

DOCKET NO. 059-LH-12-2025

CYPRESS-FAIRBANKS  
INDEPENDENT SCHOOL  
DISTRICT

*Petitioner,*

V.

CAROLE LEE-HALE,

*Respondent.*

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BEFORE BRENETTAE J. PAYNE

CERTIFIED INDEPENDENT  
HEARING EXAMINER

TEXAS EDUCATION AGENCY

**RECOMMENDATION OF THE CERTIFIED INDEPENDENT HEARING EXAMINER**

Petitioner, Cypress-Fairbanks Independent School District, ("CFISD"), proposes termination of Respondent, Carole Lee-Hale ("Hale") one year probationary contract ("the contract") pursuant to Texas Education Code Sections 21.251, et seq. and on the basis of violations of Cypress-Fairbanks Independent School District Board Policy. Ms. Hale timely requested a hearing and a one day hearing was held on February 10, 2026.

Brendettae Payne is the Certified Independent Hearing Examiner ("IHE") assigned by the Texas Education Agency to preside at the hearing.

Petitioner is represented by Stephanie Hamm, Esq. with the law firm of Thompson & Horton, LLP, 3200 Southwest Freeway, Suite 2000, Houston, TX 77027. Respondent represented herself during the hearing.

On or about November 11, 2025, Ms. Hale received notice ("notice letter") from the District that the District's Board of Trustees voted to propose the termination of her employment under her one year probationary contract for good cause. (Pet. Ex. 7). The notice of proposed termination identifies the following reason, as authorized by CFISD Policy to support the termination of Respondent's term contract: "inability to return to the classroom due to ongoing medical restriction and exhaustion of all available leave entitlement." (Pet. Ex. 7). The notice letter explained the following: (i) Ms. Hale was

employed as a teacher at Metcalf Elementary beginning August 14, 2023; and on September 15, 2023, Ms. Hale was placed on assault leave pursuant to Texas Education Code § 22.003; (ii) Ms. Hale was also placed on temporary disability leave starting on September 17, 2023, which ran concurrently with her assault leave; (iii) Ms. Hale's temporary disability leave expired on March 15, 2024, and her assault leave entitlement concluded on September 15, 2025. (See *id.*)

The notice letter further explained on September 11, 2025, Ms. Hale requested accommodations but was informed that request had to come from Ms. Hale's treating physician. Based on the letter, Ms. Hale failed to provide the request but instead informed the District she was not released to return to work. As a result of her failure to provide the request and her failure to return to work, Ms. Hale was informed she would now be considered absent without leave. (Pet. Ex. 7; *see also* Pet. Ex. 6).

Ms. Hale timely requested a hearing pursuant to Chapter 21 of the Texas Education Code to challenge the proposed termination. The Hearing Examiner conducted a hearing on the proposed termination on February 10, 2026.

### **FINDINGS OF FACT**

After due consideration of the evidence and matters officially noticed, in my capacity as Certified Independent Hearing Examiner, I make the following Findings of Fact (Citations to evidence are not exhaustive but are intended to indicate some of the basis for the particular finding of fact):

1. Ms. Hale began working for CFISD as a Full-Time Teacher at Metcalf Elementary School on August 14, 2023. (Hearing Transcript ["Tr."] 12-13; Pet. Ex. 7). Her term contract was renewed on a probationary basis for the 2025–2026 school year. (Tr. 41; Pet. Ex. 1).
2. Ms. Hale's probationary contract requires her to perform the duties of her assigned position with reasonable care, skill, and diligence, and in accordance with the hours and dates set by

the District. (Pet. Ex. 1 ¶¶ 1, 7). Ms. Hale’s probationary contract can be terminated for good cause. (Pet. Ex. 1 ¶ 20). Under the Texas Education Code and District Board Policy DFAA (Legal), “[g]ood cause’ is the failure to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts in this state.” (Tr. 44; Pet. Ex. 11).

3. Attendance is an essential function of a classroom teacher. (Tr. 24–25; Pet. Ex. 7).
4. The District maintains and requires compliance with Board policies relating to leaves and absences. (See Pet. Exs. 9–12). Those policies are posted publicly on the District’s website and are outlined in the District’s Employee Handbook. (Tr. 76; Pet. Exs. 9-12). Failure to comply with the District’s policies—including its uniformly applied neutral absence control policy—is grounds for disciplinary action, including termination of employment. (Tr. 57–60, 71–72; Pet. Exs. 9, 11).

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<sup>1</sup> At the hearing, Ms. Hale claimed she only received advanced copies of Petitioner’s Exhibits 1–7; however, Petitioner’s Exhibit 1–11 were sent to Ms. Hale in a single email on February 4, 2026 at 4:08 p.m. The District later offered Petitioner’s Exhibit 12 as a rebuttal exhibit during the hearing, based on Ms. Hale’s testimony regarding FMLA leave.

5. About a month after Ms. Hale began working as a Full-Time Teacher at Metcalf Elementary, she took approved assault leave following an incident that occurred in her classroom on September 15, 2023. (Tr. 14; Pet. Ex. 3). Section 22.003(b) of the Texas Education Code states, in pertinent part:

In addition to all other days of leave provided by this section or by the school district, an employee of a school district who is physically assaulted during the performance of the employee's regular duties is entitled to the number of days of leave necessary to recuperate from all physical injuries sustained as a result of the assault . . . The period provided by this subsection may not extend more than two years beyond the date of the assault.

(Tr. 15; Pet. Ex. 2; *see also* Pet. Exs. 9–10).

6. Pursuant to District Board Policy DEC (Legal), “[a]n employee is considered recuperated from physical injury sustained once the employee can return to duty with or without accommodations, unless doing so would worsen an injury or additional leave would facilitate the healing process.” (Tr. 55, Pet. Ex. 10).
7. Ms. Hale remained on assault leave for two years. She exhausted her assault leave on September 15, 2025. Because Ms. Hale was on protected leave through September 15, 2025, the District’s Board of Trustees continued to approve new contracts for Ms. Hale, including her probationary contract for the 2025–2026 school year, which the Board approved in April 2025. (Tr. 36, Pet. Ex. 1)

(Tr. 16; Pet. Ex. 4).

8. Upon the expiration of Ms. Hale's assault leave, she did not provide a fitness-for-duty certification to return to work. (Tr. 17; Pet. Ex. 4). The District therefore offered Ms. Hale the opportunity to use an additional 21 days of personal accrued leave beginning on September 16, 2025. (Tr. 19–20; Pet. Ex. 4). Ms. Hale elected to use her 21 days of accrued leave. (Pet. Ex. 5).
9. It is undisputed Ms. Hale was unable to return to work following the expiration of her accrued leave. (Tr. 21–22, 57–58). Ms. Hale's last day physically present at work was September 15, 2023 and as of the date of the hearing she remains unable to return to work. (Tr. 21–22, 57–58). It is also undisputed that Ms. Hale has not provided the District with an anticipated return to work date. (Tr. 57–58).
10. Ms. Hale exhausted all leave to which she is entitled under state or federal law and District policy. (Tr. 21–22, 57).<sup>3</sup>
11. Ms. Hale has been absent from work without leave since October 17, 2025. (Tr. 21–24, 59, 72; Pet Ex. 6–7).
12. On October 24, 2025, the District sent a letter to Ms. Hale, summarizing the exhaustion of her leave and the accommodation process. (Tr. 22; Pet. Ex. 6). The letter reminded Ms. Hale that she was out of leave and that she needed clearance to return to work. (Tr. 22; Pet. Ex. 6). The letter also informed Ms. Hale that if she was unable to return to work and she did not resign, a recommendation for her termination would be presented to the District's Board of Trustees. (Tr. 22; Pet. Ex.

6).

13. Because Ms. Hale could not return to work following the expiration of all available leave, and did not resign, the District's Board of Trustees voted to propose the termination of Ms. Hale's probationary contract on November 10, 2025. (Tr. 24, Pet. Ex. 7).

14. The notice of proposed termination states in relevant part:

Because you have exhausted all available leave and remain unable to return to duty, you are absent without leave and no longer have job protection under district policy or the Texas Education Code. Attendance is an essential function of your job, and because you cannot perform the essential functions of your position, this constitutes good cause for termination of your probationary contract.

(Tr. 24, 58-59; Pet. Ex. 7).

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<sup>3</sup> Consistent with federal law, District Board Policy DECA (Legal) provides that an employee is eligible for leave under the Family and Medical Leave Act ("FMLA") if the employee has been (i) employed by the District for at least 12 months; (ii) has been employed by the District for at least 1,250 hours of service during the 12 months immediately preceding the commencement of leave; and (iii) is employed at a worksite where 50 or more employees are employed by the District within 75 miles of that worksite. (Pet. Ex. 12 (citing 29 U.S.C. § 2611(2) and 29 C.F.R. 825.110)). Ms. Hale was not eligible for FMLA leave at the time of the alleged assault because she had only been employed by the District for approximately one month. (Tr. 70, 78-79). Ms. Hale also was not eligible for FMLA leave when she exhausted her other leave entitlements because she had not worked 1,250 hours within the preceding 12 months. (Tr. 70, 78-79; Pet. Ex. 12).

15. It is undisputed that an employee's attendance at work, when an employee has exhausted all available leave, is an accepted standard of conduct for full-time teachers, as generally recognized and applied in similarly situated school districts in this state. (Tr. 45-47).

16. The uncontroverted evidence shows that Ms. Hale has failed to meet the accepted standards of conduct for her profession, as generally recognized and applied in other Texas school district similarly situated to CFISD. (Tr.45–47).
17. There was testimony whether Respondent Hale applied for FMLA and/or was eligible for FMLA. I find there is insufficient evidence to conclude Respondent Hale was wrongfully denied her right to apply for FMLA. Whether an employee is eligible for FMLA is outside the scope of this appeal and thus I do not render a decision whether or not Ms. Hale was even eligible to apply and/or eligible for FMLA.
18. I find there is sufficient evidence to conclude Respondent Hale exhausted all available leave under the District's Policies and the Texas Education Code.
19. I find there is sufficient evidence to conclude, due to ongoing medical restrictions, Respondent Hale remains unable to return to work.
20. I find there is sufficient evidence to conclude Respondent Hale was considered absent without leave under the District policy and Texas Education Code.
21. I find there is sufficient evidence to conclude attendance is an essential function of Respondent's job as a certified teacher.
22. I find there is sufficient evidence to conclude Respondent Hale has been absent from work without approved leave since October 17, 2025 and she is unable to perform the essential functions of her position by her continued absence.
23. I find there is sufficient evidence to conclude the District had good cause to terminate Respondent Hale's one year probationary contract with Cypress-Fairbanks ISD.

## **DISCUSSION**

It appears to this hearing officer there is good cause to terminate Respondent's on year probationary contract with Cypress-Fairbanks ISD. I rely on the District's policy, the Texas Education Code, the testimony and evidence provided at the one day hearing for my decision.

There were two District employees who testified on behalf of Cypress-Fairbanks ISD and Respondent testified on her own behalf without any additional witnesses during the one day hearing.

During the District's testimony, it was evident there is a general standard, expectation and acceptance, that physical presence and attendance is required for a teacher in order to perform their job duties for their assigned position as a certified teacher in the District. It was further evident, when an employee signs a one year probationary contract, they are informed in writing and agree their contract can be terminated for good cause.

During Respondent's testimony, it was evident Respondent has not been released to return to work albeit having a desire to work. Unfortunately a desire to work and showing up for work are separate matters. Respondent failed to rebut Petitioner's evidence of her clearance to work and also failed to actually physically return to work. Thus, Respondent failed to meet the standards and terms of her contract.

Respondent was hired as a certified teacher and started working at Metcalf Elementary on August 14, 2023. On September 15, 2023, Respondent was placed on assault leave which per District policy can extend for two years. On September 17, 2023, Respondent was placed on temporary disability leave, which ran concurrently with the assault leave. Per calculations of two

years from date of assault leave and the temporary disability leave, Respondent should have returned to work on or after September 16, 2025 unless there were extenuating circumstances to change Respondent's return date by fact and/or operation of law. The evidence shows Petitioner informed Respondent of an additional 21 earned days extending Respondent's return back to work date to October 17, 2025. All of the date(s) of suggested and required return were communicated orally and in writing to Respondent. Respondent failed to return back to work on or after October 17, 2025 and thereby exhausted all of Respondent's available leave entitlements.

Therefore the reason for the proposed action based on Respondent Hale's inability to return to the classroom due to ongoing medical restrictions and exhaustion of all available leave entitlements is sustained as good cause and reasons to terminate Ms. Hale's one year probationary contract.

It is to be noted, the decision rendered herein is based on the one day in person hearing, relevant testimony by all witnesses and closing arguments made during the final day of testimony. Any ancillary arguments made extending beyond the aforementioned were not considered in this decision.

Therefore, based on review of the evidence, testimony of the witnesses presented at the one day hearing, I believe there is credible evidence based on the preponderance of the evidence burden in the record and testimony that Cypress-Fairbanks ISD met its burden of proof by a preponderance of the evidence to terminate Respondent's one year probationary contract.

### **CONCLUSIONS OF LAW**

After due consideration of the record, matters officially noticed, and the foregoing Findings, in my capacity as Certified Independent Hearing Examiner, I make the following Conclusions of Law:

1. Ms. Hale is a “teacher” as defined by Texas Education Code § 21.201.
2. The Hearing Examiner’s jurisdiction to hear this matter is proper under Texas Education Code § 21.251(a)(2).
3. School boards “have ‘the exclusive power and duty to govern and oversee the management of the public schools of the district[.]’” *Davis*, 34 S.W.3d at 565. As such, the school board “must be the ultimate interpreter of its policy[.]” *Id.* In the context of a hearing before an independent hearing examiner, “while an independent factfinder decides the facts under subchapter F [of Chapter 21], the Board retains the authority to make the ultimate decision of whether the facts demonstrate that board policy was violated.” *Id.*
4. The Texas Education Code provides that “[a] teacher employed under a probationary contract may be discharged at any time for good cause as determined by the board of trustees, good cause being the failure to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts in this state.” TEX. EDUC. CODE § 21.104(a).
5. A teacher who desires to contest the proposed termination of their probationary contract may request a hearing before a Certified Hearing Examiner not later than the 15<sup>th</sup> day after the teacher receives written notice of the proposed action. See TEX. EDUC. CODE §§ 21.1041(1), 21.253.

6. Whether good cause to terminate a contract exists is a conclusion of law. TEX. EDUC. CODE § 21.259(b)(1).

7. The District's Board of Trustees voted to propose the mid-contract termination of Ms. Hale's probationary contract for the 2025–2026 school year and provided Ms. Hale with the required notice of their decision.

8. Ms. Hale timely requested a hearing on her proposed mid-contract termination pursuant to Chapter 21 of the Texas Education Code.

9. According to Texas Education Code § 21.256(h), the District bears the burden of proof by a preponderance of the evidence.

10. The evidentiary hearing held on February 10, 2026, fully afforded Ms. Hale all due process required under the United States Constitution, the Texas Constitution, and the Texas Education Code.

11. There is good cause to terminate Ms. Hale's probationary contract, as that term is defined in the Texas Education and CFISD Board Policy.

12. Failure to return to work on campus or to submit the required documentation to support a leave or accommodation request constitutes good cause to terminate a classroom teacher's contract. *See, e.g., Dallas Indep. Sch. Dist. v. Nutall*, Dkt. 021-LH-01-2021 (Tex. Comm'r Educ. 2021) ("Nutall was absent from work for more than five consecutive days and was not on an approved leave for an ADA accommodation. Nutall's absences were excessive and were not due to an approved leave or accrued compensatory or vacation time. Based on the facts enumerated above, Nutall's absence from work beyond five consecutive

workdays without approved leave or an ADA accommodation to work remotely violates District policy, and alone, constitutes good cause for terminating his contract and employment.”); *Martin v. Dallas Indep. Sch. Dist.*, Dkt. No. 059-R2-301 (Tex. Comm’r Educ. 2004) (school district had good cause to terminate employee who was absent for significant period during which she did not provide medical documentation for absences; excessive absences constitute good cause for termination and are inconsistent with continued existence of employer/employee relationship); *Shaw v. Dallas Indep. Sch. Dist.*, Dkt. No. 036-R2-1103 (Tex. Comm’r Educ. 2004) (“Not showing up for work without an acceptable excuse generally constitutes good cause for terminating a contract.”); *Pfeuffer v. Dallas Indep. Sch. Dist.*, Dkt. No. 163-R2-898 (Tex. Comm’r Educ. 1998)(“Petitioner’s failure to return to work for a time period in excess of one year and failure to provide a return date constituted failure to perform as an ordinary employee” and “constituted good cause to terminate her term contract.”).

13. The Courts have determined an employee who does not report to work as assigned is failing to perform as an ordinary employee, unless the employee has some entitlement to leave or accommodation and therefore there is good cause to terminate the employee. See *Duncan v. Highland Park Independent School District*, Dkt. No. 085-R2-398 (Tex. Comm’r Educ. 1998). In *Duncan*, a school nurse argued the school district lacked good cause to terminate her employment because the district “should have moved other employees around to create a position that she could fill.” The Commissioner rejected the argument, stating:

The issue in this case is not whether Petitioner is a competent nurse. The only issue as to good cause is whether Petitioner, who had exhausted all sick leave and leave time under the Family and Medical Leave Act, was not required to report to her assigned job. An employee who does not report to work as assigned is failing to perform as an ordinary employee, unless the employee has some entitlement to leave or accommodation. Petitioner was required to report to work. Petitioner had exhausted all available leave and was not entitled to the accommodations she requested. Petitioner's failure to report to work constitutes good cause to terminate her term contract.

*Duncan*, Dkt. No. 085-R2-398 at \*3.

14. Good cause exists to terminate Ms. Hale's employment contract because the uncontroverted and unrebutted evidence demonstrates the following: (i) Ms. Hale has been absent without leave; (ii) Ms. Hale has exhausted all of her leave entitlements under state and District policy; (iii) Ms. Hale still has not been medically cleared to return to work; and (iv) Ms. Hale has not provided the District with an anticipated return-to-work date.
15. Good cause exists to terminate Respondent Hale's contract because an employer is not required to eliminate an essential function of a position, such as attendance in the classroom. *See, e.g., Credeur v. Louisiana*, 860 F.3d 785, 793 (5th Cir. 2017) ("[T]here is a general consensus among courts...that regular work-site attendance is an essential function of most jobs."); *Ray v. Columbia Brazoria Indep. Sch. Dist.*, 2024 WL 1252362, \*5 (S.D. Tex. March 22, 2024) ("[A]ttending work in person is an essential function of a teacher even though schools temporarily permitted remote instruction during the pandemic.").

16. Because Ms. Hale never reported to work after exhausting her leave entitlements, Ms. Hale failed to fulfill her job duties and responsibilities, and failed to meet the accepted standards of conduct for her profession, as generally recognized and applied in other Texas school districts similarly situated to Cypress-Fairbanks ISD. Ms. Hale's failure to report to work following the expiration of her available leave, and her failure to fulfill her job duties as a teacher, constitute good cause for her termination.
17. The District proved by a preponderance of the evidence that Ms. Hale exhausted all leave to which she was entitled under state and federal law and District policy on October 17, 2025.
18. The District proved by a preponderance of the evidence that Ms. Hale has been absent without leave since October 17, 2025.
19. The District proved by a preponderance of the evidence that Ms. Hale is still unable to return to work despite exhausting all available leave entitlements, and thus cannot fulfill the essential functions of her job—attendance in the classroom.
20. The District proved by a preponderance of the evidence that Ms. Hale has failed to fulfill the requirements of her contract, thus providing support for the Board's determination of good cause for termination and triggering the contract's termination provision, paragraph 20. (Tr. 24; Pet. Ex. 1).
21. The District proved by a preponderance of the evidence that there is good

cause to terminate Ms. Hale's probationary contract for the 2025–2026 school year.

22. The District proved by a preponderance of the evidence that Ms. Hale failed to meet the accepted standards of conduct for her profession, as generally recognized and applied in other Texas school district similarly situated to Cypress-Fairbanks ISD.
23. The District proved by a preponderance of the evidence that the decision to propose Ms. Hale for mid-contract termination was motivated by legitimate business reasons, and not by discriminatory or retaliatory animus or other improper purpose.
24. Any conclusion of law deemed to be a finding of fact is hereby adopted as such.
25. All relief requested by the District is GRANTED.
26. Respondent's appeal is DENIED and the District's request to terminate Carol Lee-Hale's contract is hereby GRANTED.

#### **RECOMMENDATION**

1. After due consideration of the evidence and matters officially noticed, and the foregoing Findings of Fact and Conclusions of Law, in my capacity as the Hearing Examiner, I respectfully RECOMMEND that the Board of Directors of Cypress-Fairbanks ISD adopt the foregoing Findings of Fact and Conclusions of Law and enter an order to terminate the one year probationary contract of Carole Lee Hale with Cypress-Fairbanks ISD.
2. Carol Lee Hale's appeal of the recommended termination of her one year probationary contract is and should be **DENIED**.
3. SIGNED AND ISSUED this 10th day of March 2026.

By: /s/ Brendettae Payne

BRENDETTAE PAYNE,  
CERTIFIED INDEPENDENT HEARING EXAMINER

**CERTIFICATE OF SERVICE**

I hereby certify a true and correct copy of the foregoing instrument has been forwarded to all counsel of record via email and regular and/or certified mail on this the 10th day of March, 2026.

Christina Eischens  
Texas Education Agency

***Via Email [Christina.eischens@tea.texas.gov](mailto:Christina.eischens@tea.texas.gov)***

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