

DOCKET NO. 112-LH-02-2026

HOUSTON INDEPENDENT
SCHOOL DISTRICT,

Petitioner,

v.

SHANELL WILLIAMS,

Respondent.

§
§
§
§
§
§
§
§
§
§

BEFORE JAMILA CARROLL

INDEPENDENT HEARING EXAMINER

STATE OF TEXAS

RECOMMENDATION OF THE CERTIFIED INDEPENDENT HEARING EXAMINER

Statement of the Case

Houston Independent School District (Petitioner), has proposed the termination of Shanell Williams' (Respondent), one-year term contract. Petitioner has listed falsification of FMLA documentation as its good cause reason for terminating Respondent's contract. The petitioner is represented by Mr. Bryce Corsaut. Respondent is represented by Mr. James Fallon. Petitioner has filed a Plea to the Jurisdiction and asserted that Respondent's request for the appointment of a Hearing Examiner was not timely. Respondent did not object or file a response. Thus, this recommendation is based on the Petitioner's Plea to the Jurisdiction alone. The Hearing Examiner did not conduct a hearing. Therefore, no transcript is available. The references below address the Petitioner's Plea alone.

Findings of Fact

1. HISD employed Williams under a one-year term contract during the 2025 2026 school year. See Ex. A.
2. On Thursday, January 15, 2026, HISD's Board of Managers proposed the termination of Williams' term contract for good cause. See Exs. B-C.
3. On Friday, January 16, 2026, HISD's Superintendent of Schools, F. Mike Miles, issued a letter (the Notice Letter) to Williams regarding the Board's proposal to terminate her term contract for good cause. See Exs. B-C. HISD transmitted the Notice Letter to Williams by, inter alia, email and hand delivery. Id.

4. More specifically, on Monday, February 2, 2026, Nichaelia Tucker, the campus principal at Valley West Elementary School, emailed the Notice Letter to Williams' work and personal email addresses. See Ex. B. Williams acknowledged her receipt of the Notice Letter in a response email sent the following day, on Tuesday, February 3, 2026. Id.

5. On Thursday, February 5, 2026, HISD also hand-delivered a copy of the Notice Letter to Williams when she visited Valley West Elementary School. See Ex. C. Williams again acknowledged her receipt by signing and dating a copy of the Notice Letter at that time. Id.

6. HISD notified Williams in the Notice Letter of relevant appellate procedures and timelines as follows:

APPEAL PROCEDURE

In accordance with Section 21.251 et seq. of the Texas Education Code, and HISD Board Policies DFBA (LEGAL), DFD (LEGAL), and DFD (LOCAL), you are hereby advised that you have the right to protest the proposed termination by submitting a written request for a hearing to the Commissioner of Education, Texas Education Agency (TEA), Division of Hearings and Appeals, 1701 North Congress Ave., Austin, Texas 78701-1494, Facsimile 512-475-3662, within fifteen (15) days of receipt of this letter.

If you do not request a hearing within the time prescribed by law, the Board shall take the appropriate action and notify you in writing of the action.

Exs. B-C (emphasis in original).

7. On February 24, 2026, Williams requested a hearing on her proposed termination— twenty-one (21) days after she received the Notice Letter by email and nineteen (19) days after she received the Notice Letter by hand delivery. See Ex. D.

Conclusions of Law

8. Williams failed to timely request a hearing pursuant to Chapter 21, Subchapter F of the Texas Education Code. See Tex. Educ. Code § 21.253(a); see *Lewis v. Houston Indep. Sch. Dist.*, Dkt.

No. 053-R2-05-2024 (Comm'r Educ. 2024); see *Lewis v. Houston Indep. Sch. Dist.*, Dkt. No. 042-R1-03-2024 (Comm'r Educ. 2024); see *Blake v. Grapeland Indep. Sch. Dist.*, Dkt. No. 040-R10-0306 (Comm'r Educ. 2007); see *Anderson v. Wilmer-Hutchins Indep. Sch. Dist.*, Dkt. No. 004-R2-905-2005 (Comm'r Educ. 2005); see *Reyes v. Roma Indep. Sch. Dist.*, Dkt. No. 083-R2-199 (Comm'r Educ. 2000); see *Houston Indep. Sch. Dist. v. Russo*, Dkt. No. 176-LH-06-2024 (CHE Rec. 2024); see *Houston Indep. Sch. Dist. v. Green*, Dkt. No. 336-LH-0611 (CHE Rec. 2011); see *Charlotte Indep. Sch. Dist. v. Carmichael*, Dkt. No. 041-LH-0108 (CHE Rec. 2008); see Exs. E-F. Chapter 21, Subchapter F of the Texas Education Code requires a teacher to submit their request for a hearing before an independent hearing examiner to the Commissioner of Education not later than the fifteenth (15th) day after they receive written notice of the board's proposal to terminate their term contract. *Id.* If a teacher does not timely request a hearing within the mandatory 15-day deadline as required under Chapter 21, Subchapter F, then the teacher's appeal should be dismissed for lack of jurisdiction. *Id.*

9. Williams' 15-day deadline to file a written request for a hearing before an independent hearing examiner was Wednesday, February 18, 2026. See Tex. Educ. Code § 21.253(a).

10. Williams failed to file her written request for a hearing before an independent hearing examiner by Wednesday, February 18, 2026 (or Friday, February 20, 2026). See Ex. D. Williams instead first submitted her written request for hearing on Tuesday, February 24, 2026. *Id.* Williams' failure to timely submit her request for a hearing with the Commissioner within the mandatory 15-day timeline prescribed under Chapter 21, Subchapter F deprives the Independent Hearing Examiner of jurisdiction over this appeal. See Tex. Educ. Code § 21.253(a); see *Lewis*, Dkt. No. 053-R2-05-2024; see *Lewis*, Dkt. No. 042-R1-03-2024; see *Blake*, Dkt. No. 040-R10-0306; see *Anderson*, Dkt. No. 004-R2-905-2005; see *Reyes*, Dkt. No. 083-R2-199; see *Russo*, Dkt. No. 176-LH-06-2024; see *Green*, Dkt. No. 336-LH-0611; see *Carmichael*, Dkt. No. 041-LH-0108; see Exs. E-G.

RECOMMENDATION

After due consideration of the Petitioner's Plea to the Jurisdiction and the foregoing findings of fact and conclusions of law, in my capacity as the Certified Independent Hearing Examiner, I recommend that the Houston Independent School District's Board of Managers dismiss Respondent's Appeal as this Hearing Examiner has no jurisdiction to preside over it.

SIGNED AND ISSUED this 27th day of April 2026.

/s/ Jamila B. Carroll

Jamila B. Carroll

Independent Hearing Examiner

Exhibit A

HISD One Year Employee Term Contract

HOUSTON INDEPENDENT SCHOOL DISTRICT

One Year Employee Term Contract

STATE OF TEXAS

COUNTY OF HARRIS

Form# 000000485901

Employee Name: Shanell Williams **Employee Number:** 00095774

This Contract is entered into by and between the Board of Education of the Houston Independent School District (Board) and **WILLIAMS, SHANELL MAUREEN** under the following terms and conditions:

1. The Board hereby agrees to employ the Employee and the Employee agrees to serve the Board by performing duties as assigned by the Superintendent of Schools of the Houston Independent School District (District) for the school year **2025 - 2026**, according to the hours and dates set by the District as they exist or are hereafter amended.
2. The Board agrees to pay the Employee for services rendered an annual salary according to the salary schedule or compensation manual adopted by the Board. The Employee understands and agrees that only the Board is authorized to establish an annual salary and that any representation made by any other person regarding salary is of no effect and shall not be relied upon. Qualifying employees may receive an incentive payment through an awards program established under Texas Education Code chapter 21, subchapter O if the District participates in the program. Any incentive payment distributed is considered payment for performance and not an entitlement as part of an employee's salary. If the Employee will work on a less-than-12- month basis, the Employee's salary will be paid on an annualized basis. The District will make deductions from each paycheck for income tax withholding and benefits. The Employee's salary shall be reduced for absences in excess of authorized, paid leave.
3. The Employee agrees that the District may deduct any wage overpayments under this contract. At the Employee's request repayment may be deducted from one or more pay periods, however, terms of repayment may not exceed four pay periods without the written approval of the District.
4. If the District implements a furlough under Texas Education Code Section 21.4021, the Employee's salary will be reduced in proportion to the number of furlough days. The reduction will be equally distributed over the remainder of the applicable school year.
5. It is understood and agreed by the parties to this Contract that the Superintendent of Schools, or designee, of the District shall have the right to assign such duties to the Employee as the Superintendent of Schools, or designee, shall deem proper. Because the Employee is not employed to fill a specific position or assignment, the Employee shall, at any time, be subject to assignment and reassignment of positions or duties, additional duties, changes in responsibilities or work, transfers, or reclassifications, for which the Employee is professionally certified or otherwise qualified to perform.
6. Neither supplemental duties nor any stipends paid for such supplemental duties are covered by this Contract. It is understood and agreed that any such payments are not included as part of the annual salary covered by this Contract. No property right to continued employment in such supplemental duties exists regardless of whether stipends are paid, and such duties may be terminated for any reason, or for no reason, at the sole discretion of the District. If the Employee performs a supplemental duty, the start and end dates for the supplemental duty may be different from the start and end dates under this Contract.
7. It is understood and agreed by the parties to this Contract that the Employee shall perform his or her duties to the best of his or her skill and ability and shall discharge duties required by the District, by federal law, and by the school laws of this state. Employee shall faithfully perform to the satisfaction of the District all duties set forth in the job description or as assigned. This Contract is specifically subject to the policies, procedures, Administrative Regulations (ARs), administrative directives, and rules of the District as they exist or may be amended, issued, enacted or adopted during the term of this Contract.
8. The Employee shall satisfactorily submit or account for all grades, reports, school equipment, or other required items, subject to state law, upon request from the District.

9. This Contract is conditioned on the Employee providing the necessary certification, credentials, official transcripts, original service records, medical records, and/or any other records and information required by law, the Texas Education Agency, the State Board for Educator Certification, any other credentialing agency, or the District. Failure of the Employee to provide this information may constitute a rejection of the employment offer by the Employee, at the sole discretion of the District. The Employee agrees to maintain any required certification throughout the term of this Contract. If the Employee fails to extend a temporary or emergency certificate or permit, or if the Employee's certification expires, is canceled, or is revoked, the District may provide the Employee with notice that this Contract is void pursuant to Texas Education Code Section 21.0031. Failure of the Employee to maintain proper certification in the position(s) assigned will render this Contract void and may be grounds for termination of employment or other employment actions as provided under state law, except if the Employee is a certified teacher assigned to teach a subject for which the teacher is not certified. If the Contract is rendered void because the Employee does not hold a certificate or permit issued by the appropriate state agency or fails to fulfill the requirements necessary to extend the Employee's temporary or emergency certificate or permit, and if, following notice that the Employee's contract is void, the District terminates or takes other permissible action against the Employee, the Employee is not entitled to a Chapter 21 hearing. Any false statement, misrepresentation, omission, or fraud by the Employee in or concerning any required records or information may constitute a rejection of the employment offer, at the sole discretion of the District, if discovered before employment begins, or grounds for termination of this Contract or employment or nonrenewal of this Contract if discovered after employment begins.

Page 1 of 3

HOUSTON INDEPENDENT SCHOOL DISTRICT

One Year Employee Term Contract

STATE OF TEXAS

COUNTY OF HARRIS

Form#

Employee Name: Shanell Williams **Employee Number:** 00095774

- 10 The Employee agrees that a criminal history record acceptable to the District, at its sole discretion, is a condition of this Contract. The Employee agrees to submit to a review of his or her national criminal history record information (NCHRI) if required by the District, Texas Education Agency (TEA), or State Board for Educator Certification (SBEC). The Employee represents that he or she has disclosed to the District in writing his or her criminal history as part of the application process and agrees that during the term of this Contract, the Employee will notify the Human Resources Department of any charge, arrest, conviction, pleas of nolo contendere (no contest) and/or receipt of deferred adjudication or probation for any felony or crime of moral turpitude in accordance with Board Policy DH (LOCAL).
11. Employee may be terminated during the term of this Contract due to a program change or a financial exigency in accordance with Board policy and state law. Employment in a federally or categorically funded position is expressly conditioned upon the availability of full funding and if full funding becomes unavailable, the Employee's employment is subject to termination or nonrenewal, as applicable.
12. The Employee may resign at the end of the school year covered by this Contract in accordance with Section 21.210 of the Texas Education Code. If the Employee attempts to resign at any other time, the Employee will be released from this Contract only with the written consent of the Board. If the Board does not consent to release the Employee and the Employee nevertheless abandons the Contract, the District may file a complaint seeking sanctions against the Employee with the appropriate agency. In the event that Employee retires or resigns from his or her employment with the District or the Teacher Retirement System, this Contract shall terminate. A retirement or resignation must be carried out in accordance with Board Policy and ARs as they exist at the time of retirement or resignation.
13. Renewal or nonrenewal will be in accordance with Board Policies, ARs and state law (Chapter 21, Subchapter E of the Texas Education Code).
14. The Board has not adopted any policy, rule, regulation, law or practice providing for tenure. No right of tenure is created by this Contract. This Contract shall not grant or create any contractual or other expectancy of continued employment or claim of entitlement to employment beyond the term of the Contract.
15. During the term of this Contract, the Employee may be terminated for good cause as determined by the Board, financial exigency that requires a reduction in personnel, or for any reason stated in Board Policies, ARs, or this Contract. The Employee may be suspended without pay for good cause as

determined by the Board for a period not to extend beyond the end of the school year covered in this Contract pending termination of the Employee or in lieu of termination in accordance with state law. Said actions shall be taken in accordance with Chapter 21, Subchapters E and F of the Texas Education Code.

16. It is understood and agreed by the Board and the Employee that, upon acceptance of this Contract by the Employee, all previous contracts of employment with the Board are superseded and terminated and are of no force and effect. The invalidity of any portion of this Contract under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of the Contract.
17. Failure of the Employee to return this signed Contract within 14 calendar days may constitute a rejection of the employment offer and the Employee may not be employed, at the sole discretion of the District.
18. The Employee agrees to keep a current address on file with the District's human resources office. Unless Texas Education Code Chapter 21 requires a different notice delivery method, the Employee agrees that the District may meet any legal obligation it has to give the Employee written notice regarding the Employee's employment by hand-delivering the notice to the Employee or by sending the notice by certified mail, regular mail, and/or express delivery service to the Employee's address of record, or by communicating by electronic mail at the electronic mail address provided to by the Employee to the District.
19. The Board has authorized the Superintendent of Schools to execute this Contract.

I have read this Contract and **ACCEPT** to comply with its terms and conditions.

☐

I have read this Contract and **REJECT** to comply with its terms and conditions.

☐

By declining this contract, I have accepted a non-teacher position at HISD.

By declining this contract, I am resigning from the district effective the end of the duty schedule.

Date May 22, 2025

Signed By Shanell Williams on 05/22/2025 at 22:52:25

F. Mike Miles

F. Mike Miles

Superintendent of Schools

Houston Independent School District

Page 2 of 3

Exhibit B

Emails re. Notice Letter Transmission dated February 2-3, 2026

Exhibit C

Notice Letter Acknowledged by Williams on February 5, 2026

Exhibit D

Williams' Request for Hearing Before Hearing Examiner
dated February 24, 2026

James Fallon

Attorney at Law
3401 Allen Parkway
Houston, Texas 77019
(713) 224-0284
(713) 224-0109 facsimile
james@jtfallon.com

February 24, 2026

Mike Morath, Commissioner Via Fax: (512) 475-3662 Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701

Dear Commissioner Morath,

I am writing to you regarding Ms. Shanell Williams. Ms. Williams is a teacher with the Houston Independent School District. She has received notice of HISD's intention to terminate her employment. Ms. Williams contests all proposed actions and formally requests the assignment of a Hearing Examiner. Enclosed under the cover of this letter is a copy of the HISD termination proposal.

Thank you for your time and attention. Please contact me as soon as you are able regarding the assignment.

Sincerely,

James Fallon

Cc: Superintendent of Schools Via Fax: (713) 556-7269 And the HISD Board of Education

Eischens, Christina

From: Jotform <noreply@jotform.com>

Sent: Tuesday, February 24, 2026 4:16 PM

To: HearingsandAppeals; Eischens, Christina

Subject: Re: The Office of General Counsel, Division of Hearings & Appeals E-Filing

Follow Up Flag: Follow up

Flag Status: Flagged



The Office of General Counsel, Division of Hearings & Appeals E Filing

Docket Number: NEW

Case Style: Houston ISD v. Shanell Williams

Title of

Document(s): Termination Appeal

Name of filing

party: Shanell Williams

Email Address: james@jtfallon.com

Phone Number: 713-256-6913

Upload

Attachment(s): [ShanellWilliamsAppealFiling.pdf](#)

You can [edit this submission](#) and [view all your submissions](#) easily.

Exhibit E

Board Policy DFBA (LEGAL)

Houston ISD
101912

TERM CONTRACTS DFBA SUSPENSION/TERMINATION DURING CONTRACT (LEGAL)

Suspension Without Pay

Back Pay

Financial Exigency

A board may, for good cause as determined by the board, suspend an employee without pay:

**Grounds for
Dismissal**

1. Pending discharge, or
2. In lieu of termination.

The suspension may not extend beyond the end of the school year.

Education Code 21.211(b)

Notice

If an employee is not discharged after being suspended without pay pending discharge, the employee is entitled to back pay for the period of suspension. *Education Code 21.211(c)*

Hearing

A board may terminate a term contract and discharge a term contract employee at any time for:

1. Good cause as determined by the board; or
2. A financial exigency that requires a reduction in personnel. *Education Code 21.211(a)*

Before any term contract employee is dismissed for good cause, the employee shall be given reasonable notice in writing of the charges against him or her and an explanation of a district's evidence, set out in sufficient detail to fairly enable the employee to show any error that may exist. Cleveland Bd. of Educ. v. Louder mill, 470 U.S. 532 (1985)

If a term contract employee desires a hearing before an independent hearing examiner, the employee must file a written request with the commissioner of education not later than the 15th day after the date the employee receives notice of the proposed termination or suspension without pay. The employee must provide a district with a copy of the request and must provide the commissioner with a copy of the

notice.

The parties may agree in writing to extend by not more than ten days the deadline for requesting a hearing.

Education Code 21.251(a), .253 [See DFD]

An employee who is protesting proposed action to terminate a term contract at any time on the basis of a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel must notify the board in writing not later than the tenth day after the date the employee receives notice of the proposed action. The employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract.

DATE ISSUED: 10/20/2025 1 of 2 UPDATE 126
DFBA(LEGAL)-P
Houston ISD
101912

TERM CONTRACTS DFBA SUSPENSION/TERMINATION DURING CONTRACT (LEGAL)

Report by Principal

tract [see DFBB] or a hearing under Education Code Chapter 21, Subchapter F, as determined by the board. *Education Code 21.159*

The principal of a district, including a district of innovation, must notify the superintendent not

later than the seventh business day after the date of an educator's termination of employment following an alleged incident of misconduct described by Education Code 22A.051(a) or the principal knew about an educator's misconduct under Education Code 22A.051(a)(1), or not later than 48 hours after the principal becomes aware of evidence of misconduct described by Education Code 22A.051(a)(2)(A), (B), (C), or (D)(b)(1). *Education Code 22A.051(c); 19 TAC 249.14(e) [See DP]*

DATE ISSUED: 10/20/2025 2 of 2 UPDATE 126
DFBA(LEGAL)-P

Exhibit F

Board Policy DFD (LEGAL)

Houston ISD
101912

TERMINATION OF EMPLOYMENT DFD HEARINGS BEFORE HEARING EXAMINER

(LEGAL)

Applicability

2. Terminate a probationary or term contract before the end of the contract period, except as provided below; or

3. Suspend without pay.

This hearing process does not apply to a decision to:

1. Terminate a probationary contract at the end of the contract term;

Exception

2. Not renew a term contract, unless the board has adopted this process for nonrenewals; or

3. Terminate a probationary or term contract before the end of the contract period or terminate a continuing contract at any time, based on a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel, unless the board has decided to use this hearing process.

Education Code 21.251

Not later than the 15th day after the date the employee receives notice of one of the proposed contract actions listed above, the employee must file a written request with the commissioner for a hearing before a hearing examiner. The employee must provide the district with a copy of the request and must provide the commissioner with a copy of the notice. The parties may agree in writing to extend by not more than 10 days the deadline for requesting a hearing. *Education Code 21.253*

Request for Hearing

Assignment of Hearing Examiner by Agreement

The parties may agree to select a hearing examiner from the list maintained by the commissioner or a person who is not certified to serve as a hearing examiner, provided that person is licensed to practice law in Texas. If the parties agree on a hearing examiner the parties shall, before the date the commissioner is permitted to assign a hearing examiner, notify the commissioner in writing of the agreement, including the name of the hearing examiner selected.

By Appointment

This hearing process applies only if an employee requests a hearing after receiving notice of a proposed decision to:

1. Terminate a continuing contract at any time, except as provided below;

If the parties do not select a hearing examiner

by agreement, the commissioner shall assign commissioner receives the request for a the hearing examiner not earlier than the sixth hearing. When a hearing examiner has been business day and not later than the 10th assigned, the commissioner shall notify the business day after the date on which the parties immediately.

DATE ISSUED: 10/20/2025 1 of 5 UPDATE 126
DFD(LEGAL)-P
Houston ISD
101912

TERMINATION OF EMPLOYMENT DFD HEARINGS BEFORE HEARING EXAMINER (LEGAL)

Rejection

Employee Rights

The parties may agree to reject a hearing examiner for any reason and either party is entitled to reject an assigned hearing examiner for cause. A rejection must be in writing and filed with the commissioner not later than the third day after the date of notification of the hearing examiner's assignment. If the parties agree to reject the hearing examiner or if the commissioner determines that one party has good cause for the rejection, the commissioner shall assign another hearing examiner.

Finality of Decision

Powers of Hearing Examiner

After the employee receives notice of the proposed contract action, the parties may agree in writing that the hearing examiner's decision be final and nonappealable on all or some issues.

Conduct of Hearing

Education Code 21.254

The hearing examiner may issue subpoenas, administer oaths, rule on motions and the admissibility of evidence, maintain decorum, schedule and recess the proceedings, allow the parties to take depositions or use other means of discovery, and make any other orders as provided by commissioner rule.

Schedule Restriction

Private

The hearing and any depositions must be held within the geographical boundaries of the district or at the regional education service center that serves the district.

Exception

Protection of Witnesses

Education Code 21.255

A hearing before a hearing examiner may not

be held on a Saturday, Sunday, or a state or federal holiday, unless all parties agree.
Education Code 21.257(c)

A hearing before a hearing examiner shall be private unless the employee makes a written request for a public hearing.

If necessary to maintain decorum, the hearing examiner may close a hearing that an employee has requested be public.

To protect the privacy of a witness who is a child, the hearing examiner may close the

hearing to receive the testimony or order that the testimony be presented by procedures in Article 38.071, Code of Criminal Procedure.

At the hearing, the employee has the right to:

1. Be represented by a representative of the employee's choice;
2. Hear the evidence on which the charges are based;
- 3.

Cross-examine each adverse witness; and

4. Present evidence.

DATE ISSUED: 10/20/2025 2 of 5 UPDATE 126
DFD(LEGAL)-P
Houston ISD
101912

TERMINATION OF EMPLOYMENT DFD HEARINGS BEFORE HEARING EXAMINER (LEGAL)

Evidence

Waiver of Deadline **Consideration**

Burden of Proof

Costs

Oral Argument and Recording

The hearing is not subject to the Administrative Procedure Act.

Recommendation

The hearing shall be conducted in the same manner as a trial without a jury in state district court. A certified shorthand reporter shall record the hearing.

The Texas Rules of Civil Evidence shall apply at the hearing. An evaluation or appraisal of

the teacher is presumed to be admissible at the hearing. The hearing examiner's findings of fact and conclusions of law shall be presumed to be based only on admissible evidence.

The district has the burden of proof by a preponderance of the evidence at the hearing.

Education Code 21.256

The district shall bear the cost of the services of the hearing examiner and certified shorthand reporter and the production of any original hearing transcript. Each party shall bear its costs of discovery, if any, and its attorney's fees. *Education Code 21.255(e)*

Not later than the 60th day after the date on which the commissioner receives a request for a hearing before a hearing examiner, the hearing examiner shall complete the hearing and make a written recommendation. The recommendation must include findings of fact and conclusions of law. The recommendation may include a proposal for granting relief, including reinstatement, back pay, or employment benefits. The proposal for relief

may not include attorney's fees or other costs associated with the hearing or appeals from the hearing. The hearing examiner shall send a copy of the recommendation to each party, the board president, and the commissioner.

The parties may agree in writing to extend by not more than 45 days the right to a recommendation by the date specified above.

Education Code 21.257

The board or a designated subcommittee shall consider the hearing examiner's record and recommendation at the first board meeting for which notice can be posted in compliance with the open meetings laws. The meeting must be held not later than the 20th day after the date that the board president receives the hearing examiner's recommendation and record.

At the meeting, the board or subcommittee shall allow each party to present an oral argument to the board or subcommittee. The board may, by written policy, limit the amount of time for oral argument.

DATE ISSUED: 10/20/2025 3 of 5 UPDATE 126
DFD(LEGAL)-P
Houston ISD
101912

TERMINATION OF EMPLOYMENT DFD HEARINGS BEFORE HEARING EXAMINER
(LEGAL)

Legal Advice **Dismissal**

Decision

Recording
ment, provided equal time is allotted each
party. A certified short hand reporter shall
record any such oral argument.

The board or subcommittee may obtain advice from an attorney who has not been involved in the proceedings.

Education Code 21.258, .260

The hearing examiner may dismiss a hearing before completing the hearing or making a written recommendation if:

1. The teacher requests the dismissal;
2. The school district withdraws the proposed decision that is the basis of the hearing; or
3. The teacher and school district request the dismissal after reaching a settlement regarding the proposed decision that is the basis of the hearing.

Education Code 21.257(f)

Not later than the 10th day after the date on which the meeting to consider the hearing examiner's recommendation is held, the board or subcommittee shall announce its decision, which must include findings of fact and conclusions of law, and may include a

grant of relief.

The board or subcommittee may adopt, reject, or change the hearing examiner's conclusions of law or proposal for granting relief. A determination by the hearing examiner regarding good cause for the suspension of an employee without pay or the termination of a probationary, continuing, or term contract is a conclusion of law and may be adopted, rejected, or changed by the board or board subcommittee.

The board may reject or change a finding of fact made by the hearing examiner:

1. Only after reviewing the record of the proceedings; and
2. Only if the finding of fact is not supported by substantial evidence.

The board or subcommittee shall state in writing the reason for and legal basis for a change or rejection.

Education Code 21.257, .259

A certified shorthand reporter shall record the announcement of the decision. The district shall bear the cost of the reporter's services.
Education Code 21.260

DATE ISSUED: 10/20/2025 4 of 5 UPDATE 126
DFD(LEGAL)-P
Houston ISD
101912

TERMINATION OF EMPLOYMENT DFD HEARINGS BEFORE HEARING EXAMINER (LEGAL)

Record of Proceedings

The commissioner shall consider the appeal solely on the basis of the local record and may not consider any additional evidence or issue. *Education Code 21.301(c)*

The record of the proceedings before the independent hearing examiner shall include:

1. The transcripts of proceedings at the local

level; 2. All evidence admitted;

3. All offers of proof;

4. All written pleadings, motions, and intermediate rulings; 5. A description of matters officially noticed;

6. If applicable, the recommendation of the independent hearing examiner;

7. The transcript of the oral argument before

the board or board subcommittee;

8. The decision of the board or board subcommittee; and

9. If applicable, the board or board

subcommittee's written reasons for changing the recommendation of the independent hearing examiner.

19 TAC 157.1072(e)

DATE ISSUED: 10/20/2025 5 of 5 UPDATE 126
DFD(LEGAL)-P

Exhibit G

Relevant Statutes, Commissioner Decisions,
and IHE Recommendations

Chapter 21, Subchapter

F

SUBCHAPTER F. HEARINGS BEFORE HEARING EXAMINERS

Sec. 21.251. APPLICABILITY. (a) This subchapter applies if a teacher requests a hearing after receiving notice of the proposed decision to:

(1) terminate the teacher's continuing contract at any time, except as provided by Subsection (b)(3); (2) terminate the teacher's probationary or term contract before the end of the contract period, except as provided by Subsection (b)(3); or

(3) suspend the teacher without pay.

(b) This subchapter does not apply to:

(1) a decision to terminate a teacher's employment at the end of a probationary contract;

(2) a decision not to renew a teacher's term contract, unless the board of trustees of the employing district has decided to use the process prescribed by this subchapter for that purpose; or

(3) a decision, on the basis of a financial exigency declared under Section [44.011](#) that requires a reduction in personnel, to terminate a probationary or term contract before the end of the contract period or to terminate a continuing contract at any time, unless the board of trustees has decided to use the process prescribed by this subchapter for that purpose.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 8 (S.B. [8](#)), Sec. 12, eff. September 28, 2011.

Sec. 21.252. CERTIFICATION OF HEARING EXAMINERS. (a) The State Board of Education, in consultation with the State Office of Administrative Hearings, by rule shall establish criteria for the certification of hearing examiners eligible to conduct hearings under this subchapter. A hearing examiner certified under this subchapter must be licensed to practice law in this state.

(b) The commissioner shall certify hearing examiners according to the criteria established under Subsection (a). A person certified as a hearing examiner or the law firm with which the person is associated may not serve as an agent or

representative of:

- (1) a school district;
- (2) a teacher in any dispute with a school district; or
- (3) an organization of school employees, school administrators, or school boards.

(c) The commissioner shall set hourly rates of compensation for a hearing examiner and shall set a maximum amount of compensation a hearing examiner may receive for a hearing.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 21.253. REQUEST FOR HEARING. (a) A teacher must file a written request for a hearing under this subchapter with the commissioner not later than the 15th day after the date the teacher receives written notice of the proposed action. The teacher must provide the district with a copy of the request and must provide the commissioner with a copy of the notice.

(b) The parties may agree in writing to extend by not more than 10 days the deadline for requesting a hearing.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 201, Sec. 12, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 902, Sec. 1, eff. June 20, 2003.

Sec. 21.254. ASSIGNMENT OF HEARING EXAMINER. (a) The commissioner shall maintain a list of the names of all persons who have been certified as hearing examiners. The list shall be initially prepared in a random order, and subsequent additions to the list shall be added chronologically.

(b) The commissioner shall assign the hearing examiner for a particular case by selecting the next person named on the list who resides within reasonable proximity to the district as determined by the commissioner. The commissioner may not change the order of names once the order is established under this section, except that once each hearing examiner on the list has been assigned to a case, the names shall be randomly reordered.

(c) If a hearing examiner is not selected by the parties to a pending case under Subsection (e), the commissioner shall assign a hearing examiner to the case not earlier than the sixth business day and not later than the 10th business day after the date on which the commissioner receives the request for a hearing. When a hearing examiner has been assigned to a case, the commissioner shall immediately notify the

parties.

(d) The parties may agree to reject a hearing examiner for any reason and either party is entitled to reject the assigned hearing examiner for cause. A rejection must be in writing and filed with the commissioner not later than the third day after the date of notification of the hearing examiner's assignment. If the parties agree to reject the hearing examiner or if the commissioner determines that one party has good cause to reject the hearing examiner, the commissioner shall assign another hearing examiner as provided by Subsection (b). If neither party makes a timely rejection, the assignment is final.

(e) After the teacher receives the notice of the proposed action, the parties by agreement may select a hearing examiner from the list maintained by the commissioner under Subsection (a) or a person who is not certified to serve as a hearing examiner. A person who is not a certified hearing examiner may be selected only if the person is licensed to practice law in this state. If the parties agree on a hearing examiner, the parties shall, before the date the commissioner is permitted to assign a hearing examiner, notify the commissioner in writing of the agreement, including the name of the hearing examiner selected.

(f) After the teacher receives the notice of the proposed action, the teacher and the district may agree in writing that the decision of the hearing examiner will be final and nonappealable on all or some issues.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 201, Sec. 13, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 902, Sec. 2, eff. June 20, 2003.

Sec. 21.255. HEARINGS BEFORE HEARING EXAMINER. (a) The hearing examiner may issue subpoenas at the request of either party for the attendance of witnesses and the production of documents at the hearing and may administer oaths, rule on motions and the admissibility of evidence, maintain decorum by closing the hearing or taking other appropriate action, schedule and recess the proceedings, and make any other orders as provided by rules adopted by the commissioner. The hearing examiner may issue a subpoena for the attendance of a person who is not an employee of the district only if the party requesting the issuance of the subpoena shows good cause for the subpoena. The hearing must be held within the geographical boundaries of the school district or at the regional education service center that serves the district. (b) A hearing examiner may allow either party to take one or more depositions or to use other means of discovery before the hearing. The hearing examiner, at the request of

either party, may issue subpoenas for the attendance of witnesses and the production of documents at the deposition. The hearing examiner may issue a subpoena for the deposition of any person who is not an employee of the district only if the party requesting the issuance of the subpoena shows good cause for the subpoena. The deposition must be held within the geographical boundaries of the school district or at the regional education service center that serves the district.

(c) A procedure specified in this section may be changed or eliminated by written agreement of the teacher and the school district after the teacher receives the written notice of the proposed action.

(d) If the hearing examiner is unable to continue presiding over a case at any time before issuing a recommendation or decision, the parties shall request the assignment of another hearing examiner under Section [21.254](#) who, after a review of the record, shall perform any remaining functions without the necessity of repeating any previous proceedings.

(e) The school district shall bear the cost of the services of the hearing examiner and certified shorthand reporter at the hearing and the production of any original hearing transcript. Each party shall bear its respective costs, including the cost of discovery, if any, and attorney's fees.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 21.256. CONDUCT OF HEARING. (a) A hearing under this subchapter must be private unless the teacher requests in writing that the hearing be public, except that a hearing examiner may close a hearing if necessary to maintain decorum.

(b) The hearing is not subject to Chapter [2001](#), Government Code.

(c) At the hearing, a teacher has the right to:

- (1) be represented by a representative of the teacher's choice;
- (2) hear the evidence on which the charges are based; (3) cross-examine each adverse witness; and
- (4) present evidence.

(d) The Texas Rules of Evidence apply at the hearing. A certified shorthand reporter shall record the hearing. (e) The hearing shall be conducted in the same manner as a trial without a jury in a district court of this state. The hearing examiner's findings of fact and conclusions of law shall be presumed to be based only on admissible evidence.

(f) To protect the privacy of a witness who is a child, the hearing examiner may:

- (1) close the hearing to receive the testimony of the witness; or

(2) order that the testimony or a statement of the witness be presented using the procedures prescribed by Article [38.071](#), Code of Criminal Procedure.

(g) An evaluation or appraisal of the teacher is presumed to be admissible at the hearing.

(h) At the hearing, the school district has the burden of proof by a preponderance of the evidence.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 5.003, eff. September 1, 2005.

Sec. 21.257. RECOMMENDATION OF HEARING EXAMINER. (a) Not later than the 60th day after the date on which the commissioner receives a teacher's written request for a hearing, the hearing examiner shall complete the hearing and make a written recommendation that:

(1) includes proposed findings of fact and conclusions of law; and

(2) may include a proposal for granting relief.

(a-1) A determination by the hearing examiner regarding good cause for the suspension of a teacher without pay or the termination of a probationary, continuing, or term contract is a conclusion of law and may be adopted, rejected, or changed by the board of trustees or board subcommittee as provided by Section [21.259](#)(b).

(b) The proposed relief under Subsection (a)(2) may include reinstatement, back pay, or employment benefits but may not include attorney's fees or other costs associated with the hearing or appeals from the hearing.

(c) The parties may agree in writing to extend by not more than 45 days the right to a recommendation by the date prescribed by Subsection (a). A hearing under this section may not be held on a Saturday, Sunday, or a state or federal holiday, unless all parties agree.

(d) The hearing examiner shall send a copy of the recommendation to each party, the president of the board of trustees, and the commissioner.

(e) A hearing examiner who fails to timely issue a written recommendation or decision may not be assigned by the commissioner to conduct additional hearings for a period not to exceed one year.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 201, Sec. 14, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 902,

Sec. 3, eff. June 20, 2003.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 8 (S.B. [8](#)), Sec. 13, eff. September 28, 2011.

Sec. 21.258. CONSIDERATION OF RECOMMENDATION BY BOARD OF TRUSTEES OR BOARD SUBCOMMITTEE. (a) The board of trustees or a subcommittee designated by the board shall consider the recommendation and record of the hearing examiner at the first board meeting for which notice can be posted in compliance with Chapter [551](#), Government Code, following the issuance of the recommendation. The meeting must be held not later than the 20th day after the date that the president of the board receives

the hearing examiner's recommendation and the record of the hearing.

(b) At the meeting, the board of trustees or board subcommittee shall consider the hearing examiner's recommendation and shall allow each party to present an oral argument to the board or subcommittee. The board by written policy may limit the amount of time for oral argument. The policy must provide equal time for each party.

(c) The board of trustees or board subcommittee may obtain advice concerning legal matters from an attorney who has not been involved in the proceedings.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 21.259. DECISION OF BOARD OF TRUSTEES OR BOARD SUBCOMMITTEE.

(a) Not later than the 10th day after the date of the board meeting under Section [21.258](#), the board of trustees or board subcommittee shall announce a decision that:

- (1) includes findings of fact and conclusions of law; and
- (2) may include a grant of relief.

(b) The board of trustees or board subcommittee may adopt, reject, or change the hearing examiner's:

- (1) conclusions of law, including a determination regarding good cause for suspension without pay or termination; or
- (2) proposal for granting relief.

(c) The board of trustees or board subcommittee may reject or change a finding of fact made by the hearing examiner only after reviewing the record of the proceedings before the hearing examiner and only if the finding of fact is not supported by substantial

evidence.

(d) The board of trustees or board subcommittee shall state in writing the reason and legal basis for a change or rejection made under this section.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 8 (S.B. [8](#)), Sec. 14, eff. September 28, 2011.

Sec. 21.260. RECORDING OF BOARD MEETING AND ANNOUNCEMENT. A certified shorthand reporter shall record the oral argument under Section [21.258](#) and the announcement of the decision under Section [21.259](#). The school district shall bear the cost of the services of the certified shorthand reporter.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

**Lewis v. Houston Indep. Sch. Dist., Dkt.
053-R2-05-2024 (Comm'r Educ. 2024)**

EDWINA LEWIS, Petitioner, v. HOUSTON INDEPENDENT..., 2024 WL 3409790...

2024 WL 3409790 (TEXEDAG)

Texas Education Agency

The Commissioner of Education

The State of Texas

EDWINA LEWIS, Petitioner,

v.

HOUSTON INDEPENDENT SCHOOL DISTRICT, Respondent.

DOCKET NO. 053-R2-05-2024

June 21, 2024

DECISION OF THE COMMISSIONER

STATEMENT OF THE CASE

*1 Petitioner, Edwina Lewis, complains of the decision of the Respondent, Houston Independent School District, concerning her probationary contract. Christopher Maska is the Administrative Law Judge appointed by the Commissioner of Education

to hear this cause. Petitioner appeared pro se. Respondent is represented by Amir A. Roohi, Attorney at Law, Houston, Texas.

The principal issue in this case is jurisdiction. Petitioner is contesting the termination of her probationary contract during the contract's period under [Texas Education Code § 21.301](#). This case was heard by an independent hearing examiner under Texas Education Code chapter 21, subchapter F. Petitioner failed to meet the timelines for requesting a hearing concerning the proposed termination of her probationary contract during the contract's period. Because Petitioner failed to timely request a hearing, Petitioner has failed to exhaust administrative remedies.

FINDINGS OF FACT

After due consideration of the record and matters officially noticed, it is concluded that the following Findings of Fact are established because they are undisputed:

1. Petitioner was employed by Respondent under a probationary contract for the 2023-2024 school year.
2. On December 15, 2023, Respondent's board voted to propose the termination of Petitioner's 2023-2024 contract during the contract's period.
3. By letter dated December 15, 2023, Certified Mail, Return Receipt Requested, Petitioner was informed that Respondent's Board of Trustees had voted to propose the termination of her probationary contract and that she could contest the proposal by making a written request to the Commissioner within 15 days of receiving the letter. Petitioner received this letter on January 12, 2024.
4. On February 14, 2024, Petitioner requested a hearing concerning the proposed termination of her probationary contract. February 14, 2024 is 32 days after January 12, 2024.

WESTLAW © 2026 Thomson Reuters. No claim to original U.S. Government Works. 1
EDWINA LEWIS, Petitioner, v. HOUSTON INDEPENDENT..., 2024 WL 3409790...

5. The Independent Hearing Examiner found that Petitioner failed to timely request a hearing.
6. On April 11, 2024, Respondent's board of trustees voted to adopt the recommendation of the Independent Hearing Examiner and to terminate Petitioner's contract.

DISCUSSION

Petitioner contests the termination of her probationary contract. Respondent denies Petitioner's claims and contends that the Commissioner lacks jurisdiction over Petitioner's claims.¹

Exhaustion of Remedies

A teacher who receives a notice of the proposed termination of her probationary contract during the contract's period has an opportunity to request a hearing. [Tex. Educ. Code § 21.251\(a\)\(2\)](#). The procedure for requesting a hearing is set forth in

statute: *2 REQUEST FOR HEARING. (a) A teacher must file a written request for a hearing under this subchapter with the commissioner not later than the 15th day after the date the teacher receives written notice of the proposed action. The teacher must provide the district with a copy of the request and must provide the commissioner with a copy of the notice.

[Tex. Educ. Code § 21.253\(a\)](#). This provision means what it says:

Under this subsection, if the teacher desires a hearing, it must be requested within fifteen days of receiving the proposed termination notice.

El Paso Indep. Sch. Dist. v. Kell, 465 S.W.3d 383, 385 (Tex. App.--El Paso 2015, pet. denied). Compliance with [Texas Education Code § 21.253](#) is required to exhaust administrative remedies. *Smithville Indep. Sch. Dist. v. Hoskins*, NO. 03-98-00561-CV, NO. 03-98-00624-CV, 1999 Tex. App. LEXIS 6964 31-32 (Tex. App.--Austin Sep. 16, 1999, no pet.). The Commissioner may dismiss a case for failure to exhaust administrative remedies. [19 Tex. Admin. Code § 157.1056\(a\)](#). If a teacher does not request a hearing no later than the 15th day after the teacher receives notice of the proposed termination of a probationary contract during the contract's period, the teacher has failed to exhaust administrative remedies and an appeal to the Commissioner should be dismissed.

Did Petitioner Exhaust?

Petitioner, by her own admission, received the notice of the proposed termination of her probationary contract during the contract's period on January 12, 2024. Petitioner did not request a hearing from the Commissioner until February 14, 2024. This was the thirty-second day after Petitioner received notice. As Petitioner failed to request a hearing by the 15th day after she received notice, Petitioner has failed to exhaust administrative remedies. By not invoking administrative remedies, Petitioner lost the opportunity to contest the proposed termination of her contract.

Does an Exception Apply?

Petitioner admits that the request is not timely:

WESTLAW © 2026 Thomson Reuters. No claim to original U.S. Government Works. 2
EDWINA LEWIS, Petitioner, v. HOUSTON INDEPENDENT..., 2024 WL 3409790...

Petitioner is not arguing that she timely filed the appeal. It is evident that she did not. Petitioner's Brief, p.3. But she goes on the argue that Respondent's actions hindered her from filing and denied her due process. *Id.*

Nonrenewal of Term Contract Standards

Petitioner contends Respondent violated [Texas Education Code §§ 21.204, 21.206, and 21.208](#) all of which outline the procedures required to nonrenew a term contract. Respondent could not have violated any of these procedures because Petitioner's contract is a probationary contract. Petitioner is not entitled to the Texas Education Code chapter 21, subchapter E procedures.

Due Process

Petitioner contends that Respondent violated her due process rights citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487 (1985). While Petitioner is correct that she is entitled to due process, Petitioner received due process. Petitioner was given the opportunity for a hearing, but Petitioner did not avail herself of that opportunity. The Chapter 21, subchapter F procedures meet the requirements of due process. *Rodriguez v. Ysleta Indep. Sch. Dist.*, 217 Fed. Appx. 294 (5th Cir. 2007), Petitioner could have had full due process if she had timely requested a hearing. Respondent did not violate Petitioner's due process rights.

Conclusion

*3 This case should be dismissed for lack of jurisdiction.

CONCLUSIONS OF LAW

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact, in my capacity as Commissioner of Education, I make the following Conclusions of Law:

1. The Commissioner lacks jurisdiction over this case under [Texas Education Code § 21.301](#).
2. The Commissioner may dismiss a case for failure to exhaust administrative remedies. [19 Tex. Admin. Code § 157.1056\(a\)](#).
3. If a teacher does not request a hearing no later than the 15th day after the teacher receives notice of the proposed termination of a probationary contract during the contract's period, the teacher has failed to exhaust administrative remedies and an appeal to the Commissioner should be dismissed
4. Because Petitioner did not request a hearing no later than the 15th day after she received notice of the proposed termination of a probationary contract during the contract's period, Petitioner has failed to exhaust administrative remedies.
5. The standards concerning the nonrenewal of term contracts under Texas Education Code chapter 21, subchapter E do not apply to this case.
6. Because Petitioner had an opportunity for a full due process hearing, but failed to invoke that opportunity, no violation of due process has occurred.
7. This case should be dismissed for failure to exhaust administrative remedies.

ORDER

After due consideration of the record, matters officially noticed and the foregoing Findings of Fact and Conclusions of Law, in my capacity as Commissioner of Education, it is hereby ORDERED that the Petitioner's appeal be, and is hereby, DISMISSED.

SIGNED AND ISSUED this 21st day of June 2024.

MIKE MORATH
COMMISSIONER OF EDUCATION

Footnotes

- ¹ This is the second time the Commissioner has considered the termination of Petitioner's probationary contract. In Docket No. 042-R1-03-2024, the Commissioner dismissed the case because at the time the case was filed, while there had been a proposal to terminate Petitioner's probationary contract, there was not a board decision to terminate Petitioner's contract.

2024 WL 3409790 (TEXEDAG)

End of Document © 2026 Thomson Reuters. No claim to original U.S. Government Works.

Lewis v. Houston Indep. Sch. Dist., Dkt.
042-R1-03-2024 (Comm'r Educ. 2024)

EDWINA LEWIS, Petitioner, v. HOUSTON INDEPENDENT..., 2024 WL 1961206...

2024 WL 1961206 (TEXEDAG)

Texas Education Agency

The Commissioner of Education

The State of Texas

EDWINA LEWIS, Petitioner,

v.

HOUSTON INDEPENDENT SCHOOL DISTRICT, Respondent.

DOCKET NO. 042-R1-03-2024

April 18, 2024

DECISION OF THE COMMISSIONER

STATEMENT OF THE CASE

*1 Petitioner Edwina Lewis filed a March 20, 2024 petition for review with the Texas Commissioner of Education, pursuant to [Texas Education Code § 21.301](#). In her appeal, Petitioner asks the Commissioner to review the Independent Hearing Examiner's March 1, 2024 Order recommending dismissal of her Subchapter F hearing. Adrienne Butcher is the Administrative Law Judge assigned to this case. Petitioner proceeds *pro se*. Respondent is represented by its general counsel and assistant general counsel, Erica M. Graham and Amir A. Roohi, respectively, of Houston, Texas.

Because as addressed herein, Petitioner's appeal is untimely and unexhausted, it is dismissed.

FINDINGS OF FACT

After due consideration of the record and matters officially noticed, it is concluded that the following Findings of Fact are established by the record and file in this case:

1. Petitioner held a probationary contract with Respondent for the 2023-2024 school year.
2. On December 15, 2023, Respondent notified Petitioner by certified mail that its board of managers voted to propose termination of her probationary contract for good cause during its term. Petitioner received this notice no later than January 5, 2024.

3. On February 8, 2024, having received no request for a due process hearing under Texas Education Code Chapter 21, Subchapter F, Respondent's school board met and voted to terminate Petitioner's probationary contract during its term. Respondent notified Petitioner of the board's decision by letter hand delivered to Petitioner on February 12, 2024.

4. On February 14, 2024, Petitioner requested a Subchapter F due process hearing on the proposed contract termination. Based on that request, the Agency assigned an Independent Hearing Examiner (IHE) to hear the matter. During the Subchapter F proceedings, Respondent moved to dismiss the hearing, asserting that Petitioner's request was untimely under § 21.253(a).

WESTLAW © 2026 Thomson Reuters. No claim to original U.S. Government Works. 1
EDWINA LEWIS, Petitioner, v. HOUSTON INDEPENDENT..., 2024 WL 1961206...

5. The IHE issued a March 1, 2024 Order granting Respondent's motion to dismiss the Subchapter F hearing.

6. On March 27, 2024, the board president received the IHE's Order and dismissal recommendation. Respondent's board then met to consider the IHE's recommendation on April 11, 2024. Respondent represents that at that meeting, the board voted to adopt the IHE's recommendation and to dismiss the Subchapter F hearing.

7. On March 20, 2024, Petitioner filed her appeal to the Commissioner under [Texas Education Code § 21.301](#). Respondent filed a plea to the jurisdiction, asserting that Petitioner's appeal to the Commissioner is untimely.

8. The Administrative Law Judge held an April 15, 2024 prehearing conference. *See* [19 Tex. Admin. Code § 157.1056\(a\)](#). During the conference and in her pleadings, Petitioner acknowledged that she received the proposed mid-term contract termination notice by January 5, 2024. The parties agree that Respondent terminated Petitioner's contract on February 8, 2024 and that Petitioner was notified of the termination on February 12, 2024. Also, during the prehearing conference, Petitioner orally requested an opportunity to replead under [Texas Education Code § 7.057](#) to address alleged violations by the board of her employment contract and of Texas school laws.

DISCUSSION

Petitioner's [Texas Education Code § 21.301](#) appeal

***2** The Texas Education Code provides, in relevant part,
Not later than the 20th day after the date the board of trustees or board subcommittee *announces its decision under Section 21.259* or the board advises the teacher of its decision not to review the teacher's contract under Section 21.208, the teacher may appeal the decision by filing a petition for review with the commissioner.

[Tex. Educ. Code § 21.301\(a\)](#) (emphasis added). The Agency's implementing rule provides, in relevant part, Petition for review. A teacher wishing to appeal the decision of a board of trustees or board subcommittee must file with the commissioner or the agency's division responsible for hearings and appeals a petition for review not later than the 20th day after the date the board of trustees or the board subcommittee *announces its decision under TEC, § 21.259*, or the board notifies the teacher in writing of its decision not to renew the teacher's contract under [TEC, § 21.208](#). Failure to timely file a petition for review will result in the dismissal of the hearing.

19 Tex. Admin. Code § 157.1072(c) (emphasis added).

An appeal brought under § 21.301 to the Commissioner complaining of a teacher's midyear contract termination is therefore premised on a school board's decision under § 21.259. That decision follows the board's consideration of the IHE's recommendation made under a Subchapter F due process hearing. See Tex. Educ. Code §§ 21.258, .259. Accordingly, to appeal to the Commissioner under § 21.301(a), a party must have exhausted the party's Subchapter F remedy.

Petitioner did not timely request a Subchapter F due process hearing. She received the notice of proposed contract termination no later than January 5, 2024. Her Subchapter F request was due within fifteen days after receipt of that notice. Tex. Educ. Code § 21.253(a). Even if the parties had agreed to extend Petitioner's deadline in writing--which is not alleged in this case--the statutory maximum for such an agreed extension is ten days. Petitioner's February 14, 2024 request would still be untimely even if it had been extended, which it was not. Because Petitioner did not timely request a Subchapter F hearing, the Commissioner cannot review the board's February 8, 2024 decision to terminate her contract for good cause.

WESTLAW © 2026 Thomson Reuters. No claim to original U.S. Government Works. 2
EDWINA LEWIS, Petitioner, v. HOUSTON INDEPENDENT..., 2024 WL 1961206...

Although Petitioner did eventually request a Subchapter F proceeding on February 14, 2024, that request followed the board's February 8, 2024 termination decision and was untimely. To the extent the board voted on April 11, 2024 to adopt the IHE's March 1, 2024 Order recommending dismissal of the untimely-requested Subchapter F proceeding, Petitioner's March 20, 2024 appeal is premature and must be dismissed; parties cannot prematurely file appeals as jurisdictional placeholders before a board decision is made. See *Walker v. Hitchcock Indep. Sch. Dist.*, No. 012-R2-1109 (Comm'r Educ. 2009) (“A premature filing in an administrative appeal will not serve to invoke the jurisdiction of a tribunal even if a filing that was made later would invoke the tribunal's jurisdiction.” (citing *Marble Falls Indep. Sch. Dist.*, 275 S.W.3d 558, 566-67 (Tex. App.--Austin 2008, pet. denied))). Regardless, even if Petitioner now appealed the April 11, 2024 board decision on the IHE's dismissal recommendation of the untimely Subchapter F proceeding, that appeal would have the same jurisdictional bar, as Petitioner's February 14, 2024 Subchapter F request following the board's termination decision was untimely.

*3 Because Petitioner did not timely request a Subchapter F hearing, the Commissioner lacks jurisdiction under § 21.301 to hear her mid-term probationary contract termination. Petitioner's § 21.301 appeal should be dismissed.

Opportunity to replead under § 7.057

In the prehearing conference on jurisdiction, Petitioner stated that she wishes to amend her appeal to proceed instead under Texas Education Code § 7.057, based on alleged school board violations of Texas school laws and of her written employment contract. Petitioner orally requested and was provided with an opportunity to evaluate her potential claims and file an amended pleading under § 7.057 under a separate cause number.

CONCLUSIONS OF LAW

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact, in my capacity as Commissioner of Education, I make the following Conclusions of Law:

1. The Commissioner lacks jurisdiction over this case because Petitioner's appeal of her mid-term contract termination is

untimely and not based on a school board decision following a timely requested Subchapter F hearing. [Tex. Educ. Code § 21.301\(a\)](#).

2. A party appealing a termination decision under [Texas Education Code § 21.301](#) must timely request a Subchapter F due process hearing on a proposed mid-term contract termination, as the board's consideration of and action on the Subchapter F recommendation is a jurisdictional prerequisite to an appeal to the Commissioner. [Tex. Educ. Code § 21.301\(a\)](#).

3. Appeals from school board decisions under [Texas Education Code § 21.259](#) must be filed on or before the 20th day after the board or its subcommittee announces its decision and cannot be filed before the decision is made. [Tex. Educ. Code § 21.301\(a\)](#).

4. To the extent Petitioner would appeal the board's April 11, 2024 decision on the independent hearing examiner's dismissal of her untimely Subchapter F hearing, her March 20, 2024 appeal of that decision is premature and must be dismissed. [Tex. Educ. Code § 21.301\(a\)](#); [19 Tex. Admin. Code § 157.1072\(c\)](#); *Reyna v. Hidalgo Indep. Sch. Dist.*, No. 028-R2-03-2023 (Comm'r Educ. 2023); *Marshall v. Spring Indep. Sch. Dist.*, No. 039-R1-06-2021 (Comm'r Educ. 2021).

5. Petitioner's appeal is dismissed without a hearing for untimeliness and for lack of jurisdiction. [19 Tex. Admin. Code § 157.1056\(a\)](#).

ORDER

WESTLAW © 2026 Thomson Reuters. No claim to original U.S. Government Works. 3
EDWINA LEWIS, Petitioner, v. HOUSTON INDEPENDENT..., 2024 WL 1961206...

After due consideration of the record, matters officially noticed and the foregoing Findings of Fact and Conclusions of Law, in my capacity as Commissioner of Education, it is hereby ORDERED that the Petitioner's appeal be, and is hereby, DISMISSED.

SIGNED AND ISSUED this 18th day of April 2024.

MIKE MORATH
COMMISSIONER OF EDUCATION

2024 WL 1961206 (TEXEDAG)

End of Document © 2026 Thomson Reuters. No claim to original U.S. Government Works.

Blake v. Grapeland Indep. Sch. Dist.,
Dkt. 040-R10-0306 (Comm'r Educ.
2007)

DENNIS BLAKE v. GRAPELAND INDEPENDENT SCHOOL..., 2007 WL 9711916...

2007 WL 9711916 (TEXEDAG)

Texas Education Agency

The Commissioner of Education

The State of Texas

DENNIS BLAKE

V.

GRAPELAND INDEPENDENT SCHOOL DISTRICT

DOCKET NO. 040-R10-0306

DOCKET NO. 029-R10-0106

2007

DECISION OF THE DESIGNEE OF THE COMMISSIONER

Statement of the Case

*1 Petitioner, Dennis Blake, complains of actions taken by Respondent, Grapeland Independent School District. Christopher Maska is the Administrative Law Judge appointed by the Commissioner of Education. Petitioner appeared pro se. Respondent is represented by Chris G. Elizalde, Attorney at Law, Austin, Texas.

The Administrative Law Judge issued a Proposal for Decision recommending that Petitioner's appeal be dismissed for lack of jurisdiction. No exceptions were filed.

Findings of Fact

The following Findings of Fact are not disputed:

1. Petitioner was employed by Respondent as a teacher under a term contract.
2. By letter of December 16, 2005, which Petitioner received on December 20, 2005, Petitioner was informed that the board of trustees had voted to propose the termination of his contract. The letter specified that "[i]f you desire to protest the

proposed action, you must file a written letter request for a hearing with the Commissioner of Education no later than the 15th day after you receive this notice.”

3. Fifteen days after December 20, 2005 is January 5, 2006.

4. Petitioner filed a document styled “A filing of Petition for Review” on January 10, 2006. This document did not include a copy of the district's notice of proposed termination.

5. Petitioner refiled a Petition for Review on March 20, 2006.

WESTLAW © 2026 Thomson Reuters. No claim to original U.S. Government Works. 1
DENNIS BLAKE v. GRAPELAND INDEPENDENT SCHOOL..., 2007 WL 9711916...

Discussion

Petitioner contends that Respondent improperly ended his employment. Respondent denies this and contends that Petitioner failed to exhaust administrative remedies.

Exhaustion of Remedies

When a school district proposes to terminate a teacher's contract, the district is required to send the teacher notice of its proposed action. Once notice is received, a teacher must timely request a hearing, if the teacher wishes to contest the proposed action: A teacher must file a written request for a hearing under this subchapter with the commissioner not later than the 15th day after the date the teacher receives written notice of the proposed action. The teacher must provide the district with a copy of the request and must provide the commissioner with a copy of the notice.

[Tex. Educ. Code § 21.253](#). In the present case, Petitioner received the notice of proposed termination on December 20, 2005. The notice informed Petitioner of the requirement to request a hearing within 15 days. January 5, 2006 is the fifteenth day after December 20, 2005. If Petitioner wished to contest the proposed termination, he should have requested a hearing on or before January 5, 2006. Petitioner did not do so. Petitioner failed to exhaust administrative remedies. This failing is jurisdictional.

Petitioner did file a document that is styled “A filing of Petition for Review” on January 10, 2006.¹ It should be noted that a request for a hearing under [Texas Education Code section 21.253](#) does not require the filing a petition for review. By filing a petition for review one is indicating that one wishes to invoke the Commissioner's jurisdiction under [Texas Education Code section 7.057](#) or [21.301](#). These provisions do not give the Commissioner the authority to assign a certified hearing examiner to hear a termination case. However, a failure to properly label a pleading or request is not necessarily fatal. Unfortunately, for Petitioner filing a request for a hearing late is fatal. Even if the document filed on January 10, 2006 is construed to be a request for a hearing on the issue of the proposed termination, the request is late.

Extenuating Circumstances

*2 Petitioner maintains that there are extenuating circumstances that should excuse his late filing. He contends that the notice was lost and that he was informed that he did not have to file until later. While the notice may have been lost after it was received by Petitioner, this does not excuse Petitioner. Teachers need to take care that notices affecting their livelihoods are responded to.

Petitioner also maintains that his conversations with Texas Education Agency staff led him to believe that he did not have to file until January 11, 2006. There is no need to take evidence as to Petitioner's allegation. Whatever may have been said, Petitioner was responsible for exhausting administrative remedies. In *Wilmer-Hutchins Indep. Sch. Dist. v Sullivan*, 51 S.W.3d 293, 295 (Tex. 2001), a case where a similar claim was made, the Court held:

Even if the District misled Sullivan as she claims, her failure to exhaust administrative remedies is fatal to her action.

Ultimately, each party is responsible for making the correct determination as to how administrative remedies need to be exhausted.

Conclusion

This case should be dismissed for failure to exhaust administrative remedies.

WESTLAW © 2026 Thomson Reuters. No claim to original U.S. Government Works. 2
DENNIS BLAKE v. GRAPELAND INDEPENDENT SCHOOL..., 2007 WL 9711916...

Conclusions of Law

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact, in my capacity as Designee of the Commissioner of Education, I make the following Conclusions of Law:

1. The Commissioner of Education lacks jurisdiction over this case under [Texas Education Code section 7.057](#).
2. If a teacher wishes to contest a notice of proposed termination the teacher must file a written request for a hearing under this subchapter with the commissioner not later than the 15th day after the date the teacher receives written notice of the proposed action. This requirement is jurisdictional. [Tex. Educ. Code § 21.253](#).
3. Because Petitioner failed to request a hearing concerning the proposed termination of his term contract not later than the 15th day after he received notice, Petitioner failed to exhaust administrative remedies.
4. Each party is responsible for making the correct determination as to how administrative remedies need to be exhausted. Being misled does not excuse a failure to exhaust remedies.
5. This case should be dismissed for lack off jurisdiction. [19 Tex. Admin. Code § 157.1056\(a\)](#).

ORDER

After due consideration of the record, matters officially noticed and the foregoing Findings of Fact and Conclusions of Law, in my capacity as Designee of the Commissioner of Education, it is hereby

ORDERED that Petitioner's appeal be, and is hereby, DISMISSED.

SIGNED AND ISSUED this ____ day of _____, 2007.

ROBERT SCOTT
CHIEF DEPUTY COMMISSIONER BY DESIGNATION

Footnotes

- ¹ Petitioner also filed a document entitled "a re-filing of Petition for Review" on March 20, 2006. This document was given a separate docket number. However, petitioner clarified that he meant the document filed on March 20, 2006 to be an amended petition for review not a separate petition for review.

2007 WL 9711916 (TEXEDAG)

End of Document © 2026 Thomson Reuters. No claim to original U.S. Government Works.

WESTLAW © 2026 Thomson Reuters. No claim to original U.S. Government Works. 3

**Anderson v. Wilmer-Hutchins Indep. Sch.
Dist., Dkt. 004-R2-905 (Comm'r Educ. 2005)**

ELEANOR ANDERSON v. WILMER-HUTCHINS..., 2005 WL 8146571...

2005 WL 8146571 (TEXEDAG)

Texas Education Agency

The Commissioner of Education

The State of Texas

ELEANOR ANDERSON

V.

WILMER-HUTCHINS INDEPENDENT SCHOOL DISTRICT

DOCKET NO. 004-R2-905

2005

DECISION OF THE DESIGNEE OF THE COMMISSIONER

*1 Petitioner, Eleanor Anderson, complains of the decision of Respondent, Wilmer-Hutchins Independent School District, to terminate her term contract. Christopher Maska is the Administrative Law Judge appointed by the Commissioner of Education to hear this cause. Petitioner is represented by Mark W. Robinett, Attorney at Law, Austin, Texas. Respondent is represented by Kevin O'Hanlon and Leslie McCollom, Attorneys at Law, Austin, Texas.

Findings of Fact

After due consideration of the record and matters officially noticed, it is concluded that the following Findings of Fact are supported by substantial evidence and are the findings of fact that can best support Respondent's Decision:¹

1. Petitioner had a term contract with Respondent for the 2005-2006 school year.
2. On June 27, 2005, Respondent's Board of Managers voted to approve a reduction in force to eliminate all campus based positions due to a financial exigency.
3. On July 2, 2005, Respondent mailed to Petitioner a notice of proposed termination by both regular mail and certified mail. Both letters were properly addressed and the proper postage was affixed.
4. The notice sent by certified mail on July 2, 2005 was returned with the notation "refused" and with the date 07-09-05.
5. The notice sent by regular mail on July 2, 2005 was not returned to Respondent. Petitioner received this notice on or before July 9, 2005.
6. A second notice of proposed termination was sent to Petitioner on July 26, 2005 by regular mail along with Petitioner's paycheck.
7. Petitioner requested a hearing on the issue of the proposed termination of her contract by letter dated August 10, 2005. 8. August 10, 2005 is more than 15 days after July 9, 2005.

 © 2026 Thomson Reuters. No claim to original U.S. Government Works. 1
ELEANOR ANDERSON v. WILMER-HUTCHINS..., 2005 WL 8146571...

9. On March 21, 2005, Wilmer-Hutchins Independent School District's 2004 Accountability Rating was changed from "Academically Acceptable" to "Academically Unacceptable."

10. On March 21, 2005, the Commissioner appointed a Board of Managers for Wilmer-Hutchins Independent School District.

11. On May 12, 2005, after receiving preclearance from the Justice Department, the members of the Board of Manager for Wilmer-Hutchins Independent School District assumed their duties.

Discussion

Respondent, finding that Petitioner had not timely requested a hearing, voted to terminate her term contract. Petitioner contends that Respondent's decision should be overturned because the Board of Managers that proposed termination and that voted to terminate Petitioner's contract is invalid and unauthorized to take any action, and that Petitioner's request for a hearing was timely filed.² Respondent denies this and asserts that Petitioner failed to exhaust administrative remedies as to the claim the Board of Managers is invalid.

Invalidity of the Board of Managers

*2 Petitioner contends that the Board of Managers is invalid. Petitioner argues that the statutory standards for appointing a board of managers were not met and concludes that this means that the board is invalid and all of its acts are invalid.

Quo Warranto

The first question to be addressed concerning Petitioner's claims that the Board of Managers and its actions are invalid is whether the Commissioner has jurisdiction over such a claim. It has been held that:

A quo warranto proceeding is the exclusive remedy to test the right of an officer to hold office. It may not be done by the accused or a litigant upon trial of a case.

Vick v. City of Waco, 614 S.W.2d 861, 864 (Tex. App. Waco 1981, writ ref'd n.r.e.)(citations omitted). A quo warranto proceeding is a statutory cause of action that must be brought in district court. Tex. Civ. Prac. & Rem. Code, ch. 66. While one claiming a right to hold a contested office may have additional remedies, others are limited to quo warranto proceedings.³ Where none of the petitioners are asserting a claim to the office challenged, as in the case presented by this appeal, the authorities in this State hold that a proceeding in quo warranto is the exclusive legal remedy afforded to the public by which it may protect itself against the unlawful occupancy of public office by an occupant.

Saenz v. Lackey, 522 S.W.2d 237, 240 (Tex. Civ. App.-Corpus Christi 1975, writ ref'd n.r.e.)(citations omitted). The justification for limiting the right to challenge the authority of public officers has been explained:

Public officers should be free to perform their duties without having their authority questioned incidentally in litigation between other parties. They should not be called on to defend their authority unless a proper legal officer of the State has determined that the question raised is serious and deserves judicial consideration as required by article 6253. This settled policy of the State is exemplified by cases holding that the decision of the Attorney General or the district or county attorney to present the information under that statute is a matter of discretion to be exercised for the protection of the public and cannot be controlled by mandamus.

Lewis v. Drake, 641 S.W.2d 392, 294 (Tex. App.-Dallas 1982, no writ). Since a quo warranto proceeding is the exclusive method for a party who is not claiming a right to the office to challenge the right of another to hold office, the Commissioner lacks jurisdiction over Petitioner's claim that the Board of Managers was not validly appointed.⁴

Remedy

But even assuming the Commissioner had jurisdiction to determine whether a board of managers was validly appointed, she could not declare the acts of this Board of Managers to be invalid. Actions of de facto officers are valid even if a court determines that the individuals in question did not lawfully obtain office. *Vick* at 864. The Attorney General of Texas has held:

*3 A de facto officer is one who, by his own acts, has the appearance of holding the office he has assumed, but who in fact, does not validly hold the office. The designation of “de facto officer” may attach to one who holds office under color of an appointment that is subsequently invalidated on the grounds that the appointee was ineligible. Acts performed by a de facto officer under color of office are considered valid.

Op Tex. Att’y Gen. No. JN-874 (1988)(citations omitted). The individuals serving on the Board of Managers in the present case have, at the least, the appearance of holding office. They are at least de facto officers and, hence, their actions cannot be held to be invalid.

Petitioner's claim that the Board of Managers should not have been appointed is not frivolous. Petitioner maintains that Wilmer Hutchins Independent School District has not been “rated as academically unacceptable for a period of one year or more.” Tex. Educ. Code § 39.131(a)(9). Petitioner notes that the Board of Managers was appointed on the day that Wilmer-Hutchins Independent School District's accountability rating was changed from academically acceptable to academically unacceptable. At issue is the meaning of the phrase “rated as academically unacceptable for a period of one year or more.” No court has interpreted this phrase. The Attorney General has not issued an opinion.

While Petitioner's interpretation is not frivolous, neither is the position of Respondent. Respondent maintains that when a district receives an accountability rating that it has received a rating for a one year period. Accountability ratings are yearly ratings. Tex. Educ. Code § 39.073(a). When a district receives an accountability rating, it is a rating concerning the school's performance for a particular year. Further, the history of legislative antecedents to Texas Education Code section 39.131(a)(9) supports Respondent's position. The original precursor to Texas Education Code section 39.131(a)(9) read:

(d) A district that does not have a rating above accredited advised for a period of three years is unaccredited at the conclusion of that period unless the district qualifies for a rating above accredited advised at that time.

Texas Education Code, 71st Leg., R.S., ch. 813, §2.23, 1989 Tex. Gen. Laws 3693. At that time, the period required was three years and action could only be taken if the rating had not increased “at the conclusion of that period.” This language was unambiguous that a full three years of poor ratings was required. The next year, the legislature made a significant change to the language initially adopted:

(g) A district that is rated academically unaccredited for a period of two years shall be annexed to another district under Section 19.027 of this code or the commissioner shall order the creation of a state operated school district under Section

21.758 of this code.

*4 Texas Education Code, 71st Leg., 6th C.S., ch. 1, § 2.18, 1990 Tex. Gen. Laws 21. Here the Legislature purposely removed the language specifying that consequences would apply if at the conclusion of the time period no improvement had been made. A full three years of poor ratings was no longer required. The next Legislature reduced the time period from two years to one

© 2026 Thomson Reuters. No claim to original U.S. Government Works. 3
ELEANOR ANDERSON v. WILMER-HUTCHINS..., 2005 WL 8146571...

year. Texas Education Code, 72nd Leg., R.S., ch. 20, §24, 1992 Tex. Gen. Laws 415. The legislative history indicates that the Commissioner has been given increasingly more authority to take action when a district is not successful. At first, a full three years had to pass before consequences would be applied. But within a few years, the Legislature had changed the requirement to a poor rating for a single year.

The legislative history of a related provision of [Texas Education Code section 39.131](#) indicates that to be “rated as academically unacceptable for a period of one year” means that the rating of academically unacceptable for a school year has been awarded. It does not mean that 365 days have passed since a rating of academically acceptable has been given. In 2003, H.B. 976 was introduced by Senator Florence Shapiro. As introduced, the bill provided that:

(11) if a district has been rated as academically unacceptable for a period of one year or more due to the district's dropout rates, impose sanctions designed to improve high school completion rates, including:

(A) ordering the development of a dropout prevention plan for approval by the commissioner;

(B) restructuring the district or appropriate school campuses to improve identification of and service to students who are at risk of dropping out of school, as defined by Section 29.081;

(C) ordering lower student-to-counselor ratios on school campuses with high dropout rates; and

(D) ordering the use of any other intervention strategy effective in reducing dropout rates, including mentor programs and flexible class scheduling.

Tex. S.B. 976, 78th Leg., R.S. (2003)(Introduced Version). This provision, which has become [Texas Education Code section 39.131\(a\)\(11\)](#), was amended to read “for a period of two years.” The testimony regarding this amendment indicates that the reason for the amendment was to allow a district a period of one year to improve. Hearings on S.B. 976 before the Senate Education Committee, March 25, 2003, pp 11-13; Local Record, vol. 3, exhibit 3. Under Petitioner's interpretation, the introduced language would give a district one year to improve and there would be no need for an amendment to increase the time period to two years.

Request for Hearing

Petitioner contends that she timely sought a hearing after receiving notice of the proposed termination of her contract. She argues that it does not matter whether she timely requested a hearing concerning the notice that was sent on July 2, 2005

because she timely requested a hearing concerning the notice sent on July 26, 2005. Petitioner also contends that there is not substantial evidence that Petitioner ever received either notice that was sent on July 2, 2005.

Resetting the Clock

*5 Petitioner contends that the timeline for requesting a hearing is reset each time a teacher receives a copy of the written notice of proposed termination. The language at issue reads:

A teacher must file a written request for a hearing under this subchapter with the commissioner not later than the 15th day after the date the teacher receives written notice of the proposed action.

[Tex. Educ. Code § 21.253\(a\)](#). Petitioner suggests that if a teacher is sent five notice letters over five weeks and she receives one letter each week, the teacher will have timely requested a hearing if she does so within fifteen days after she receives the

© 2026 Thomson Reuters. No claim to original U.S. Government Works. 4
ELEANOR ANDERSON v. WILMER-HUTCHINS..., 2005 WL 8146571...

last letter. The timeline to request notice under [Texas Education Code section 21.253](#) begins when one first receives written notification. The statute requires the filing of a request “not later than the 15th day after the date the teacher receives written notice.” The statute refers to “the date” not “any date.” If a teacher fails to request a hearing not later than the fifteenth date after first receiving written notice, there is no jurisdiction for a Texas Education Code, chapter 21, subchapter F hearing. The fact that a teacher receives a second, third, or fourth notification by mail, personal delivery, or finally picks up the notice that was left in her box at school, does not reset the timeline for requesting a hearing.

Substantial Evidence

Petitioner maintains that there is no evidence that she received the notice that was sent on July 2, 2005. Petitioner is correct that the mailbox rule's presumption that she received the notice on the date it was mailed was destroyed when she presented evidence that she did not receive the notice. [Temple Indep. Sch. Dist. v. English](#), 896 S.W.2d 167, 169 (Tex. 1995). However, the determination that Petitioner's request for hearing was untimely is based on evidence not a presumption.

Two notice letters were sent to Petitioner's address on July 2, 2005. One was sent regular mail and it was never returned. This is some evidence that it was received. The notice sent by certified mail was marked “refused” and dated 07/09/05. This is evidence that Petitioner or her agent did not wish to receive the certified letter. Petitioner suggests that her sister refused the letter. The Commissioner has held that the failure to pick up a certified letter may result in a determination that an individual received constructive notice. *Parker v. New Caney Independent School District*, Docket No. 354-R1-794 (Comm'r Educ. 1996). It has been held that a refusal to accept certified mail may constitute constructive service. [Ethereedge v. Hidden Valley Airpark](#), 169 S.W.3d 378, 382-383 (Tex. App.-Austin 2005, pet. denied). The refusal to accept certified mail in this case constitutes constructive service. Further, the fact the certified letter was presented to Petitioner or her agent on July 9, 2005 would tend to indicate that letter sent by regular mail was also received by that date. Petitioner received actual and constructive notice on or before July 9, 2005 that Respondent had proposed to terminate her contract. Petitioner was required to request a hearing on or before July 24, 2005. Petitioner's request for a hearing by letter of August 10, 2005 is untimely.

Conclusion

*6 The Commissioner lacks jurisdiction to consider Petitioner's claim that the Board of Managers is invalid. The timeline to request a hearing under [Texas Education Code section 21.253\(a\)](#) begins when one first receives written notification. The timeline is not reset each time a copy of the notice is received. Petitioner failed to request a hearing within 15 days of receiving actual or constructive notice of the proposed termination of her contract.

Conclusions of Law

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact, in my capacity as Designee of the Commissioner of Education, I make the following Conclusions of Law:

1. The Commissioner of Education lacks jurisdiction over this case based on [Texas Education Code section 21.301](#).
2. A quo warranto proceeding is the exclusive remedy to test the right of an officer to hold office.
3. The Commissioner does not have the authority to conduct a quo warranto proceeding. Tex. Civ. Prac. & Rem. Code, ch. 66.
4. The members of the Board of Managers are at least de facto officers.
5. Acts of de facto officers under color of office are valid.

© 2026 Thomson Reuters. No claim to original U.S. Government Works. 5
ELEANOR ANDERSON v. WILMER-HUTCHINS..., 2005 WL 8146571...

6. The acts of the Board of Managers in proposing to terminate Petitioner's contract and in terminating Petitioner's contract are not invalid.
7. The timeline to request a hearing under [Texas Education Code section 21.253\(a\)](#) begins when one first receives, actually or constructively, written notification. The timeline is not reset each time a copy of the notice is received.
8. Petitioner constructively received written notification of the proposal to terminate her contract on July 9, 2005 when the certified letter containing notice was refused.
9. The timeline for Petitioner to request a hearing under [Texas Education Code section 21.253\(a\)](#) began on July 9, 2005.
10. Petitioner did not timely request a hearing under [Texas Education Code section 21.253\(a\)](#).
11. The timeline for requesting a hearing under [Texas Education Code section 21.253\(a\)](#) is jurisdictional.
12. This case should be dismissed for lack of jurisdiction. [19 Tex. Admin. Code § 157.1056\(a\)](#).

ORDER

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact and Conclusions of Law, in my capacity as Designee of the Commissioner of Education, it is hereby

ORDERED that Petitioner's appeal be, and is hereby DISMISSED.

SIGNED AND ISSUED this ____ day of _____, 2005.

ADAM JONES
ASSOCIATE COMMISSIONER BY DESIGNATION

Footnotes

- ¹ The standard of review is further explicated in *Bosworth v. East Central Independent School District*, Docket No. 090-R1-803 (Comm'r Educ. 2003).
- ² While Petitioner seeks reinstatement, a ruling that Respondent incorrectly determined Petitioner failed to exhaust administrative remedies would result in a remand, not a decision that Petitioner prevails on the merits.
- ³ An exception, not relevant to the present controversy, would be that one can bring a claim that an officer was appointed in violation of the Open Meetings Act. *Rivera v. City of Laredo*, 948 S.W.2d 787, 792 (Tex. App.-El Paso, writ denied).
- ⁴ Respondent's contention that Petitioner failed to exhaust administrative remedies as to the claim the Board of Managers is invalid fails because the exclusive remedy is with the courts. Petitioner need not exhaust administrative remedies when relief cannot be granted by administrative bodies.

2005 WL 8146571 (TEXEDAG)

End of Document © 2026 Thomson Reuters. No claim to original U.S. Government Works.

© 2026 Thomson Reuters. No claim to original U.S. Government Works. 6

**Reyes v. Roma Indep. Sch. Dist.,
Dkt. 083-R2-199 (Comm'r Educ.
2000)**

JAVIER REYES v. ROMA INDEPENDENT SCHOOL DISTRICT, 2000 WL 36726627...

2000 WL 36726627 (TEXEDAG)

Texas Education Agency
The Commissioner of Education
The State of Texas

JAVIER REYES
V.
ROMA INDEPENDENT SCHOOL DISTRICT

DOCKET NO. 083-R2-199
February 25, 2000

DECISION OF THE COMMISSIONER

Statement of the Case

*1 Petitioner, Javier Reyes, appeals Respondent's, Roma Independent School District's, decision to terminate his term contract.

Christopher Maska was the Administrative Law Judge appointed by the Commissioner of Education to preside over this cause. Petitioner was represented by Robert M. Capello, Jr., Attorney at Law, Edinburg, Texas. Respondent was represented by Robert E. Hall, Attorney at Law, Houston, Texas.

On November 2, 1999, the Administrative Law Judge issued a Proposal for Decision recommending that Petitioner's appeal be granted to the extent specified in this Decision. Exceptions and replies were timely filed and considered.

Findings of Fact

After due consideration of the record and matters officially noticed, it is concluded that the following Findings of Fact are supported by substantial evidence.

1. Respondent, Roma Independent School District, employed Petitioner, Javier Reyes, under a term contract that was to expire in May 2000.
2. On November 17, 1998, Petitioner was placed on leave with pay due to allegations that he had sexually harassed students.
3. Petitioner grieved his placement on leave with pay. Respondent waived the Level I and II hearings and scheduled the grievance to be held before the board of trustees.
4. On December 15, 1998, just before the grievance hearing was to be held, the following agreement was entered into between the parties.

Mr. Hall: . . . One is the discussion with Mr. Capello, who is the lawyer here for Mr. Reyes, we have-my understanding is that we have agreed that the issue here tonight is whether or not Mr. Capello's client, Coach Reyes, should be reinstated to

his job, put back to work and exonerated or whether he should be found to have committed the wrongdoing of which he has

been accused and the Board can then, if they so decide, take whatever action they deem appropriate up to and including his termination. The reason that I mention that is that, technically, this Level III grievance hearing was requested by Mr. Reyes and the grievance that he filed was actually not a grievance concerning his termination because he had not yet been terminated, yet, but he was suspended pending the outcome of an investigation. The problem that we were running into is that we- I think, both of us realized that we were facing the possibility of having this done twice. In other words, having a hearing about whether or not he should be suspended pending an investigation and then coming back and having another hearing about whatever outcome of that investigation was. I will tell you that as far as I know the investigation is completed, and the Administration is prepared to put on its case. But, I want to be not in doubt here as to what the ultimate issue to be decided is because the state of the record is a bit ambiguous.

***2** Can we have that arrangement?

Mr. Capello: Yes, sir, that's the agreement that you and I have Mr. Hall.

5. On December 15, 1998, Respondent conducted an evidentiary hearing as to the possible termination of Petitioner's term contract and as to Petitioner being placed on leave with pay. Respondent voted to terminate Petitioner's contract.

6. Respondent's board of trustees never voted to propose the termination of Petitioner's

contract. 7. Petitioner never received written notice of the proposed termination of his contract.

8. Petitioner did not object to a directive that he was not to contact potential witnesses.

Discussion

Petitioner contends that the termination of his term contract was improper because he was not given written notice of proposed termination and an opportunity to request the assignment of a certified hearing examiner; he was not given Level I and II hearings as to his grievance concerning being placed on leave with pay; and he was directed not to contact any witnesses.

Background

On November 17, 1998, Petitioner was placed on leave with pay due to allegations that he had sexually harassed students. Petitioner grieved his placement on leave with pay. Respondent waived the Level I and II hearings and scheduled the grievance to be held before the board of trustees. Just prior to the board meeting, both parties reached an agreement. Instead of having the grievance hearing to be likely followed by a hearing on proposed termination, it was agreed that the hearing would be both a grievance hearing and a hearing on proposed termination. Respondent wanted this procedure not just to save time and money but to prevent the need to call students twice to testify about sexual harassment. The hearing was held and the board voted to terminate Petitioner's contract.

Jurisdiction as to Grievance

Petitioner contends that he was improperly denied Level I and II hearings as to his grievance concerning leave with pay. The Commissioner lacks jurisdiction over this claim. Petitioner has not alleged that this violates a school law of Texas. [TEXAS EDUCATION CODE § 7.057\(a\)\(2\)\(A\)](#). While Petitioner may have identified a violation of a written contract, the Commissioner would only have jurisdiction if Petitioner could show monetary harm. [TEXAS EDUCATION CODE §](#)

[7.057\(a\)\(2\)\(B\)](#). Since leave with pay by its nature does not result in monetary harm, the Commissioner lacks jurisdiction over this claim.

© 2026 Thomson Reuters. No claim to original U.S. Government Works. 2
JAVIER REYES v. ROMA INDEPENDENT SCHOOL DISTRICT, 2000 WL 36726627...

Exhaustion as to Witnesses

Petitioner complains that he was directed not to contact potential witnesses. However, Petitioner failed to raise this issue at the hearing before the board of trustees. Petitioner has waived this issue.

Must Chapter 21 procedures be followed?

Petitioner correctly points out that Respondent failed to follow the procedures set out in Chapter 21 for terminating a term contract. No notice of proposed termination was sent to him. Because this was not done, Petitioner could not request a certified hearing examiner to be assigned to the case. There is no provision for a board of trustees to conduct an evidentiary hearing concerning a proposed termination. The procedures set out in Subchapters E and F of Chapter 21 are mandatory. A district must give a teacher written notice of the proposed action. If a teacher timely requests a hearing, a hearing examiner presides over the hearing. If no timely request for a hearing is made, the district may vote to terminate the contract without a hearing.

***3** As the Supreme Court of Texas held in [Texas Catastrophe Prop. Ins. Ass'n. v. Council of Co-Owners](#), 706 S.W.2d 644, 645 (Tex. 1986):

When the Legislature creates an administrative agency, it may also prescribe rules and regulations governing the administrative body and the method by which the rights determined by such body will be enforced, including the procedures for obtaining judicial review of final agency decisions.

Likewise, the Legislature has the authority to establish procedures for school districts. In [Grounds v. Tolar Indep. Sch. Dist.](#), 707 S.W.2d 889, 891 (Tex. 1986), the court held:

When a cause of action is derived from statute, the statutory provisions are mandatory and exclusive and must be complied with in all respects or the action is not maintainable for lack of jurisdiction.

The procedures specified in Subchapters E and F of Chapter 21 are mandatory and exclusive. A board of trustees lacks the jurisdiction to deviate from those procedures.

Subchapter F of Chapter 21 establishes the hearing procedures to be followed but allows the parties in limited circumstances to agree to some changes. [Texas Education Code section 21.254\(e\)](#) allows the parties to select a lawyer to hold the evidentiary hearing and issue a recommendation. [Texas Education Code section 21.254\(f\)](#) allows the parties to agree in writing that all or part of a decision of a hearing examiner is final and not appealable. [Texas Education Code section 21.255\(c\)](#) allows the parties to agree in writing to change the procedures as to discovery matters. [Texas Education Code section 21.257\(c\)](#) allows the parties to agree in writing to waive the certified hearing examiner's timeline for issuing a recommendation. If the Legislature wished to allow the parties to agree to change anything else about an evidentiary hearing,

it would have specified that right.

Exhaustion as to Hearing

It can be argued that Petitioner failed to exhaust administrative remedies with regard to the conduct of the board hearing. Petitioner did not object to the board holding an evidentiary hearing as to possible termination. In fact, Petitioner agreed to the procedure. However, there are exceptions to the exhaustion of administrative remedies doctrine. The Texas Supreme Court in [Westheimer Indep. Sch. Dist. v. Brockett](#), 567 S.W.2d 780, 785 (Tex. 1978) held:

© 2026 Thomson Reuters. No claim to original U.S. Government Works. 3
JAVIER REYES v. ROMA INDEPENDENT SCHOOL DISTRICT, 2000 WL 36726627...

It follows, however, that intervention by the court in administrative proceedings may be permissible when an agency is exercising authority beyond its statutorily conferred powers. Specifically, it has been held that when there is an absence of jurisdiction in an administrative agency, the doctrine of exhaustion of administrative remedies is not applicable.

Here, the district lacked jurisdiction to hold an evidentiary hearing on the possible termination of Petitioner's contract. Therefore, the doctrine of exhaustion of administrative remedies does not apply.

Waiver

It would appear that Petitioner has waived the argument that he was entitled to a hearing before a certified hearing examiner. Petitioner, who was represented by counsel, decided that instead of having two hearings he wished to have one hearing. Petitioner knowingly relinquished his right to a hearing before a certified hearing examiner. However, because it has been determined that Respondent's error was that it lacked jurisdiction, this is a case of fundamental error. In Grounds, the Texas Supreme Court held that "lack of jurisdiction is fundamental error and may be raised before this court for the first time." 707 S.W.2d at 893. See also [Central Educ. Agency v. Burke](#), 711 S.W.2d 7, 8-9 (Tex. 1986). It has long been the law in this state that fundamental error may not be waived. [Ramsey v. Dunlop](#), 146 Tex. 196, 205 S.W.2d 970 (Tex. 1947); [Lessing v. Cunningham & Hardee](#), 55 Tex. 231 (1881). Further, the Texas Supreme Court has held that an agreement of the parties cannot enlarge the jurisdiction of a tribunal. [Burke v. Sutterfield](#) 525 S.W.2d 950, 953 (Tex. 1975). Because the error that occurred was fundamental error, waiver cannot apply.

Harmful Error

*4 Respondent points out that under [Texas Education Code section 21.303\(c\)](#), the Commissioner cannot reverse the decision of a board of trustees for a procedural irregularity unless the error was likely to lead to an erroneous decision. However, the Commissioner does not have jurisdiction over this case based on Subchapter G of Chapter 21 of the Texas Education Code. This section does not apply because the Subchapter F procedures were not complied with. [TEXAS EDUCATION CODE § 21.301](#). Further, even if [Texas Education Code section 21.303\(c\)](#) did apply, fundamental error would be the type of error likely to lead to an erroneous decision.

Remedy

Because Respondent lacked jurisdiction to hold a hearing, the decision to terminate Petitioner's contract is void. However, Respondent may choose to propose termination of Petitioner's contract on the same grounds. Since the first hearing was a nullity, Respondent may now attempt to properly complete the procedure for proposed termination. Of course, if this were to occur, Respondent could not retroactively terminate Petitioner's contract. Respondent is entitled to back pay and benefits until he is reinstated or until his contract is properly ended.

Petitioner also seeks an award of attorney's fees. The Commissioner lacks jurisdiction to award attorney's fees.

Conclusion

The Commissioner lacks jurisdiction to hear Petitioner's claim concerning leave with pay. Petitioner failed to exhaust administrative remedies as to his claim concerning a directive not to contact witnesses. However, Respondent did lack jurisdiction to hold an evidentiary hearing concerning the possible termination of Petitioner's contract. Respondent's decision to terminate Petitioner's contract should be overturned.

© 2026 Thomson Reuters. No claim to original U.S. Government Works. 4
JAVIER REYES v. ROMA INDEPENDENT SCHOOL DISTRICT, 2000 WL 36726627...

Response to Respondent's Exceptions to the Proposal for Decision

Respondent contends that while this case involves “an odd set of circumstances”, fundamental error did not occur. Respondent argues that its actions comport with Chapter 21; that Petitioner waived any objections; and that the Proposal for Decision does not consistently treat Subchapters E, F, and G as mandatory and exclusive.

Can a Board hold an Evidentiary Hearing?

Respondent argues that if a teacher does not request the Commissioner to assign a certified hearing examiner, a board can hold any type of hearing it wishes. Respondent notes that the Commissioner may not substitute his judgment if a board is lawfully exercising its powers and concludes that the Commissioner must affirm its action. [TEXAS EDUCATION CODE § 11.151\(b\)](#). However, Respondent's first premise is mistaken.

Two Tracks

Subchapters E, F, and G of the Texas Education Code establish a procedure for terminating a term contract that has two tracks. The process begins by a board voting to propose termination. The teacher then has the option of requesting a hearing within 15 days of receiving written notice of proposed termination. [TEXAS EDUCATION CODE § 21.253](#). A teacher's failure to timely request a hearing deprives the Commissioner of jurisdiction. In a number of cases, the Commissioner has declined to assign a certified hearing examiner because the teacher's request was not timely. This is so because the procedures in Subchapters F and G are mandatory and exclusive. Both teachers and districts have lost appeals for failure to meet Chapter 21 timelines. [Moses v. Fort Worth Indep. Sch. Dist., 977 S.W.2d 851 \(Tex.-App.-Fort Worth 1998, no pet.\)](#); [Cortez v. Dallas](#)

Independent School District, Docket No. 056-TR2-1297 (Comm'r Educ. 1998); *Caro v. McAllen Independent School District*, Docket No. 194-R1-697 (Comm'r Educ. 1997); *Colella v. Dallas Independent School District*, Docket No. 010-R2-997 (Comm'r Educ. 1997); *Patnod v. Houston Independent School District*, Docket No. 039-R2-1097 (Comm'r Educ. 1997). Just as a teacher has a mandatory duty to timely request a hearing, a district has a mandatory duty to provide a teacher with written notice of its vote to propose nonrenewal.

Is a Hearing Requested?

*5 The two tracks diverge at the time a teacher decides whether or not to request a hearing. If a teacher fails to request a hearing, the board can vote to terminate the contract. The board has to take some action to end the contract during the term. A teacher's contract is not automatically terminated because no timely request for hearing was made. Board action is appropriate because a board "may terminate a term contract and discharge a teacher at any time..." [TEXAS EDUCATION CODE § 21.211](#). If a teacher fails to avail himself of the statutorily mandated process, the board can in effect enter a default judgment. The only thing required to sustain the board's judgment when no hearing is requested is proof that the teacher did not timely request a hearing. A teacher who fails to request a hearing after notice can not prevail before the Commissioner by showing that the district lacked good cause to terminate the contract.

The other track is when a teacher requests a hearing. In that case, the hearing is heard either by a certified hearing examiner or before an attorney agreed to by both parties. The board only has jurisdiction to hold a hearing to receive and act on the recommendation of the hearing examiner. In *Roberts-Quintyn v. Wilmer-Hutchins Independent School District*, Docket No. 195-R2-697 (Comm'r Educ. 1997), the Commissioner held that the district did not have jurisdiction to hold an evidentiary hearing concerning the termination of a term contract despite the fact that the district and teacher had entered into a contract that purported to allow such a procedure. To allow parties by agreement or contract to opt out of Chapter 21 would mean that Chapter 21 was merely directory. Districts could choose to exclusively offer contracts that waived all Chapter 21 rights.

© 2026 Thomson Reuters. No claim to original U.S. Government Works. 5
JAVIER REYES v. ROMA INDEPENDENT SCHOOL DISTRICT, 2000 WL 36726627...

Jurisdiction and Waiver

In the present case, Respondent never voted to propose termination and Petitioner never received written notice of proposed termination. The agreement that was reached to hold only one hearing concerning the grievance and termination was an agreement between the administration and Petitioner. Counsel for the administration and Petitioner's counsel stated the agreement on the record. The Board neither accepted nor rejected the agreement. The agreement was not that Petitioner would not request a hearing. The agreement was an agreement to hold a hearing. If Petitioner, after receiving written notice of proposed termination, had agreed not to request a hearing, Respondent could have voted to terminate his contract. Because Petitioner did not receive proper notice of proposed termination and because Petitioner requested a hearing, Respondent lacked jurisdiction to hold an evidentiary hearing. Because Respondent acted without jurisdiction, the error is fundamental and cannot be waived. As the court held in [Benavides Indep. Sch. Dist. v. Guerra](#), 681 S.W.2d 246, 249 (Tex. App.-San Antonio 1984, writ ref'd n.r.e.):

There is another exception recognized in Texas courts to the general rule requiring exhaustion of administrative remedies. Where a school board acts without express or implied statutory authority or in contravention of a statute, then its act is void and a direct appeal will lie to the courts. [Palmer Publishing Co. v. Smith](#), 130 Tex. 346, 348, 109 S.W.2d 158, 159 (1937);

[Bear v. Donna Independent School District, 74 S.W.2d 179, 180 \(Tex. Civ. App.--San Antonio 1934, writ ref'd\).](#)

Mandatory and Exclusive

*6 Respondent argues that the holding that [Texas Education Code section 21.303\(c\)](#) does not apply to this case contradicts the holding that Subchapters E and F are the mandatory and exclusive methods of terminating a term contract. [Texas Education Code section 21.303\(c\)](#) prohibits the Commissioner from granting a Subchapter G appeal based on a board error if the error is harmless error. The reason [Texas Education Code section 21.303\(c\)](#) does not apply is that this case is not a Subchapter G appeal. A termination can only be appealed under Subchapter G if it is the appeal of a decision made under [Texas Education Code section 21.259](#). [Tex. Educ. Code § 21.301\(a\)](#). Respondent's decision was not made under [Texas Education Code section 21.259](#). Nonetheless, the Commissioner has jurisdiction under [Texas Education Code section 7.057\(a\)\(2\)\(A\) and \(B\)](#) because Respondent has alleged both violations of the Education Code and the violation of a written employment contract. Subchapter G is not the mandatory and exclusive method of appealing every alleged violation concerning a teaching contract. A district, however, must abide by Subchapters E and F in order to terminate a term contract.

Conclusions of Law

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact, in my capacity as Commissioner of Education, I make the following Conclusions of Law:

1. The Commissioner of Education has jurisdiction over this appeal concerning the claim that Respondent lacked jurisdiction to conduct an evidentiary hearing as to the possible termination of Petitioner's contract pursuant to [Texas Education Code section 7.057\(a\)\(2\)\(A\) and \(B\)](#).

2. The Commissioner lacks jurisdiction over Petitioner's grievance concerning being placed on leave with pay. 3.

Petitioner failed to exhaust administrative remedies as to his claim that he was prohibited from contacting witnesses. 4.

One does not have to exhaust administrative remedies when the issue is fundamental error.

5. One cannot waive fundamental error.

© 2026 Thomson Reuters. No claim to original U.S. Government Works. 6
JAVIER REYES v. ROMA INDEPENDENT SCHOOL DISTRICT, 2000 WL 36726627...

6. Under Subchapters E and F of Chapter 21 of the Texas Education Code, a board of trustees may only hold two types of hearings concerning the proposed termination of a term contract. If the board determines that a teacher has failed to request a hearing, the board can consider a motion to terminate the teacher's employment contract. If the teacher requests a hearing, the board must hold a hearing to consider the recommendation of the certified hearing examiner and to issue its decision.

7. A board of trustees lacks jurisdiction to hold an evidentiary hearing concerning the proposed termination of a teaching contract.

8. It was fundamental error for Respondent to conduct an evidentiary hearing concerning the possible termination of

Petitioner's contract.

9. [Texas Education Code section 21.303\(c\)](#) does not apply to this case.

10. Respondent's decision to terminate Petitioner's contract is void. Petitioner is entitled to back pay and benefits until he is reinstated or until his contract is properly ended.

*7 11. Since Respondent's hearing concerning Petitioner's contract was a nullity, Respondent is not now barred from proposing termination for the same reasons it asserted in the prior hearing.

12. The Commissioner lacks jurisdiction to award attorney's fees.

13. Petitioner's appeal is granted to the extent specified above.

Recommendation

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact and Conclusions of Law, in my capacity as Commissioner of Education, it is hereby

ORDERED that Petitioner's appeal be, and is hereby, GRANTED to the extent specified

above. SIGNED AND ISSUED this 25th day of FEBRUARY, 2000.

JIM NELSON
COMMISSIONER OF EDUCATION

2000 WL 36726627 (TEXEDAG)

End of Document © 2026 Thomson Reuters. No claim to original U.S. Government Works.

2024 WL 4732633 (TEXEDAG)

Texas Education Agency

The Commissioner of Education

The State of Texas

Houston Independent School District

v.

Rebecca Russo

DOCKET NO. 176-LH-06-2024

October 1, 2024

*1 BEFORE DELPHINE M. JAMES, TEXAS EDUCATION AGENCY, CERTIFIED INDEPENDENT

RECOMMENDATION OF INDEPENDENT HEARING EXAMINER

STATEMENT OF THE CASE

Petitioner Houston Independent School District (“HISD” or “Petitioner”) proposed termination of the term contract of Respondent Rebecca Russo (“Russo” or “Respondent”) under [Texas Education Code §21.211\(a\)](#) in a letter to Russo dated May 24, 2024. *See* **[Exhibit 1]**. After receiving notice of HISD's proposed termination of her term contract, Russo attempted to invoke her right under [Texas Education Code §21.251\(a\)\(2\)](#) and [§21.253](#) to request a hearing and the appointment of an independent hearing examiner (“IHE”) under subchapter F of Texas Education Code Chapter 21. Russo sent a written request for a hearing to the Texas Education Commissioner on June 18, 2024. *See* **[Exhibit 4]**. By letter dated June 26, 2024, the Texas Education Agency appointed the undersigned independent hearing examiner to preside in their matter. *See* Exhibit 3. HISD filed a Plea to the Jurisdiction asserting that the IHE lack jurisdiction to hear this matter. *See* **[Exhibit 13]**.

HISD was represented by Bryce A. Corsaut, Spalding Nichols Lamp Langlois, 3700 Buffalo Speedway, Suite 500, Houston, Texas 77098. Russo was represented by Deshonda Charles, D. Charles Law Firm, 808 W. Main Street Houston, TX 77098.

FINDINGS OF FACT,

After due consideration of the evidence and matters officially noticed, in my capacity as an Independent Hearing Examiner, I make the following Findings of Facts.

1. Respondent was employed at HISD as a teacher under a one-year term contract for the 2023-2024 school year. *See* **[Exhibit 8]**.

2. On March 23, 2023, Russo signed an employee contract with HISD having the following statement “I have read this

Contract and ACCEPT to comply with its terms and conditions”. See [Exhibit 8 Page 2]

3. Paragraph 13 of Russo's Contract further states *“Renewal and non-renewal will be in accordance with Board Policies, ARs and State Law. (Chapter 21, Subchapter E of the Texas Education Code)”* See [Exhibit 8 13]

© 2026 Thomson Reuters. No claim to original U.S. Government Works. 1
Houston Independent School District v. Rebecca Russo, 2024 WL 4732633 (2024)

4. By letter dated May 24, 2024, Petitioner Houston Independent School District (“Houston ISD” or the “District” or “HISD”) notified Respondent Rebecca Russo of the proposed termination of her 2023-2024 term contract under [Texas Education Code § 21.211\(a\)](#). See [Exhibit 1].

5. After receiving notice of the proposed termination of her term contract, Russo attempted to invoke her right under [Texas Education Code §§ 21.251\(a\)\(2\)](#) and [21.253](#) to request a hearing and the appointment of a hearing examiner under Chapter 21, Subchapter F of the Texas Education Code. See [Exhibit 4].

*2 6. Russo sent a written request for hearing to the Texas Education Commissioner on June 18, 2024 at 11:54 p.m. See [Exhibit 5].

7. By letter dated June 26, 2024, the Texas Education Agency appointed Delphine James as the Independent Hearing Examiner to preside in this matter. See [Exhibit 3].

8. On May 23, 2024, HISD's Board of Managers proposed the nonrenewal of Russo's term contract at its scheduled meeting on May 23, 2024. See [Exhibit 1].

9. On May 24, 2024, HISD's Superintendent of Schools, Mike Miles, issued a letter (the Notice Letter) to Russo regarding the Board's proposal to nonrenew Russo's term contract. See [Exhibit 1].

10. As stated in the notice letter, HISD transmitted the Notice Letter to Ms. Russo by hand delivery, first class mail, and certified mail, return receipt requested. See [Id].

11. On May 24, 2024, HISD transmitted the Notice Letter to Ms. Russo by certified mail. See [Exhibit 2].

12. The certified mail was returned on June 11, 2024, but the United States Post Office reattempted delivery to Russo on May 30, 2024. See [Exhibit 11].

13. On May 30, 2024, Russo's Principal hand delivered a copy of the Notice to Ms. Russo. See Russo's Declaration. See [Exhibit 6 ¶1].

14. Russo further asserted in her declaration that she was misled as to the way she would receive formal notice. See [Exhibit 6 ¶3].

15. On May 30, 2024, Russo sent a text to Kelly Johnston, an assistant principal employed by HISD at Briargrove Elementary School, regarding the Notice. The Affidavit of Ms. Johnston stated that she received a text from Russo at 6:26 p.m. on May 30, 2024, with a picture of the written Notice. See [Exhibit 7 ¶4].

16. Kelly Johnston affidavit attaches Russo's text exchange. At 6:30 p.m. Ms. Johnston asks whether Russo was going to appeal. At 6:31 p.m. Russo replied, "Yes but not until June 5'D". See [Exhibit 7].

17. The Notice Letter in **Exhibit 1** provided Russo the appeal procedure and timeline requirements as follows:

APPEAL PROCEDURE

In accordance with [Section 21.251 et seq. of the Texas Education Code](#), and HISD Board Policies DFBB (LEGAL), DFBB (LOCAL), DFD (LEGAL), and DFD (LOCAL), **you are hereby advised that you have the right to protest the proposed nonrenewal by submitting a written request for a hearing to the Commissioner of Education, Texas Education Agency**

© 2026 Thomson Reuters. No claim to original U.S. Government Works. 2
Houston Independent School District v. Rebecca Russo, 2024 WL 4732633 (2024)

(TEA), Division of Hearings and Appeals, 1701 North Congress Ave., Austin, Texas 78701-1494, Facsimile 512-475-3662, within fifteen (15) days of receipt of their letter. If you do not request a hearing within the time prescribed by law, the Board shall take the appropriate action and notify you in writing of the action.

18. On June 18, 2024, at 11:54 p.m., Ms. Russo requested a hearing on her proposed nonrenewal nineteen (19) days after she received the notice of non-renewal Letter. See [Exhibit 5].

*3 19. On August 15, 2024, HISD filed a plea to the jurisdiction asserting that the IHE lacked jurisdiction because Russo did not file her request for a hearing within 15 days of receipt of the notice of non-renewal. See [Exhibit 13].

20. In Russo's response to HISD's Plea to the Jurisdiction, Russo states that May 30, 2024, was the date that she recalled her principal telling her about the Notice of Nonrenewal. Russo further alleges that HISD cannot prove the critical date of receipt of Notice to Russo. Russo further requested that the IHE transforms this proceeding into an appeal. See [Exhibit 9].

21. In HISD's reply to Russo's Response, HISD reasserts its argument and provides evidence through Kelly Johnson's Affidavit that Russo received the Notice on May 30, 2024. See [Exhibit 12]

22. In Russo's supplemental Response to the plea to the jurisdiction, Russo reasserts her argument that the date of receipt should be the date Russo reasonably believe that she received the Notice of non-renewal. See [Exhibit 10]

23. The findings and conclusions in the Recommendation are based on the documents, affidavits, and information submitted by the parties.

DISCUSSION

1. [Texas Education Code § 21.253](#). states *“(a) A teacher must file a written request for a hearing under this subchapter with the commissioner not later than the 15th day after the date the teacher receives written notice of the proposed action. The teacher must provide the district with a copy of the request and must provide the commissioner with a copy of the notice. (b) The parties may agree in writing to extend by not more than 10 days the deadline for requesting a hearing.”*

2. [Texas Education Code § 21.206](#) states *“If the employee desires a hearing after receiving notice of the proposed nonrenewal, the employee shall notify the Board in writing not later than the 15th day after:*

The date the employee receives hand delivery of the notice of proposed nonrenewal; or

The date the notice is delivered to the employee's address of record with the District, if the notice is mailed by prepaid certified mail or delivered by express delivery service.

3. HISD DFBB Legal states *“The notice must be delivered personally by hand delivery to the employee on the campus at which the employee is employed. If the employee is not present on the campus on the date that hand delivery is attempted, the notice must be mailed by prepaid certified mail or delivered by express delivery service to the employee's address of record with the District. Notice that is postmarked on or before the tenth day before the last day of instruction is considered timely for these purposes.”*

© 2026 Thomson Reuters. No claim to original U.S. Government Works. 3
Houston Independent School District v. Rebecca Russo, 2024 WL 4732633 (2024)

4. In the present case, Russo received the notice of proposed termination on May 30, 2024 by hand delivery. The notice informed Russo of the requirement to request a hearing within 15 days which was June 14, 2024, and respondent served the request for hearing on June 18, 2024.

*4 5. Russo did not request a 10-day extension with HISD or TEA.

6. Russo makes a point about not receiving the Notice. However, HISD sent the notice to Russo to her by certified mail on May 24, 2024, as required by HISD Board policies.

7. Therefore, Russo was required to request a hearing on or before June 14, 2024, and failed to do so. This failing is jurisdictional. See *Blake v. Grapeland Independent School* DKT-040-R10-0306 (Comm'r Edu. 2007); See Also *Lewis v Houston Independent School District* DKT-053-R2-05-2024 (Comm'r Edu. 2024).

8. Respondent asserted that there were extenuating circumstances that should excuse her late filing. However, Russo was informed by HISD in writing that she had 15 days to request the hearing. As articulated in *Blake*, ultimately, it is Russo's responsibility to meet the jurisdictional requirement pursuant to the Texas Education Code.

CONCLUSION OF LAW

1. Jurisdiction for an independent hearing examiner to hear this matter is proper under [Texas Education Code § 21.251\(a\)\(2\)](#) only if the Respondent meets the jurisdictional requirements.

2. As requested by Russo, the independent hearing examiner does not have the authority to change her hearing request to an appeal.

3. Because Russo failed to meet the jurisdictional requirements under the Texas Education Code, this matter should be dismissed in its entirety as articulated in *Blake and Lewis*.

4. Any conclusion of law deemed to be a finding of fact is hereby adopted as such.

RECOMMENDATION

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact and Conclusions of Law, the Independent Hearing Examiner hereby RECOMMENDS that the Board of Trustees of the Houston Independent School District adopt the foregoing Findings of Fact and Conclusion of Law, and take action consistent therewith.

SIGNED and issued the 1st day of October 2024.

Delphine James
Delphine James Certified Independent Hearing Examiner

2024 WL 4732633 (TEXEDAG)

End of Document © 2026 Thomson Reuters. No claim to original U.S. Government Works.

© 2026 Thomson Reuters. No claim to original U.S. Government Works. 4

Houston Indep. Sch. Dist. v. Green, Dkt. 336-LH-0611 (CHE Rec. 2011)

HOUSTON INDEPENDENT SCHOOL DISTRICT Petitioner..., 2011 WL 13153223...

2011 WL 13153223 (TEXEDAG)

Texas Education Agency

The Commissioner of Education

The State of Texas

HOUSTON INDEPENDENT SCHOOL DISTRICT Petitioner

vs.

JANICE GREEN Respondent

TEA DOCKET NO 336-LH-0611

July 25, 2011

*1 BEFORE EQUATOR L. TURNER CERTIFIED HEARING EXAMINER

RECOMMENDATIONS OF THE HEARING EXAMINER

Statement of the Case

Houston Independent School District, hereinafter referred to as the Petitioner, has proposed the non-renewal of Ms. Janice Green, hereinafter referred to as Respondent, one-year term contract. Petitioner has listed two reasons in its letter of notice of proposed nonrenewal of Respondent's contract. Petitioner is represented by Ms. M. Kaye DeWalt of Littler Mendelson, P.C., Houston, Texas. Respondent, is represented by Ms. Marilyn L. Brown, of Houston Federation of Teachers, Houston, Texas. Petitioner has never asserted that Respondent's request for the appointment of a Hearing Examiner was not timely, nor that the Hearing Examiner does not have jurisdiction. However, after reviewing the case, the Hearing Examiner question the parties as to whether she has jurisdiction to rule on her appeal of the nonrenewal. The Hearing Examiner, via conference call on June 29, 2011 and email, requested that both parties file briefs on the issue of jurisdiction. Petitioner did not file a brief with the Hearing Examiner. Thus, this recommendation is based on the Respondent's brief alone. The Hearing Examiner also did not conduct a hearing. Therefore, no transcript is available, so the references below address the Respondent's brief alone.

Findings of Fact

After due consideration of the record and matters officially noticed, the following findings of fact have been proven by a preponderance of the evidence (citations to evidence are not exhausted but are basically intended to indicate some of the basis for the specific findings of fact):

1. Respondent is a teacher certified to teach Art, in the Houston Independent School District and currently teaches at Key Middle School. (Respondent's Brief P. 3).
2. Respondent job code was 001456 which is a Literacy Coach for Middle School. *Id.*
3. Per steps outlined by Petitioner for Principals to follow in determining which teachers were eligible for nonrenewal, the first criterion was job code. *Id.*

© 2026 Thomson Reuters. No claim to original U.S. Government Works. 1
HOUSTON INDEPENDENT SCHOOL DISTRICT Petitioner..., 2011 WL 13153223...

4. The Principal at Key Middle School closed the job code 001456 which signifies that the position of Literary Coach was being eliminated. *Id.*

5. Respondent is employed by the Petitioner pursuant to a one-year term contract for the 2010 - 2011 school year. (Respondent's Brief P. 1).

6. By letter dated April 08, 2011, Respondent received notice from Petitioner's Superintendent, Terry B. Grier, Ed.D, that it

was recommended to non-renew her contract to Petitioner's Board of Education. *Id.*

7. This letter notified Respondent that she had the right to protest the proposed nonrenewal by submitting a written request for a hearing to the Commissioner of Education and to Dr. Terry Grier, Ed.D, within fifteen (15) days of the date she received the letter.

*2 8. The letter also noted that “if you failed to properly and timely protest the Board's proposal for nonrenewal, you will waive any right to a hearing and the proposal for nonrenewal of your contract will become a final decision of nonrenewal by law.” *Id.*

9. A hearing was held before Petitioner's Board of Education on April 07, 2011 regarding the non-renewal of Respondent's contract. At the conclusion of the hearing, Petitioner's Board voted to non-renew Petitioner's contract of employment. *Id.*

10. On April 20, 2011, Respondent's representative Ms. Corina Ortiz, Houston Federation of Teachers, timely faxed a letter stating that Ms. Janice Green contested the proposed action and formally requested the assignment of a Hearing Examiner to (1) Houston Independent School District Board Services, (2) Dr. Terry Grier, Ed.D, and (3) Robert Scott, Commissioner of Texas Education Agency. (Respondent's Brief P. 1).

11. Unfortunately, the fax to Robert Scott, Commissioner of Texas Education Agency, did not go through. The confirmation page identified the failure as “BUSY/NO SIGNAL” at Texas Education Agency but this was not initially detected. The faxes to Houston Independent School District Board Services and Dr. Terry Grier, Ed.D., were received satisfactorily. *Id.*

12. Due to the high volume of Houston Federation of Teachers members who contested their nonrenewal and formally requested the assignment of a Hearing Examiner, it was not noticed right away that no Hearing Examiner had been assigned to Respondent. *Id.*

13. Houston Federation of Teachers Representative Helen Wheatley contacted Texas Education Agency by phone reaching Isabel Lozoria, Legal Assistant, on June 03, 2011. Ms. Wheatley refaxed Respondent's request along with the fax confirmation sheets from April 20, 2011. (Respondent's Brief P. 2).

14. On June 07, 2011, Texas Education Agency sent a letter to Ms. Equator Lavette Turner, the assigned Hearing Examiner and Dr. Terry B. Grier, Ed.D., stating that “(P)lease note that this request was filed in our office however, due to a clerical error it was not previously assigned.”

15. The letter further states that “(T)he request was received on April 20, 2011 and has been assigned to the above mentioned hearing examiner to preside over this case.” *Id.*

Discussion

The April 20, 2011 letter was sent to (1) Houston Independent School District Board Services, (2) Dr. Terry Grier, Ed.D, and (3) Robert Scott, Commissioner of Texas Education Agency. Unfortunately, the fax to Robert Scott, Commissioner of Texas Education Agency, did not go through. The confirmation page identified the failure as “BUSY/NO SIGNAL. The April 20, 2011 letter disposes of the issue whether Ms. Janice Green timely requested a hearing from the Commissioner.

Timely Filing

Pursuant to [Texas Education Code Section 21.253 \(a\)](#), a teacher must file a written request for a hearing under this subchapter with the Commissioner not later than the 15th day after the date the teacher received written notice of the proposed action. The teacher must provide the district with a copy of the request and must provide the commissioner with a copy of the notice.

*3 (b) the parties may agree in writing to extend by not more than 10 days the deadline for requesting a hearing.

Houston Federation of Teachers Representative Helen Wheatley contacted Texas Education Agency by phone reaching Isabel Lozoria, Legal Assistant, on June 03, 2011. Ms. Wheatley refaxed Respondent's request along with the fax confirmation sheets from April 20, 2011. (Respondent's Brief P. 2). There is no issue as to whether the faxes sent to Houston Independent School District Board Services and to Dr. Terry Grier, Ed.D., were received in a timely manner. (Respondent's Brief P. 3) However, [§21.253 of the Texas Education Code](#) states that the Commissioner must receive notice not just the Houston Independent School District Board Services or Dr. Terry Grier, Ed.D.

Respondent argues that proceeding with the hearing according to the process outlined in Chapter 21 of the Texas Education Code presents no harm to the district. (Respondent's Brief P. 3) Hundreds of teachers were affected in the Reduction in Force that took place at Houston Independent School District and but for the BUSY/NO SIGNAL received on the fax to Texas Education Agency, there would be no question as to the jurisdiction of the undersigned Hearing Examiner to hear the case. *Id.* Respondent further argues that the failure of the fax to Texas Education Agency to be received should be considered excusable neglect. (Respondent's Brief P. 4) The definition of excusable neglect according to Black's Law Dictionary is:

"A failure -- which the law will excuse -- to take some proper step at the proper time (esp. in neglecting to answer a lawsuit) not because of the party's own carelessness, inattention, or willful disregard of the court's process, but because of some unexpected or unavoidable hindrance or accident or because of reliance on the care and vigilance of the party's counsel or on a promise made by the adverse party." *Id.*

Respondent further argues that the fact that many faxes were sent from the Houston Federation of Teachers fax machine to the Texas Education Agency fax machine on the same day that were received gave Houston Federation of Teachers no reason to believe that this one was not received. *Id.* Respondent alleges this oversight was not "carelessness, inattention, or willful disregard of the court's process" but rather was due to the volume being faxed on the same day to the same fax number, all the rest of which were successfully received. *Id.* Respondent cited *Child b/n/f Parents v. Aldine Independent School District*, Docket No. 023-R10-1209 (Comm'r Educ. 2011), stating similar circumstances occurred and a ruling was made that since the failure was due to the malfunctioning of the fax machine at Texas Education Agency, the filing was deemed to be timely. (Respondent's Brief P. 5)

However, unlike in the case cited above, there was no "malfunction" of the fax machine at Texas Education Agency. In the case *Child b/n/f Parents v. Aldine Independent School District*, the Petitioner had faxed the Petition for Review on the deadline but "it was discovered that the fax machine for the Texas Education Agency, Hearings and Appeals Division was malfunctioning on December 4, 2009. Because the failure of the transmission was due to the fault of the Texas Education Agency, the Petition for Review is deemed to be timely filed." In the present case, the fax machine was just busy/no signal. The letter dated June 07, 2011 from Isabel Lozoria, where she states "please note that this request was filed in our office however, due to a clerical error it was not previously assigned" does excused the 15th day deadline required by statute. Additionally, there was no proof presented that the parties agreed in writing to extend by not more than 10 days the deadline for requesting a hearing. Therefore, there is sufficient evidence that Respondent failed to timely request for a hearing according to [Texas Education Code §21.253\(a\)](#) by notifying the Commissioner.

