

TY'AUNNA SPENCER,
Petitioner,

v.

HOUSTON INDEPENDENT SCHOOL
DISTRICT,
Respondent.

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BEFORE THE

COMMISSIONER OF EDUCATION

THE STATE OF TEXAS

DECISION OF THE COMMISSIONER

STATEMENT OF THE CASE

Petitioner Ty'Aunna Spencer filed a December 19, 2025 Petition for Review with the Commissioner of Education. Petitioner challenges Respondent Houston Independent School District's board of managers' subcommittee's¹ December 18, 2025 termination of her probationary contract for excessive absences after a hearing before an independent hearing examiner (IHE), pursuant to Texas Education Code, Chapter 21, Subchapter F.

In her appeal, Petitioner complains that Respondent violated Texas Education Code section 21.258, which requires school boards to meet to consider an IHE's recommendation within twenty days of the date the board president received the IHE's recommendation and the hearing record. She also complains that the board violated section 21.259 by improperly changing the IHE's conclusions of law regarding waiver. Respondent denies error and asks the Commissioner to deny Petitioner's appeal.

Adrienne Butcher is the Administrative Law Judge assigned to this case. Petitioner proceeds *pro se*. Respondent is represented by its assistant general counsel, Ashley Yi.

For the reasons stated below, the Commissioner denies Petitioner's appeal.

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 For brevity, this Decision references only the "board."

1. The Commissioner adopts by reference and incorporates the Independent Hearing Examiner’s findings of fact, which Respondent’s board adopted without change. *See* Tex. Educ. Code § 21.304(a).

2. On December 18, 2025, the board heard the IHE’s proposal and the parties’ respective arguments in open session. The board adopted the administration’s recommended changes to the IHE’s conclusion of law 15 and to two unlabeled conclusions of law in the recommendation’s discussion section. The board then voted to terminate Petitioner’s contract.

3. Petitioner timely appealed to the Commissioner on December 19, 2025.

DISCUSSION

Background

Petitioner had a one-year probationary contract with Respondent for the 2024–2025 school year. On June 19, 2025, she signed a new probationary contract for the 2025–2026 school year.

Respondent’s teachers have a total of ten days (at 8 hours per day) of leave provided each year under state law and local policy.² Although leave can carry over from prior school years, Petitioner did not carry any leave into the 2024–2025 school year, giving her ten total leave days. Leave taken beyond a teacher’s leave allotment is unpaid leave, or “docked” days. Respondent’s Policy DEC8 (Regulation), titled “Compensation and Benefits/Leaves and Absences,” provides,

The District will not allow ‘docked days’ for exempt employees who have exhausted state and local leave and are absent beyond their allocation except as permitted by District board policy. An employee who is absent beyond their allocated number of days will be subject to disciplinary action up to and including dismissal. A docked day is when an employee is denied pay because the employee does not have sufficient leave time to cover an absence.

Petitioner’s campus distributes and trains employees on its employee handbook, which sets expectations that, *inter alia*, employees will timely report to work and follow attendance policies. The handbook also establishes “clock in” and sign-in/sign-out procedures. Respondent’s Policy DH (Local), which sets employee standards of conduct, requires employees to timely arrive at work and to follow district policies, regulations, and guidelines.

² Respondent’s locally-granted leave depends on the length of employees’ respective service terms. Teachers’ ten-month term earns them five additional annual leave days.

During and throughout the 2024–2025 school year, Petitioner violated her campus’s sign-in/sign-out policy by failing to sign in or out 109 times. Despite this issue, Petitioner’s principal, Dawn Thompson, did not discipline or counsel Petitioner on her violations of campus procedure.

On April 7, 2025, Petitioner emailed Principal Thompson notice that she would be absent on April 30, 2025 (previously approved), and also on May 1, 2, 5, and 6, 2025, because she was getting married. Principal Thompson met with Petitioner about her request and told her that if she took her requested leave days, she would enter unpaid leave status and be subject to Respondent’s “file review” process, a district-required review of employee policy violations before termination or nonrenewal proceedings commence. Later in April and before accruing her docked days, Petitioner sought administrative assistant Tanya Perez’s help in entering her unpaid leave into OneSource, Respondent’s timekeeping system, which would not let her enter unpaid leave. Petitioner then took unpaid leave on May 2 (a half day), 5, and 6, and on May 7, 2025, which had not been planned. With these absences, Petitioner had 3.5 docked days. She admits her docked days violated Policy DEC8 and that none were protected leave under state or federal law.

Respondent issued Petitioner a contract for the 2025–2026 school year on May 16, 2025. Petitioner did not sign that contract until June 19, 2025. On May 19, 2025, Petitioner appeared on the district’s absenteeism report for her May 2–7 docked days. Based on that report, Human Resources employee Keverlyn Walker requested that Petitioner’s campus conduct a file review. The campus conducted the file review on June 4, 2025, decided to proceed with termination, and held a June 5, 2025 “conference for the record,” which is a courtesy meeting to notify employees of intended personnel actions. All of these steps are part of Respondent’s termination process, though they are not required by law. After administration completed these steps, the board’s first opportunity to hear administration’s recommendation to terminate Petitioner’s contract was at its June 12, 2025 meeting.

On June 13, 2025, Respondent notified Petitioner that its board had proposed to terminate her probationary contract for good cause. Petitioner timely requested an evidentiary hearing under Texas Education Code Chapter 21, Subchapter F. The Commissioner assigned an IHE, who

conducted an October 1, 2025 hearing and issued an October 27, 2025 recommendation that the board not terminate Petitioner's probationary contract, based on a finding that it waived its termination reasons.

Probationary contract termination for good cause

Probationary contracts may be terminated during the contract term for good cause as determined by the board, where good cause is "the failure to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school district in this state." Tex. Educ. Code §21.104(a).

Petitioner's appellate issues

Petitioner presents two issues in her brief: Whether Respondent's board (1) failed to timely consider the IHE's October 27, 2025 recommendation and (2) exceeded its authority under Texas Education Code section 21.259 by rejecting the IHE's determination that it waived its right to terminate her 2025–2026 probationary contract.

Timeliness of hearing on IHE's recommendation

In her first issue, Petitioner argues that the board failed to timely hold its section 21.258(a) hearing. Section 21.258(a) provides, in relevant part,

- (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.*

Tex. Educ. Code § 21.258(a) (emphasis added).

Petitioner argues that the IHE issued her recommendation on October 27, 2025, but the board did not conduct its hearing on the recommendation until December 18, 2025. Petitioner did not address when the board president received the record of the Subchapter F hearing, which is the second statutory event that triggers the board's 20-day hearing deadline. *See id.*

The local record reflects that the IHE sent the board president her recommendation on October 27, 2025, and that Respondent's "Board Services" department sent the record of the

hearing to the board on December 12, 2025, fewer than twenty days before December 18, 2025.

Section 21.257 requires the IHE to send “a copy of the recommendation to each party, the president of the board of trustees, and the commissioner.” Tex. Educ. Code § 21.257(d). The Commissioner has recognized that while the record of the hearing is not statutorily treated the same as the recommendation, the IHE should send the board president the record of the hearing no later than the IHE’s deadline to issue the recommendation. *See Buchanan v. Hous. Indep. Sch. Dist.*, No. 033-R1-03-2013 (Comm’r Educ. 2023). However, a failure by the IHE to send the hearing record to the board president is not a *board* violation of a school law. The record does not establish a board violation of section 21.258(a); it shows, at most, that the IHE sent the record of the hearing to Respondent’s administration, which in turn sent it to the board within twenty days of the December 18, 2025 termination hearing. Petitioner has not shown a statutory violation. Accordingly, the Commissioner overrules her first issue.

Texas Education Code section 21.259

In her second issue, Petitioner argues that the board improperly rejected the IHE’s recommendation against termination based on waiver, violating Texas Education Code section 21.259. Petitioner admits that her 3.5 docked days violated Policy DEC8, but she argues that by executing a new contract for the 2025–2026 school year with “actual or constructive knowledge” of her absences through Principal Thompson, Respondent waived that termination reason.

Although the general rule is that a school district cannot take action against a teacher’s contract for conduct that occurred in another school year, the Commissioner has recognized that this is not an absolute bar, as the Education Code does not set time restrictions for contract actions. *See Goodfriend v. Hous. Indep. Sch. Dist.*, No. 079-R2-703 (Comm’r Educ. 2003) (citing *Grigsby v. Moses*, 31 S.W.3d 747, 749–50 (Tex. App.—Austin 2000, no pet.)).³ However, a school district should act to nonrenew or terminate a teacher’s contract within a reasonable time of becoming

³ *Goodfriend* involved a continuing contract, which is distinguishable because the board did not execute a new contract between school years. The Commissioner found that the district did not waive its right to terminate Goodfriend’s contract because it began taking action during the school year in which the conduct at issue occurred. However, he noted that if the school district had executed a new contract, the case for waiver would be stronger.

fully aware of the teacher's actions. *Id.* A school district that lacks full knowledge of a teacher's conduct and issues a new contract may still take action against the teacher's contract if, within a reasonable time of discovering the teacher's conduct, it takes action. But if it fails to take action within a reasonable time, it may waive its right to do so.

In this case, Petitioner took unpaid leave on May 2–7, 2025. Tex. Educ. Code § 21.103(a). The day before the statutory probationary contract end-of-year termination deadline,⁴ Respondent ran its employee absenteeism report that triggered Petitioner's file review—an event about which Principal Thompson had expressly admonished Petitioner. While the IHE found that Respondent had established good cause for both Petitioner's violations of the sign-in/sign-out procedures and the district's absenteeism policy, she found that the waiver doctrine “estopped” Respondent from terminating Petitioner's 2025–2026 contract. In so finding, the IHE reasoned that Principal Thompson knew of Petitioner's extensive, year-long violation of sign-in/sign-out procedures but never provided any counseling or discipline. The IHE also found that Principal Thompson knew of Petitioner's Policy DEC8 violations, as they discussed the docked days in early April 2025. Citing a 1994 U.S. Fifth Circuit case, the IHE reasoned that the principal is Respondent's agent, and her knowledge of Petitioner's violations was imputed to Respondent. *See Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443 (5th Cir. 1994).

Assuming waiver of the sign-in/sign-out issue, the absenteeism issue that arose at the end of the school year is distinguishable. Texas school boards (and, as here, superintendents with board-delegated authority to contract with teachers), not principals, have statutory authority to enter contracts with teachers. Nothing in the record reflects that Respondent's board or superintendent knew of Petitioner's absenteeism and Policy DEC8 violations. While Principal Thompson did not address Petitioner's sign-in/sign-out violations,⁵ she did address the

⁴ See Tex. Educ. Code § 21.103(a). Respondent's deadline to notify Petitioner that the board had voted to terminate her probationary contract at the end of the contract year was May 20, 2025. Because Respondent did not provide this notice by May 20, 2025, it proceeded instead with section 21.104 termination.

⁵ It is unclear why Principal Thompson did not take earlier administrative action on either Petitioner's 109 violations of sign-in/sign-out procedures or her docked days in early May 2025. The record evidence reflects that Principal Thompson and Petitioner both knew that the docked days would violate Policy DEC8.

absenteeism in April 2025 and told Petitioner that her anticipated absences would violate Policy DEC8, subjecting her to file review and potential contract termination. Shortly after the May 19 absenteeism report prompted Human Resources to request the file review, Respondent began termination proceedings. This is inconsistent with waiver. *See Goodfriend*, No. 079-R2-703 (noting that a district's initiation of action is not a waiver of its right to take contract action).

Significantly, at this point, Petitioner had not yet signed her 2025–2026 probationary contract that Respondent had issued on May 16, 2025. A fundamental principle of Texas contract law requires both an offer and acceptance to form a valid, enforceable contract. Petitioner did not accept the proffered contract until June 19, 2025, which was after her file review, conference for the record, and the board's notice of proposed termination. Clearly, on June 19, 2025, there was no longer a meeting of the minds between the parties to enter a contract, as Respondent was actively pursuing contract termination. But also fundamentally, Petitioner's unaccepted offer had become Respondent's option under the contract's Paragraph 17, which provides,

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.

The dates are undisputed. Respondent made a May 16, 2025 contract offer that Petitioner signed to accept on June 19, 2025. The fourteenth calendar day after May 16, 2025, was May 30, 2025. Under the contract's Paragraph 17, Petitioner's delayed acceptance gave Respondent the option to reject its offer. Respondent's initiation of termination proceedings, taken before Petitioner accepted the contract, clearly contradicts the offer and is inconsistent with an intent to employ Petitioner under a probationary contract for the 2025–2026 school year. The facts do not support a finding that Respondent waived its right to terminate Petitioner's contract.

The board's adoption of the administration's recommended written changes to Conclusion of Law 15 and to two unlabeled conclusions of law in the discussion section, as well as the written reasons for the changes, was not erroneous. Petitioner has not established that the board violated Texas Education Code section 21.259. The Commissioner overrules Petitioner's second issue.

Conclusion

For the reasons above, the Commissioner denies Petitioner's appeal.

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 has jurisdiction over this appeal over the school board's termination of Petitioner's probationary contract for good cause. *See* Tex. Educ. Code § 21.301(a).
2. Petitioner fails to show that the board violated Texas Education Code section 21.258(a).
3. Petitioner did not establish that Respondent waived its right to terminate her 2025–2026 probationary contract. *Goodfriend v. Hous. Indep. Sch. Dist.*, No. 079-R2-703 (Comm'r Educ. 2003).
4. Petitioner fails to show that Respondent violated Texas Education Code section 21.259 by changing Conclusion of Law 15 and two unlabeled conclusions of law in the discussion section to conclusions of law that it did not waive its right to terminate Petitioner's probationary contract. Tex. Educ. Code § 21.259.
5. The 2025–2026 probationary contract's express terms gave Respondent the option of whether to continue with the contract when Petitioner did not accept it within fourteen calendar days.
6. Petitioner's appeal is denied.

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, DENIED.

SIGNED AND ISSUED this 4th day of February 2026.

Mike Morath Digitally signed by Mike Morath
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MIKE MORATH
COMMISSIONER OF EDUCATION