) §§97.1055, 97.1057, and 97.1059. Specifically, Houston ISD's 2018-2019 accreditation status will be lowered to **Accredited-Warned**.

This letter also provides the district notice of my appointment of a board of managers to Houston ISD to exercise the powers and duties of the district's board of trustees, and of my appointment of a superintendent based on the results of the Special Accreditation Investigation, the lowered accreditation status, the unacceptable performance of a district campus, and the length of the conservator appointment. See Tex. Educ. Code §§39.052(d), 39.057(d), 39A.004, 39A.006, 39A.111, 39A.201, 39A.202, 39A.906, and 19 Tex. Admin. Code §§97.1057, 97.1059, 97.1073.

Special Accreditation Investigation

In response to multiple complaints received by the Texas Education Agency (TEA or agency) alleging violations with laws relating to governance of an Independent School District and compliance with the Texas Open Meetings Act, TEA issued a Notice of Special Accreditation

Investigation (SAI) on January 22, 2019, and due to concerns reported by Houston ISD staff, issued an amended Notice of SAI on March 24, 2019, to include alleged violations of contract procurement. On August 5, 2019, the Agency issued a Preliminary Report and provided the district and its trustees an opportunity to respond. After conducting an informal review of the responses, the Agency issued a Final Report on October 30, 2019, which documented the following findings:

- A quorum of the board of trustees deliberated and exercised decision making powers outside of a public meeting held in compliance with the Texas Open Meetings Act in violation of Tex. Educ. Code §11.051(a-1);
- Members of the board of trustees acted individually on behalf of the board, exceeding the scope of their authority in violation of Tex. Educ. Code §11.051(a-1) Governance of Independent School District
- Members of the board of trustees violated contract procurement rules while the district was selecting a vendor/contract as well as attempting to tamper with contracts that had been awarded in violation of Tex. Educ. Code §§44.031 and 44.031(a)(1).

Based on these findings, the Final Report recommended lowering the district's accreditation status and appointing a conservator and a board of managers to ensure appropriate governance of the district and implementation of policies and procedures to address the issues raised in the Final Report.

Accreditation Status and Appointment of a Board of Managers and Superintendent

Pursuant to Tex. Educ. Code §§39.052(d) and 39.057(d), and 19 Tex. Admin. Code §§97.1055(a)(4), 97.1055(a)(8), 97.1055(b)(2)(B), and 97.1055(b)(3), a school district's accreditation status may be raised or lowered and an accreditation sanction may be issued based on the results of a special accreditation investigation. I have evaluated and considered the issues documented in the Final Report relating to the inability of the board of trustees to carry out its power and duties in Tex. Educ. Code §§11.151 and 11.1511, and 19 Tex. Admin. Code §97.1073(e)(8) as demonstrated by its failure to address the long-standing academic deficiencies at Wheatley High School. Specifically, the report makes findings of fact identifying serious and persistent instances where individual board members exercise decision-making authority in violation of Texas Open Meetings Act and violated laws relating to contracting.

These findings compel me to lower the district's 2018-2019 accreditation status to **Accredited-Warning** and appoint a board of managers because the district exhibits serious or persistent deficiencies that may lead to the probation or revocation of the district's accreditation if not addressed because the breakdown in governance may impact academic and financial performance. See 19 Tex. Admin. Code §97.1055(b)(2)(B)(ii). These actions are necessary because the district has failed to comply with the requirements related to purchasing as set forth in Subchapter B, Chapter 44 of the Education Code. See Tex. Educ. Code §§ 39.052(b)(2)(A)(iii) and 7.056(e)(3)(E), and 19 Tex. Admin. Code §§97.1055(b)(2)(A)(v) and 97.1055(e).

Given the inability of the board of trustees to govern the district, these sanctions are necessary to protect the best interests of the district's current and future students. See 19 Tex. Admin. Code §97.1057(f). The findings demonstrate that individual members of the board of trustees acted on behalf the board outside of a meeting that complied with the Texas Open Meetings Act resulting in an inefficient or ineffectual use of district funds or property. See 19 Tex. Admin. Code

§97.1057(f)(1). The board members should have focused on implementing effective change to improve the performance of students in the district's low performing campuses. See 19 Tex. Admin. Code §97.1057(f)(4). The board of trustees failed to do so.

The findings in the Final Report demonstrate material deficiencies that are serious and extensive. See 19 Tex. Admin. Code §97.1059(b)(1)(E). The findings also demonstrate that the district's governing problems are long-standing and have recurred over time. See 19 Tex. Admin. Code §97.1059(b)(2). The deficiencies cited in the Final Report demonstrate a substantial and imminent threat to the welfare of the district's students and to the public interest because the board of trustees is unable to govern the district, as demonstrated by its inability to address the long-standing academic deficiencies at Wheatley High School. See 19 Tex. Admin. Code §97.1059(b)(4).

As stated above, I have reviewed the Final Report and determined that the findings contained therein compel me to lower the district's accreditation status. For the same reasons cited above, these findings also compel me to appoint a board of managers to exercise the powers and duties of the board of trustees. This is authorized because the district's accreditation rating has been lowered to Accredited-Warning. See Tex. Educ. Code §39A.004(1). This intervention is also authorized because the findings in the Final Report warrant the intervention. See Tex. Educ. Code §39.057(d). This intervention is in the best interests of the students. See 19 Tex. Admin. Code §97.1057(f)(1) and (f)(4). This intervention is needed to prevent imminent and substantial harm to the welfare of the district's students or to the public interest, because the deficiencies identified in the Final Report warrant the appointment of a board of managers, and because a failure of governance has resulted in an inability of the board to carry out the powers and duties of the board as outlined in Tex. Educ. Code 11.151 and 11.1511, as demonstrated by its inability to address the long-standing academic deficiencies of Wheatley High School. See 19 Tex. Admin. Code §§97.1073(e)(4), (e)(7), and (e)(8), and 97.1059(b)(1)(E) and (b)(4).

These actions are necessary to achieve the purposes of the accreditation system. See Tex. Educ. Code §§39.051, 39.052, and 19 Tex. Admin. Code §97.1053(a), 97.1055(b)(3), 97.1057(a), 97.1057(e), and 97.1059(a). These actions are necessary to inform stakeholders of the district's poor compliance performance. See 19 Tex. Admin. Code §97.1053(a)(1). These actions will encourage the district to comply with the Texas Open Meetings Act and the purchasing laws, and will allow stakeholders the ability to assist future board members in complying with the Texas Open Meetings Act and the purchasing laws. See 19 Tex. Admin. Code §97.1053(a)(2-3). These actions will also encourage other districts to improve their compliance performance in order to avoid similar action and to retain their accreditation. See 19 Tex. Admin. Code §97.1053(a)(4). Finally, these actions will improve the Texas public school system by eliminating poor compliance performance by the district. See 19 Tex. Admin. Code §97.1053(a)(5).

Campus Performance Ratings

In 2011, Wheatley High School was assigned a final academic accountability rating of *Academically Unacceptable*. This was the campus' first unacceptable rating following a 2010 rating of *Academically acceptable*. The rating of *Academically Unacceptable* was the lowest rating in the accountability system. The campus was required to prepare a targeted improvement plan.

In 2012, no campus ratings were issued due to transition from the TAKS to the STAAR test. Under this transition, 2011 and 2013 ratings were treated as consecutive. See 19 Tex. Admin. Code §97.1055(a)(9).

In 2013, Wheatley High School was assigned a final academic accountability rating of *Improvement Required*. This was the campus' second consecutive unacceptable rating. The campus submitted its targeted improvement plan and a targeted reconstitution plan.

In 2014, Wheatley High School was assigned a final academic accountability rating of *Improvement Required*. This was the campus' third consecutive unacceptable rating. The campus was designated a Texas Title 1 Priority School (TTIPS) and received the TTIPS Cycle 3 Grant. As a condition of that grant, the campus submitted quarterly progress reports, staff and Principal effectiveness submissions, and end of year reports.

In 2015, Wheatley High School was assigned a final academic accountability rating of *Improvement Required*. This was the campus' fourth consecutive unacceptable rating. The campus continued to implement its plan associated with the TTIPS Cycle 3 grant.

In 2016, Wheatley High School was assigned a final academic accountability rating of *Improvement Required*. This was the campus' fifth consecutive unacceptable rating. Under prior law, this district and campus would have been ordered to repurpose the campus, select alternative management, or close the campus.¹ However, due to the passage of H.B. 1842, a new set of sanctions was authorized. H.B. 1842 included a transition plan for campuses such as Wheatley. Under the transition provisions, Wheatley was essentially treated as having three consecutive failed ratings following the 2016 rating, rather than five. For such a campus, the sanctions authorized by Tex. Educ. Code §39A.111 (board of managers or campus closure) for campuses with five consecutive failed ratings would apply to Wheatley following its seventh consecutive failed rating.

In 2017, Wheatley High School was assigned a final academic accountability rating of *Improvement Required*. This was the campus' sixth consecutive unacceptable rating.

In 2018, Wheatley High School had student performance that would have led to its seventh consecutive failed rating. However, due to the Hurricane Harvey waiver, Wheatley was not issued a rating of *Improvement Required*. Instead the campus was not rated. The Hurricane Harvey waiver made it clear that for campuses that were not rated due to Hurricane Harvey, the 2017 and 2019 ratings would be considered to be consecutive.²

In 2019, Wheatley High School was issued a final academic accountability rating of *F*. This was the campus' seventh consecutive unacceptable rating. On September 3, 2019, I notified the district that if the unacceptable 2019 preliminary academic performance rating assigned to the Wheatley High School became a final rating, I would be required to order either the appointment of a board of managers to govern the district as provided by Tex. Educ. Code §39A.202 or closure of the campus. The district appealed the preliminary performance rating assigned to Wheatley High School and, on November 5, 2019, the district was notified of the appeal denial and that Wheatley High School

¹ See Tex. Educ. Code §39.107(e)(2014).

² See *2018 Accountability Manual*, Chapter 10- Hurricane Harvey, School Districts and Open-Enrollment Charter Schools.

received a final 2019 academic performance rating of *F*, the seventh consecutive unacceptable rating assigned to the campus³. Consequently, I am required to take action pursuant to Tex. Educ. Code §§39A.906 and 39A.111, and I am ordering the appointment of a board of managers.

The long-standing failure of the board of trustees to provide better educational opportunities to the students of this campus, compel me to appoint a board of managers pursuant to Tex. Educ. Code §§39A.111(1), 39A.906(b) and 19 Tex. Admin. Code §97.1061(g). This action is necessary because the Agency's systems for campus accountability have identified the board of trustees' material deficiencies and inability to implement effective change to improve the performance of students assigned to the campus. See 19 Tex. Admin Code §§ 97.1057(f)(4) and 97.1059(b)(1)(G). These deficiencies have been persistent and long-standing. The HISD Board of Trustees has allowed this campus to operate with unacceptable ratings since 2011, earning 7 consecutive unacceptable ratings, and demonstrate an ongoing failure of the board of trustees to address previously identified deficiencies and establish a pattern of recurring deficiencies. See 19 Tex. Admin. Code §97.1059(b)(2).⁴

This action is necessary to achieve the purposes of the accreditation system. See Tex. Educ. Code §§39.051, 39.052, and 19 Tex. Admin. Code §97.1053(a), 97.1057(a), 97.1057(e), and 97.1059(a). This action is necessary to inform stakeholders of the district's poor campus academic performance. See 19 Tex. Admin. Code §97.1053(a)(1). This action will encourage the district to improve its academic performance, and will allow stakeholders the ability to assist future board members in improving the district's poor campus academic performance. See 19 Tex. Admin. Code §97.1053(a)(2-3). This action will also encourage other districts to improve their campus academic performance in order to avoid similar action. See 19 Tex. Admin. Code §97.1053(a)(4). Finally, these actions will improve the Texas public school system by appointing a board of managers to address the campus' poor academic performance. See 19 Tex. Admin. Code §97.1053(a)(5).

Length of the Conservator Appointment

On September 2, 2016, I appointed Dr. Doris Delaney as a conservator. At the time of this appointment, Kashmere High School had the most consecutive years of unacceptable performance of any campus in the state. The commissioner may appoint a board of managers if a conservator has been assigned to the district in any part of two consecutive school years, including the current school year. See Tex. Educ. Code §39.006(b) and 19 Tex. Admin. Code §97.1057(d). Dr. Delaney's period of appointment has included four consecutive school years including most of the 2016-17 school year, the entire 2017-18 school year, the entire 2018-19 school year, and part of the current 2019-20 school year. Under the conservator's direction, Kashmere High School has earned an acceptable rating. If the board of trustees had been more responsive to current intervention, the board should have made similar efforts to improve its other low-performing campuses.

Pursuant to my authority under Tex. Educ. Code 39A.006(b), I am appointing a board of managers to oversee the district. This appointment is necessary due the district's inability to implement

³ An unacceptable performance rating includes ratings of *Academically Unacceptable*, *Improvement Required*, and *F*. See *2019 Accountability Manual* Chapter 9, page 91.

⁴ The commissioner can consider the entire ratings history of the campus when assigning accreditation statuses or issuing an accreditation sanction. See 19 Tex. Admin. Code §97.1053(b).

effective change to improve the performance of students at its campuses. See 19 Tex. Admin. Code §97.1057(f)(4).

Public Notification: Accreditation Status

Districts that are assigned a status of **Accredited-Warned** must take specific actions to notify the parents of students enrolled in the district and property owners in the district. The requirements for public notification are specified in 19 Tex. Admin. Code §97.1055(f), and a template that reflects the required format and language for the public notice is posted at <http://tea.texas.gov/accredstatus/>. Houston ISD must complete the notification requirement **no later than December 9, 2019**. Houston ISD also must send by certified mail, return receipt requested, documentation showing compliance with the notification requirement. This documentation may be addressed as follows:

Division of Accreditation
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701
Fax: (512) 475-3665

Districts with an accreditation status below Accredited may be subject to additional accreditation sanctions as referenced in 19 Tex. Admin. Code Chapter 97, Planning and Accountability, Subchapter EE. Questions related to the public notification requirements may be addressed to accred@tea.texas.gov or (512) 463-5899.

Appointment of Board of Managers and Superintendent

Given the critical nature of the findings, I am appointing a board of managers to the district to exercise the powers and duties of the district's board of trustees under the authority of Tex. Educ. Code §§39.057(d), 39A.004, 39A.006, and 39A.111(1) and 19 Tex. Admin. Code §§97.1057, 97.1059, and 97.1073(e).

A majority of the board of managers will consist of members of the Houston ISD community who are committed to service on behalf of the students of the district and the community. The members of the board of managers will be responsible for overseeing the management of the Houston ISD, including oversight of the district's efforts to address and correct identified deficiencies, and implementation of effective structural and procedural improvement strategies for long-term positive change. Texas Education Code §39A.202 also requires that I appoint a superintendent. I will announce my appointments in future correspondence.

Conservator Appointment

The appointment of the previously appointed conservator will remain in effect and will not be impacted at this time. The district is directed to cooperate and comply with the directives given by the conservator.

Please note that the appointment of a conservator does not relieve the district and its governing board of the responsibility to, at all times, operate the district in compliance with all applicable statutes and rules. The cost of the conservator's services will be paid by the district in accordance

with Tex. Educ. Code §39A.903. The conservator's fee shall be \$85 per hour plus necessary travel expenses not to exceed the state per diem rate. Failure to make timely payments to the conservator may result in appropriate amounts being deducted from Foundation School Program (FSP) funds. The agency reserves the right to implement all available interventions and sanctions under Tex. Educ. Code, Chapter 39 and 39A, and Title 19, Tex. Admin. Code, Chapter 97, to address the current, or any future, deficiencies identified for the district.

Parent Petition

If the superintendent submits to the Commissioner a petition that the superintendent has certified as a valid petition on or before **December 2, 2019**⁵, and reflects that the parents of a majority of the students enrolled at Wheatley High School request that I either close the campus or install of board of managers, I must order the action requested. See Tex. Educ. Code §39A.112(b). However, if authorized by a majority of the board of trustees in a meeting conducted in compliance with the Texas Open Meetings Act, the board may request that the commissioner take a different action than the action requested in the parent petition. If the board takes such an action, it must provide a written explanation of the basis for the board's request to the commissioner no later than **December 16, 2019**⁶. See Tex. Educ. Code §39A.112(c). If the parent petition and the board request call for different actions, the commissioner may order either a board of managers or campus closure. See Tex. Educ. Code §39A.112(c).

Review Process

The district has a right to a formal review regarding the assignment of a board of managers and assignment of the lowered accreditation status of **Accredited-Warned**. 19 Tex. Admin. Code §157.1131. However, this formal review shall be provided only if the district submits a written request for formal review no later than **November 20, 2019**. See 19 Tex. Admin. Code §157.1133(1). Written information must also be submitted by the required deadline for requesting a formal review. See 19 Tex. Admin. Code §157.1133. If no formal review is requested by the deadline, a final decision may be issued without formal review. See 19 Tex. Admin. Code §157.1133(5). Pursuant to Tex. Educ. Code §39A.116 and 19 Tex. Admin. Code §157.1136, the Commissioner's decision related to the lowered accreditation status and appointment of the board of managers is final and may not be appealed.

A request for review and any written response and documentation **must be received by the TEA no later than November 20, 2019**, and should be sent to:

Division of Enforcement Coordination
Texas Education Agency

⁵ 19 Tex. Admin. Code §97.1065(d)(1)(C) provides that if the petition was determined to be valid, it must be submitted by the district superintendent to the commissioner not later than December 1. However, as December 1, 2019 falls on a Sunday, the deadline was extended to Monday, December 2, 2019 per the Parent Petition for Action Guidance Document.

⁶ 19 Tex. Admin. Code §97.1065(d)(3) provides for a deadline of no later than December 15, however as December 15, 2019 falls on a Sunday, the deadline was extended to Monday, December 16, 2019 per the Parent Petition for Action Guidance Document.

1701 North Congress Avenue
Austin, Texas 78701
Fax: (512) 475-3665
EnforcementCoordination@tea.texas.gov

Should the district wish to appear in person at the review or attend via telephonic conference, the district must give such notification within its request for review no later than **November 20, 2019**, and subsequent notification from TEA will be issued scheduling the review. The district is not required to attend the review; however, if the district requests a review and chooses not to attend, the review will proceed, and a final decision will be made based upon the documentation that was submitted by the district, if any, with its request for review. If no formal review is requested by the deadline, a final decision may be issued without review. See 19 Tex. Admin. Code §§157.1123(d), 157.1133(5).

Compliance and Cooperation

The board of managers, once installed, will keep me apprised of the conditions in the district and the agency will continue to monitor the district's performance and its cooperation with the agency's interventions. I will appoint a board of managers comprised of a majority of members of the Houston ISD community because I believe the community is in the best position to effectuate long-term, positive change for the district. It is my sincere desire that all parties work together in a cooperative and productive manner to address the issues within the district.

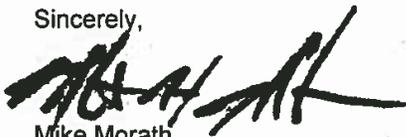
The agency reserves the right to implement all available interventions and sanctions under Tex. Educ. Code, Chapter 39, 39A, and 19 Tex. Admin. Code Chapter 97, to address the current, or any future, deficiencies identified for the campus and district.

Any questions regarding this correspondence may be addressed to the Division of Enforcement Coordination at (512) 463-5899 or EnforcementCoordination@tea.texas.gov.

Any questions regarding the accreditation status may be addressed to the Division of Accreditation at (512) 463-5899 or by email at accred@tea.texas.gov.

Any questions regarding the appointment of a board of managers, superintendent, and conservator may be addressed to Jason Hewitt in the Division of Monitors, Conservators & Investigations at (512) 936-5962 or by email at Jason.Hewitt@tea.texas.gov.

Sincerely,



Mike Morath
Commissioner of Education

MM/lm

**TAB D: EXCERPTS FROM THE TEMPORARY INJUNCTION
HEARING TRANSCRIPT**

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
CAUSE NO. D-1-GN-19-003695

3	HOUSTON INDEPENDENT	§	IN THE DISTRICT COURT OF
4	SCHOOL DISTRICT,	§	
4	Plaintiff,	§	
5	v.	§	TRAVIS COUNTY, TEXAS
6	THE TEXAS EDUCATION AGENCY	§	
7	and MIKE MORATH,	§	
8	COMMISSIONER OF EDUCATION,	§	
8	in his official capacity;	§	
8	and DORIS DELANEY, in her	§	
9	official capacity,	§	
9	Defendants.	§	459TH JUDICIAL DISTRICT

TEMPORARY INJUNCTION HEARING

On the 7th day of January, 2020, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Catherine A. Mauzy, Judge presiding, held in Austin, Travis County, Texas;

The proceedings were reported by Steven Stogel, Certified Shorthand Reporter in Travis County and the State of Texas, by machine shorthand.

APPEARANCES

FOR THE PLAINTIFF:

MR. DAVID J. CAMPBELL

SBOT No. 24057033

MR. KEVIN O'HANLON

SBOT No. 15235500

MS. AUDRA GONZALEZ WELTER

SBOT No. 24055564

O'HANLON, DEMERATH & CASTILLO

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FOR THE DEFENDANTS:

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SBOT No. 24087112

MR. ESTEBAN SOTO

SBOT No. 24052284

MS. CYNTHIA O. AKATUGBA

SBOT No. 24087083

OFFICE OF THE ATTORNEY GENERAL

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BENCH TRIAL

January 7, 2020

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JEFFREY COTTRILL, Ph.D.				
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By The Court			97	1
By Ms. Ardolino	100			1
By Mr. O'Hanlon		110		1
By Ms. Ardolino	138			1

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EXHIBIT INDEX

PLAINTIFF'S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMITTED</u>	<u>VOL</u>
1.	TEA Appoint Conservator Kashmere HS, 9/2/16	7	9	1
2.	TEA Conservators Directive, 3/25/19	7	9	1
3.	TEA Conservator Role Change, 3/25/19	7	9	1
4.	TEA's Preliminary Report, 8/15/19	7	9	1
5.	HISD's Response to TEA's Preliminary Report	7	9	1
6.	9/3/19 Letter	7	9	1
7.	Declaration of Diana Davila	7	9	1
8.	TEA's Final Report, 10/30/19	7	9	1
9.	HISD Resolution	7	9	1
10.	Stipulations of Fact	7	9	1

EXHIBIT INDEX

DEFENDANTS'

<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMITTED</u>	<u>VOL</u>
1.	HISD Enforcement Letter, 11/6/19	7	9	1
2.	Wheatley High School Accountability Ratings (2011-2019)	7	9	1
3.	Wheatley Final Accountability Rating (2019), 11/5/19	7	9	1
4.	Kashmere High School Accountability Ratings (2008-2019)	7	9	1
5.	Letter Appointing HISD Conservator, 9/2/16	7	9	1
6.	Letter Finalizing Appointment of HISD Conservator, 9/23/16	7	9	1
7.	Letter Clarifying Scope of Conservator Role, 3/24/19	7	9	1
8.	2018 Accountability Manual, Hurricane Harvey Waiver Provisions	7	9	1
9.	Notice of Special Accreditation Investigation (SAI), 1/22/19	7	9	1
10.	Amended Notice of SAI, 3/24/19	7	9	1
11.	SAI Preliminary Report, 8/5/19 (Attachments omitted)	7	9	1
12.	HISD's Request for Informal Review of SAI, 8/26/19 (Attachments omitted)	7	9	1

EXHIBIT INDEX

DEFENDANTS'

<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMITTED</u>	<u>VOL</u>
13.	SAI Final Report, 10/30/19 (Attachments omitted)	7	9	1
14.	2016 Final Accountability Ratings	7	9	1
15.	July 2017 Letter Disapproval of Kashmere Turnaround Plan	7	9	1
16.	Order Denying HISD's Preliminary Injunction & Dismissing Federal Claims (December 18, 2019)	7	9	1
17.	October 11, 2018, HISD Board Meeting (Video)	7	9	1
18.	Judgment Denying Preliminary Injunction (December 18, 2019)	7	9	1

1 A. So it was referenced earlier today. The
2 events that unfolded in what would have been October of
3 2018 when a walking quorum of board members had met with
4 an interim superintendent candidate, even provided a
5 contract to him with terms, and then had convened a
6 board meeting within days of that walking quorum, much
7 to the surprise of the other four trustees and the
8 public, and that surprise prompted a chain of events in
9 Houston that really brought the dysfunction of the
10 governing team to light, that had been on display both
11 on the turnaround plan, both with the budget coming down
12 to the wire. But we actually had a board meeting where
13 trustees were completely in the dark with respect to
14 five of the nine making a decision to hire an individual
15 prior to that meeting. And so that was October.

16 In the days and weeks after that, public
17 apologies through press conferences were issued. That
18 action was rescinded, and then another search process or
19 a search process, itself, was initiated in the spring of
20 2019. Prior to the expansion of the role of -- and the
21 scope of the conservator, and ultimately what occurred
22 was the school board was embarking down a path that was
23 going to potentially solidify the services of a
24 superintendent. And so let's just take Houston ISD, the
25 size, the typical salary, the typical contract for a

1 superintendent is three years, and the potential salary
2 is somewhere in the neighborhood of about \$300,000. And
3 so there's a potential that a superintendent is going to
4 be hired during the course of a search process where the
5 Commissioner has already identified concerns with
6 respect to turnaround plans, the adopting of a budget,
7 and the escalation of the services of a conservator.

8 And so the decision to halt that search
9 and the replacement of the interim superintendent was
10 imperative because, A, the stability of the district in
11 terms of the level of services being provided to the
12 students at both Kashmere and Wheatley, both discussed
13 earlier today, but as a district was very important,
14 especially when we had a search process that was playing
15 out that was going to potentially put the district on
16 the hook for \$1 million -- what would be a conservative
17 estimate -- with a contract that if the Commissioner
18 chose to install a board of managers and appoint a
19 superintendent, it would put him in a position where the
20 taxpayers of Houston ISD would have to come to a
21 settlement agreement with the superintendent that was
22 hired that spring.

23 Q. So I want to now turn to the recommendation to
24 appoint a board of managers. Were you involved in that
25 recommendation?

1 residents of that particular school district. And so
2 with Houston, as we were seeking feedback from the
3 community, it became apparent that it wasn't just a
4 majority that the community would like to have
5 identified and selected to serve as a board of managers,
6 but there was a desire for all those individuals to live
7 within the confines of Houston ISD.

8 And so that was a point of change and a
9 commitment that was made in the job description that was
10 ultimately posted for candidates of the board of
11 managers, that they need to be residents of Houston ISD.

12 Q. And then just very briefly, what is the
13 Commissioner's anticipated timeline for appointing the
14 board of managers?

15 A. I would say that before spring equinox, so
16 sometime in mid-March, I would anticipate a decision to
17 appoint the board of managers and the selected
18 candidates, the slate that would serve as the governing
19 team going forward would be made.

20 Q. Okay. Is that timeline important?

21 A. Yes, it is.

22 Q. Why is that?

23 A. Well, you could start from the standpoint of,
24 you know, we've got a budget process that needs to be
25 developed for next school year, and we need to allocate

1 the resources. The board of managers would need to make
2 a key determination on how to allocate the resources and
3 structure their commitments to the students of Houston
4 ISD, particularly the students that are on these
5 campuses that have seen underperformance for consecutive
6 years.

7 But, you know, I think that we could talk
8 about timelines in terms of board of managers, but if we
9 want to get real technical, since 2011, every freshman
10 class that started at Wheatley High School -- so the
11 graduating class of '14, the graduating class of '15,
12 the graduating class of '16, of '17, of '18, of '19,
13 have all done so, and have lived out their four years of
14 tenure at Wheatley High School in an underperforming
15 high school. So to say, "What's another couple of
16 months? What's another couple of years," I mean, we
17 have students that hang in the balance that have been
18 underserved for multiple years that, you know what?
19 What's another year for them? Well, it's their
20 education. The level of services that are provided
21 ought to be a commitment and a level of priority and
22 emphasis in that district.

23 MS. ARDOLINO: Pass the witness.

24 THE COURT: Go ahead.

25

TAB E: TEX. GOV'T CODE § 22.004(I)

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 2. Judicial Branch (Refs & Annos)
Subtitle A. Courts
Chapter 22. Appellate Courts
Subchapter A. Supreme Court

V.T.C.A., Government Code § 22.004

§ 22.004. Rules of Civil Procedure

Effective: September 1, 2017

[Currentness](#)

- (a) The supreme court has the full rulemaking power in the practice and procedure in civil actions, except that its rules may not abridge, enlarge, or modify the substantive rights of a litigant.
- (b) The supreme court from time to time may promulgate a specific rule or rules of civil procedure, or an amendment or amendments to a specific rule or rules, to be effective at the time the supreme court deems expedient in the interest of a proper administration of justice. The rules and amendments to rules remain in effect unless and until disapproved by the legislature. The clerk of the supreme court shall file with the secretary of state the rules or amendments to rules promulgated by the supreme court under this subsection and shall mail a copy of those rules or amendments to rules to each registered member of the State Bar of Texas not later than the 60th day before the date on which they become effective. On receiving a written request from a member of the legislature, the secretary of state shall provide the member with electronic notifications when the supreme court has promulgated rules or amendments to rules under this section.
- (c) So that the supreme court has full rulemaking power in civil actions, a rule adopted by the supreme court repeals all conflicting laws and parts of laws governing practice and procedure in civil actions, but substantive law is not repealed. At the time the supreme court files a rule, the court shall file with the secretary of state a list of each article or section of general law or each part of an article or section of general law that is repealed or modified in any way. The list has the same weight and effect as a decision of the court.

(d) The rules of practice and procedure in civil actions shall be published in the official reports of the supreme court. The supreme court may adopt the method it deems expedient for the printing and distribution of the rules.

(e) This section does not affect the repeal of statutes repealed by Chapter 25, page 201, General Laws, Acts of the 46th Legislature, Regular Session, 1939, on September 1, 1941.

(f) The supreme court shall adopt rules governing the electronic filing of documents in civil cases in justice of the peace courts.

(g) The supreme court shall adopt rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence. The rules shall provide that the motion to dismiss shall be granted or denied within 45 days of the filing of the motion to dismiss. The rules shall not apply to actions under the Family Code.

<Text of (h) effective until September 1, 2020>

(h) The supreme court shall adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions. The rules shall apply to civil actions in district courts, county courts at law, and statutory probate courts in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind, does not exceed \$100,000. The rules shall address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system. The supreme court may not adopt rules under this subsection that conflict with a provision of:

(1) Chapter 74, Civil Practice and Remedies Code;

(2) the Family Code;

(3) the Property Code; or

(4) the Tax Code.

<Text of (h) effective September 1, 2020>

(h) The supreme court shall adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions. The rules shall apply to civil actions in district courts, county courts at law, and statutory probate courts in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind, does not exceed \$100,000. The rules shall address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system. The supreme court may not adopt rules under this subsection that conflict with other statutory law.

<Text of (h-1) effective September 1, 2020>

(h-1) In addition to the rules adopted under Subsection (h), the supreme court shall adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed \$250,000. The rules shall balance the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions. The supreme court may not adopt rules under this subsection that conflict with other statutory law.

(i) The supreme court shall adopt rules to provide that the right of an appellant under [Section 6.001\(b\)\(1\), \(2\), or \(3\), Civil Practice and Remedies Code](#), to supersede a judgment or order on appeal is not subject to being counter-superseded under [Rule 24.2\(a\)\(3\), Texas Rules of Appellate Procedure](#), or any other rule. Counter-supersedeas shall remain available to parties in a lawsuit concerning a matter that was the basis of a contested case in an administrative enforcement action.

Credits

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by [Acts 1989, 71st Leg., ch. 297, § 1, eff. Aug. 28, 1989](#); [Acts 2001, 77th Leg., ch. 644, § 1, eff. June 13, 2001](#); [Acts 2007, 80th Leg., ch. 63, § 1, eff. May 11, 2007](#); [Acts 2011, 82nd Leg., ch. 203 \(H.B. 274\), §§ 1.01, 2.01, eff. Sept. 1, 2011](#); [Acts 2011, 82nd Leg., ch. 906 \(S.B. 791\), § 1, eff. Sept. 1, 2011](#); [Acts 2017, 85th Leg., ch. 868 \(H.B. 2776\), § 1, eff. Sept. 1, 2017](#); [Acts 2019, 86th Leg., ch. 696 \(S.B. 2342\), § 1, eff. Sept. 1, 2020](#).

Editors' Notes

REVISOR'S NOTE

2004 Main Volume

(1) Although the revised law for this section differs in form from its source law (the Rules of Practice Act), there is no substantive difference. Because of its structure, the Rules of Practice Act does not clearly relate the ability of the supreme court to add to the list of repealed statutes. The supreme court has consistently added to that list and has included the repeal of statutes enacted after the effective date of the Rules of Practice Act. (The list of repealed statutes as published in the Texas Rules of Court following the Rules of Civil Procedure and the Rules of Evidence denotes with an asterisk those statutes that are repealed but were enacted or amended subsequent to the effective date of the Rules of Practice Act.) In addition, the supreme court has adopted [Rule 819 of the Rules of Civil Procedure](#), which provides in part: “In case of inconsistency between the provisions of these rules and any statutory procedure not specifically listed as repealed, these rules shall apply.”

To conform the statute to the court's interpretation and avoid continued confusion, the revised law in Subsection (c) revises Sections 1 and 3 of the Rules of Practice Act as a single, ongoing power to repeal procedural statutes. The original effective date is omitted because it is executed and serves no continuing purpose, but would prolong the confusion concerning the court's rulemaking power.

(2) The revised law omits Section 5, [V.A.C.S. Article 1731a](#), as an unnecessary severability clause. The severability of statutes is provided for by Section 3.12, Code Construction Act.

[Notes of Decisions \(27\)](#)

V. T. C. A., Government Code § 22.004, TX GOVT § 22.004

Current through the end of the 2019 Regular Session of the 86th Legislature

TAB F: TEX. GOV'T CODE § 2001.003(1)

Vernon's Texas Statutes and Codes Annotated Government Code (Refs & Annos)
Title 10. General Government (Refs & Annos) Subtitle A. Administrative Procedure
and Practice Chapter 2001. Administrative Procedure (Refs & Annos) Subchapter A.
General Provisions (Refs & Annos)

V.T.C.A., Government Code § 2001.003

§ 2001.003. Definitions

Effective: September 1, 2005

[Currentness](#)

In this chapter:

(1) “Contested case” means a proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

(2) “License” includes the whole or a part of a state agency permit, certificate, approval, registration, or similar form of permission required by law.

(3) “Licensing” includes a state agency process relating to the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(4) “Party” means a person or state agency named or admitted as a party.

(5) “Person” means an individual, partnership, corporation, association, governmental subdivision, or public or private organization that is not a state agency.

(6) “Rule”:

(A) means a state agency statement of general applicability that:

(i) implements, interprets, or prescribes law or policy; or

(ii) describes the procedure or practice requirements of a state agency;

(B) includes the amendment or repeal of a prior rule; and

(C) does not include a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures.

(7) “State agency” means a state officer, board, commission, or department with statewide jurisdiction that makes rules or determines contested cases. The term includes the State Office of Administrative Hearings for the purpose of determining contested cases. The term does not include:

(A) a state agency wholly financed by federal money;

(B) the legislature;

(C) the courts;

(D) the Texas Department of Insurance, as regards proceedings and activities under Title 5, Labor Code,¹ of the department, the commissioner of insurance, or the commissioner of workers' compensation; or

(E) an institution of higher education.

Credits

Added by [Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993](#). Amended by [Acts 2005, 79th Leg., ch. 265, § 6.007, eff. Sept. 1, 2005](#).

Notes of Decisions (45)

Footnotes

[1](#) V.T.C.A., Labor Code § 401.001 et seq.

V. T. C. A., Government Code § 2001.003, TX GOVT § 2001.003

Current through the end of the 2019 Regular Session of the 86th Legislature

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TAB G: TEX. R. APP. P. 24.2

Vernon's Texas Rules Annotated Texas Rules of Appellate Procedure Section Two. Appeals from Trial Court Judgments and Orders (Refs & Annos) Rule 24. Suspension of Enforcement of Judgment Pending Appeal in Civil Cases (Refs & Annos)

TX Rules App.Proc., Rule 24.2

24.2. Amount of Bond, Deposit, or Security

Currentness

(a) *Type of Judgment.*

(1) For Recovery of Money. When the judgment is for money, the amount of the bond, deposit, or security must equal the sum of compensatory damages awarded in the judgment, interest for the estimated duration of the appeal, and costs awarded in the judgment. But the amount must not exceed the lesser of:

(A) 50 percent of the judgment debtor's current net worth; or

(B) 25 million dollars.

(2) For Recovery of Property. When the judgment is for the recovery of an interest in real or personal property, the trial court will determine the type of security that the judgment debtor must post. The amount of that security must be at least:

(A) the value of the property interest's rent or revenue, if the property interest is real; or

(B) the value of the property interest on the date when the court rendered judgment, if the property interest is personal.

(3) Other Judgment. When the judgment is for something other than money or an interest in property, the trial court must set the amount and type of security that the judgment debtor must post. The security must adequately protect the judgment creditor against loss or damage that the

appeal might cause. But the trial court may decline to permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that that relief was improper. When the judgment debtor is the state, a department of this state, or the head of a department of this state, the trial court must permit a judgment to be superseded except in a matter arising from a contested case in an administrative enforcement action.

(4) *Conservatorship or Custody.* When the judgment involves the conservatorship or custody of a minor or other person under legal disability, enforcement of the judgment will not be suspended, with or without security, unless ordered by the trial court. But upon a proper showing, the appellate court may suspend enforcement of the judgment with or without security.

(5) *For a Governmental Entity.* When a judgment in favor of a governmental entity in its governmental capacity is one in which the entity has no pecuniary interest, the trial court must determine whether to suspend enforcement, with or without security, taking into account the harm that is likely to result to the judgment debtor if enforcement is not suspended, and the harm that is likely to result to others if enforcement is suspended. The appellate court may review the trial court's determination and suspend enforcement of the judgment, with or without security, or refuse to suspend the judgment. If security is required, recovery is limited to the governmental entity's actual damages resulting from suspension of the judgment.

(b) *Lesser Amount.* The trial court must lower the amount of security required by (a) to an amount that will not cause the judgment debtor substantial economic harm if, after notice to all parties and a hearing, the court finds that posting a bond, deposit, or security in the amount required by (a) is likely to cause the judgment debtor substantial economic harm.

(c) *Determination of Net Worth.*

(1) *Judgment Debtor's Affidavit Required; Contents; Prima Facie Evidence.* A judgment debtor who provides a bond, deposit, or security under (a)(1)(A) in an amount based on the debtor's net worth must simultaneously file with the trial court clerk an affidavit that states the debtor's net worth and states complete, detailed information concerning the debtor's assets and liabilities from which net worth can be ascertained. An affidavit that meets these requirements is prima facie evidence of the debtor's net worth for the purpose of establishing the amount of the bond,

deposit, or security required to suspend enforcement of the judgment. A trial court clerk must receive and file a net-worth affidavit tendered for filing by a judgment debtor.

(2) *Contest; Discovery.* A judgment creditor may file a contest to the debtor's claimed net worth. The contest need not be sworn. The creditor may conduct reasonable discovery concerning the judgment debtor's net worth.

(3) *Hearing; Burden of Proof; Findings; Additional Security.* The trial court must hear a judgment creditor's contest of the judgment debtor's claimed net worth promptly after any discovery has been completed. The judgment debtor has the burden of proving net worth. The trial court must issue an order that states the debtor's net worth and states with particularity the factual basis for that determination. If the trial court orders additional or other security to supersede the judgment, the enforcement of the judgment will be suspended for twenty days after the trial court's order. If the judgment debtor does not comply with the order within that period, the judgment may be enforced against the judgment debtor.

(d) *Injunction.* The trial court may enjoin the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

Credits

Eff. Sept. 1, 1997. Amended by Supreme Court Aug. 29, 2003 and Sept. 10, 2003, eff. Sept. 1, 2003; March 10, 2008, and Aug. 20, 2008, eff. Sept. 1, 2008. Approved by Court of Criminal Appeals Sept. 30, 2008, eff. Sept. 30, 2008. Amended by order of April 12, 2018, eff. May 1, 2018.

Editors' Notes

NOTES AND COMMENTS

Comment to 2008 change: Subdivision 24.2(c) is amended to clarify the procedure in determining net worth. A debtor's affidavit of net worth must be detailed, but the clerk must file what is tendered without determining whether it complies with the rule. If the trial court orders that additional or other security be given, the debtor is afforded time to comply. Subdivision 24.4(a) is revised to clarify that a party seeking relief from a supersedeas ruling should file a motion in the court of appeals that has or presumably will have jurisdiction of the appeal. After the court of appeals has ruled, a party may seek

review by filing a petition for writ of mandamus in the Supreme Court. *See In re Smith / In re Main Place Custom Homes, Inc.*, 192 S.W.3d 564, 568 (Tex. 2006) (per curiam).

Notes of Decisions (112)

Rules App. Proc., Rule 24.2, TX R APP Rule 24.2
Current with amendments received through August 1, 2019

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TAB H: TEX. R. APP. P. 24.4

Vernon's Texas Rules Annotated Texas Rules of Appellate Procedure Section Two. Appeals from Trial Court Judgments and Orders (Refs & Annos) Rule 24. Suspension of Enforcement of Judgment Pending Appeal in Civil Cases (Refs & Annos)

TX Rules App.Proc., Rule 24.4

24.4. Appellate Review

Currentness

(a) *Motions; Review.* A party may seek review of the trial court's ruling by motion filed in the court of appeals with jurisdiction or potential jurisdiction over the appeal from the judgment in the case. A party may seek review of the court of appeals' ruling on the motion by petition for writ of mandamus in the Supreme Court. The appellate court may review:

(1) the sufficiency or excessiveness of the amount of security, but when the judgment is for money, the appellate court must not modify the amount of security to exceed the limits imposed by Rule 24.2(a)(1);

(2) the sureties on any bond;

(3) the type of security;

(4) the determination whether to permit suspension of enforcement; and

(5) the trial court's exercise of discretion under Rule 24.3(a).

(b) *Grounds of Review.* Review may be based both on conditions as they existed at the time the trial court signed an order and on changes in those conditions afterward.

(c) *Temporary Orders.* The appellate court may issue any temporary orders necessary to preserve the parties' rights.

(d) *Action by Appellate Court.* The motion must be heard at the earliest practicable time. The appellate court may require that the amount of a bond, deposit, or other security be increased or decreased, and that another bond, deposit, or security be provided and approved by the trial court clerk. The appellate court may require other changes in the trial court order. The appellate court may remand to the trial court for entry of findings of fact or for the taking of evidence.

(e) *Effect of Ruling.* If the appellate court orders additional or other security to supersede the judgment, enforcement will be suspended for 20 days after the appellate court's order. If the judgment debtor does not comply with the order within that period, the judgment may be enforced. When any additional bond, deposit, or security has been filed, the trial court clerk must notify the appellate court. The posting of additional security will not release the previously posted security or affect any alternative security arrangements that the judgment debtor previously made unless specifically ordered by the appellate court.

Credits

Eff. Sept. 1, 1997. Amended by Supreme Court Aug. 29, 2003, eff. Sept. 1, 2003; March 10, 2008, and Aug. 20, 2008, eff. Sept. 1, 2008. Approved by Court of Criminal Appeals Sept. 30, 2008, eff. Sept. 30, 2008.

Editors' Notes

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[Notes of Decisions \(22\)](#)

Rules App. Proc., Rule 24.4, TX R APP Rule 24.4
Current with amendments received through August 1, 2019

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