

CAUSE NO. \_\_\_\_\_

HOUSTON FEDERATION OF TEACHERS,	§	IN THE DISTRICT COURT OF
LOCAL 2415,	§	
<i>Plaintiff</i>	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
	§	___ JUDICIAL DISTRICT
MIKE MILES, SUPERINTENDENT of	§	
HOUSTON INDEPENDENT SCHOOL	§	
DISTRICT, in his official capacity only,	§	
AUDREY MOMANAEE, HOUSTON	§	
INDEPENDENT SCHOOL DISTRICT	§	
President, Board of Managers,	§	
in her official capacity only,	§	
RIC CAMPO, HOUSTON INDEPENDENT	§	
SCHOOL DISTRICT Board of Managers,	§	
in his official capacity only,	§	
ANGELA LEMOND FLOWERS,	§	
HOUSTON INDEPENDENT SCHOOL DISTRICT	§	
Board of Managers, in her official capacity only,	§	
MICHELLE CRUZ ARNOLD, HOUSTON	§	
INDEPENDENT SCHOOL DISTRICT	§	
Board of Managers, in her official capacity only,	§	
JANETTE GARZA LINDER, HOUSTON	§	
INDEPENDENT SCHOOL DISTRICT	§	
Board of Managers, in her official capacity only,	§	
ROLANDO MARTINEZ, HOUSTON	§	
INDEPENDENT SCHOOL DISTRICT	§	
Board of Managers, in his official capacity only,	§	
PAULA MENDOZA, HOUSTON	§	
INDEPENDENT SCHOOL DISTRICT	§	
Board of Managers, in her official capacity only	§	
<i>Defendants</i>	§	

**PLAINTIFFS’ VERIFIED ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER AND REQUEST FOR TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE COURT:

COMES NOW plaintiff, Houston Federation of Teachers, Local 2415 (“HFT” or the

“Union”), a labor organization representing teachers and other employees of Houston Independent School District (“HISD” or the “District”), seeking declaratory, equitable and injunctive relief against defendants pursuant to the provisions of the Uniform Declaratory Judgments Act, TEX. CIV. PRAC. & REM. CODE §§37.001 *et seq.*, as well as TEX. CIV. PRAC. & REM. CODE §§ 65.001 *et seq.*, relating to injunctions, and the equitable powers of this court.

## I. INTRODUCTION

On behalf of its members who are teachers, HFT files this petition seeking relief from the actions of HISD’s appointed superintendent, Mike Miles, and HISD’s appointed board of managers. This case involves the statutory right of teachers to be appraised for their performance in accordance with Texas Education Code requirements, as set forth in §§ 21.351 and 21.352. These provisions state that a school district is to use either an appraisal process and criteria recommended by the Commissioner of Education *or* a local appraisal process and criteria developed by a school district’s district- and campus-level site-based decision-making committees, as provided for in TEXAS EDUCATION CODE §11.251 *et seq.* In short, these provisions ensure that teachers and other stakeholders have input into a locally developed appraisal process. These are the only two legislatively approved appraisal systems in Texas. As described in this petition, defendants violated these provisions by adopting an appraisal policy that removes the appraisal system responsibility and authority from the statutorily created site-based decision-making committees and hands it over to Superintendent Miles’ sole authority. Injunctive relief, including a temporary restraining order, is necessary in this matter because if not granted, teachers will be appraised this current school year, and have those appraisals used by HISD to make high-stakes employment decisions, under an illegally developed appraisal system. Plaintiff seeks to enjoin the defendants from moving forward with using a teacher appraisal system that clearly violates the

Education Code.

## **II. DISCOVERY PLAN**

1. Plaintiff intends for this suit to be conducted under Discovery Level 2, pursuant to TEX. R. CIV. P. 190.3.

## **III. VENUE AND JURISDICTION**

2. The subject matter in controversy is within the jurisdiction of the district court.

3. Venue is proper in Harris County, Texas under TEX. CIV. PRAC. & REM. CODE §15.002(a)(1), in that HFT members work on campuses within Harris County, HFT's office is located within Harris County, and all of the events or omissions giving rise to plaintiff's claims occurred in Harris County.

4. The amount in controversy exceeds the minimum jurisdictional limits of this Court. Pursuant to Tex.R.Civ.P. Rule 47, plaintiff in good faith pleads that at this juncture, it seeks non-monetary relief and attorney's fees and costs less than \$100,000.

## **IV. PARTIES**

5. Plaintiff HFT is a labor union that represents teachers and other employees of HISD in matters related to their wages, hours, and terms and conditions of employment. It is affiliated with the Texas American Federation of Teachers, a statewide organization, and the American Federation of Teachers, a national organization. As required of labor organizations representing public employees in Texas, HFT does not claim the right to strike. HFT has its principal place of business at 2704 Sutherland Street, Houston, Texas, 77023, in Harris County, Texas.

6. Defendant Mike Miles is the appointed superintendent of HISD. By law, as superintendent, he is the "education leader and chief executive office of the school district." TEX. EDUC. CODE § 11.201(a). According to the Education Code, he bears administrative

responsibility and leadership for “consulting with the district-level [site-based decision-making] committees as required under §11.252(f),” “the evaluation of all personnel of the district other than the superintendent,” and the planning, organization, operation, supervision, and evaluation of the education programs, services and facilities of the district.” TEX. EDUC. CODE §§11.201(d)(11),(2), and (1). Superintendent Miles is sued in his official capacity only. He may be served with process at the offices of HISD, 4400 West 18<sup>th</sup> Street, HISD, Houston, Texas 77092-8501.

7. Defendant Audrey Momanaee is the president of the appointed board of managers. According to § 11.051 of the Education Code, an independent school district is governed by a board of trustees who, as a body corporate, shall “(1) oversee the management of the district; and (2) ensure that the superintendent implements and monitors plans, procedures, programs and systems to achieve appropriate, clearly defined, and desired results in the major areas of district operations.” Ms. Momanaee is sued in her official capacity only. She may be served with process at the offices of HISD, 4400 West 18<sup>th</sup> Street, HISD, Houston, Texas 77092-8501.

8. Defendant Ric Campo is the vice president of the appointed board of managers. Mr. Campo is sued in his official capacity only. He may be served with process at the offices of HISD, 4400 West 18<sup>th</sup> Street, HISD, Houston, Texas 77092-8501.

9. Defendant Angela Lemond Flowers is the secretary of the appointed board of managers. Ms. Lemond Flowers is sued in her official capacity only. She may be served with process at the offices of HISD, 4400 West 18<sup>th</sup> Street, HISD, Houston, Texas 77092-8501.

10. Defendant Cassandra Auzenne Bandy is a member of the appointed board of managers. Ms. Bandy is sued in her official capacity only. She may be served with process at the offices of HISD, 4400 West 18<sup>th</sup> Street, HISD, Houston, Texas 77092-8501.

11. Defendant Michelle Cruz Arnold is a member of the appointed board of managers. Ms. Arnold is sued in her official capacity only. She may be served with process at the offices of HISD, 4400 West 18<sup>th</sup> Street, HISD, Houston, Texas 77092-8501.

12. Defendant Janette Garza Linder is a member of the appointed board of managers. Ms. Linder is sued in her official capacity only. She may be served with process at the offices of HISD, 4400 West 18<sup>th</sup> Street, HISD, Houston, Texas 77092-8501.

13. Defendant Ronaldo Martinez is a member of the appointed board of managers. Mr. Martinez is sued in his official capacity only. He may be served with process at the offices of HISD, 4400 West 18<sup>th</sup> Street, HISD, Houston, Texas 77092-8501.

14. Defendant Paula Mendoza is a member of the appointed board of managers. Ms. Mendoza is sued in her official capacity only. She may be served with process at the offices of HISD, 4400 West 18<sup>th</sup> Street, HISD, Houston, Texas 77092-8501.

## **V. ASSOCIATIONAL STANDING**

15. HFT has approximately 6000 members employed by the school district, the majority of whom are teachers. HFT is by far the largest labor union representing HISD's teachers and other employees and is the employee organization elected by HISD employees to represent its members in consultation with the administration over terms and conditions of work. HFT is interested in enforcing and protecting the employment rights and benefits of its members, including the right to have their performance appraised under an appraisal system developed in accordance with the law. HFT's members who are teachers are aggrieved by the actions of the defendants and the Union brings this declaratory judgment action on their behalf.

16. HFT has as one of its central purposes the protection of employment rights and benefits of its members. This declaratory action is germane to that purpose.

17. HFT's members who are aggrieved by the actions of the defendant have standing to file this action on their own behalf.

18. Neither the claims asserted, nor the relief requested requires the filing of individual petitions for declaratory judgment nor the participation of individual members as parties in this action.

## VI. FACTS

19. Since 1995, the Texas Education Code has included provisions that are designed to ensure that teachers, staff, parents of students in the district, business representatives and community members are involved in planning and decision-making for improving the performance of all students. The statutory mechanism for these stakeholders to have input is through district- and campus-level committees ("SDMCs") that are established pursuant to TEX. EDUC. CODE §§11.251 – 11.253. For example, §11.251(e) provides that the school board is to adopt a policy under which the professional staff in the district nominate and elect the professional staff members to serve on the district-level SDMC that consults with the board, with at least two-thirds of the elected professional staff to be classroom teachers.

20. State law also provides for the SDMCs to play a central role in the development of a school district's local teacher appraisal system. The Texas Education Code requires a school district to either use the teacher appraisal system adopted by the Commissioner of Education, known as the Texas Teacher Evaluation and Support System ("T-TESS"), or develop its own local system. The Education Code states, in pertinent part:

**Sec. 21.352. Local Role.**

(a) In appraising teachers, each school district shall use:

(1) The appraisal process and performance criteria developed by the commissioner; or

(2) An appraisal process and performance criteria:

**(A) developed by the district- and campus-level committees established under Section 11.251;**

**(B) containing the items described by Sections 21.351(a)(1) and (2); and**

**(C) adopted by the board of trustees.**

TEX. EDUC. CODE §21.352.

21. During the 2010-2011 school year, HISD developed its own teacher appraisal system, the Teacher Appraisal and Development System (“TADS”) and implemented it in 2011. TADS was used until the 2021-22 school year, when the District began evaluating teacher based on the Commissioner’s T-TESS system. For the last two school years, HISD teachers and administrators have received extensive training on T-TESS in order to understand the rubrics used to evaluate their performance and how best to use the information provided to improve their teaching performance.

22. In early June 2023, as part of his take-over of HISD, Texas Commissioner of Education Mike Morath appointed Mike Miles as superintendent and replaced the elected board of trustees with an appointed board of managers.

23. On August 10, 2023, Superintendent Miles proposed, and the board of managers approved, a new local appraisal policy, Policy DNA (Local). A true and correct copy of Policy DNA (Local) is attached and incorporated herein as Ex. A. This important policy change was pushed through on a consent agenda and on its first reading, after the board of managers approved it as an “emergency measure.”<sup>1</sup> Through its adoption of the new policy, the Board of Managers scrapped the T-TESS appraisal system, along with its established statutorily-mandated processes and criteria for measuring teacher performance. Ex. A. The newly-adopted policy DNA (Local) states that “District teachers shall be appraised annually as specified by the District evaluation system **established by the Superintendent and his/her team.**” Ex. A (emphasis added).

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<sup>1</sup>The same night, the board of managers also approved a new version of policy DGB (Local), which eliminates a consultation policy under which teachers and staff were able to elect a consultation representative to meet regularly with the administration to discuss policy changes, as well as a new version of BP (Local), which eliminates a provision requiring employee input on regulations concerning wages, hours, and working conditions.

24. There was no engagement of the district- or campus-level SDMCs in developing a new local appraisal system.

25. Further, under TEX. EDUC. CODE §21.352(a)(2), any local appraisal system must contain items listed in §21.351(a)(1) and (2), namely, performance measurement criteria based on “observable, job-related behavior, including (1) teachers’ implementation of discipline management procedures; and 2) the performance of teachers’ students,” as well as other features described in §21.352 (a-1) – (f).

26. The hollowed-out version of DNA (Local) approved by the Board of Managers does not contain any performance criteria and it is unknown what the criteria will be for evaluating a teacher’s performance.

## **VII. CAUSES OF ACTION**

27. Plaintiff realleges and incorporate the allegations of Paragraphs 1 – 26.

28. The defendants have violated TEX. EDUC. CODE §21.352 in their elimination of the role of the district- and campus-level SDMCs in developing a local teacher appraisal process and through its adoption of a revised version of DNA (Local) without following the required process for the adoption of a local appraisal process.

29. The defendants have violated TEX. EDUC. CODE §21.352 in the adoption of a revised version of the local appraisal policy, DNA (Local), that is not based on observable, job-related behavior, including teachers’ implementation of discipline management procedures and the performance of teachers’ students.

## **VIII. APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

30. Plaintiff realleges and incorporate the allegations of Paragraphs 1 through 29.

31. Plaintiff’s application for a temporary restraining order is authorized by TEX. CIV.



PRAC. & REM. CODE §65.011 (1), (2) and (3). Plaintiff is entitled to the relief demanded in this petition, and part of the relief requires the immediate restraint of the acts of the defendants as they relate to plaintiff HFT's members. Defendants are about to perform or allow performance of an act relating to the subject of this litigation, in violation of the rights of HFT's members, and defendants' actions would tend to render the judgment in this action ineffectual.

32. If equitable relief is not granted, HFT members will not be able to recover relief that adequately or fairly compensates them for having to work and be appraised under an as-yet to be determined appraisal system illegally designed solely by Superintendent Miles, rather than having their performance appraised under a system developed by the district- and campus-level SDMCs, which include their elected representatives, and then approved by the board of trustees (or, under the current TEA take-over regime, the appointed board of managers). It is not just appraisal scores at the end of the school year as measured by an illegally developed policy that will be affected but the performance feedback that teachers are supposed to receive throughout the year to help them be more effective teachers.

33. It is probable that plaintiff will prevail over defendants after a trial on the merits, especially as the Education Code provisions at issue are plain and explicit.

34. Government officials, such as the defendants, must act with lawful authority and must not violate the law, including obeying the Texas Education Code provisions cited herein.

Government officials' actions without lawful authority or in violation of the law give rise to legally redressable *ultra vires* claims. Legislative permission is not required to sue the state or a political subdivision for declaratory and injunctive relief relating to an official's violation of state law. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 370 (Tex. 2009), citing *Fed. Sign v. Tex. S. Univ.*, 951 S.W.2d 401, 404 (Tex. 1997). "An action to determine or protect a party's rights

against a state official who has acted without legal or statutory authority is not a suit against the State that sovereign immunity bars.” *Id.* See also *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154 (Tex. 2016)(*ultra vires* case may be based on a violation of municipal ordinance); *Tex. Dep’t of Transp. v. Sefzik*, 355 S.W.3d 618, 622-23 (Tex. 2011)(*ultra vires* claim may be based on administrative regulations).

35. If plaintiff’s application is not granted, plaintiff’s members will suffer a probable, if not certain, injury. Harm is imminent because the board of managers has improperly ceded authority to the superintendent to act to devise his own appraisal system, and in fact, harm is already occurring because teachers have been left in limbo as far as what the appraisal criteria and process will be applied to them since the “old” policy was abandoned without having a new, lawful policy to replace it. For example, Superintendent Miles has repeatedly stated that teachers’ performance during 2023-24 will be used to determine salary amounts in 2024-25. Whatever the content of the superintendent’s unilaterally developed plan is or will be, it will not have been developed in accordance with the law. If plaintiff’s application is not granted, the harm that will occur is irreparable and plaintiff’s members have no adequate remedy at law. Teachers are already being evaluated under the new “Miles Evaluation System” without any way of knowing if they are being graded up or down for their work. Probable injury requires a showing that the harm is imminent, the injury would be irreparable, and the applicant has no other adequate legal remedy. *Henderson v. KRTS, Inc.*, 822 S.W.2d 769, 773 (Tex. App. – Houston [1st Dist.] 1992, no writ). Plaintiff has satisfied these requirements.

36. Although the Court is not necessarily required to consider the balance of equities in deciding whether to grant an application for equitable relief, it is important to note that the defendants would not suffer any harm by allowing the “old” evaluation policy to remain in place

– a policy familiar to administrators and teachers alike, upon which they have already been extensively trained – while this litigation takes place. Teachers, on the other hand, will suffer by having their performance evaluated under an illegal appraisal policy. The equities favor the plaintiff.

37. Plaintiff is willing to post bond. However, plaintiff notes that under TEX.R. CIV. P. 684, because defendants are governmental officials who have no pecuniary interest in the suit and no monetary damages can be shown, the Court has discretion to fix the sum of the bond.

38. Plaintiff is making attempts to provide notice to the defendants by notifying their legal counsel so that a hearing may be held on this application. However, because the defendants' actions are imminent, if no hearing can be held, the Court has authority pursuant to TEX.R. CIV. P. 680 to issue a temporary restraining order without a hearing.

39. Therefore, HFT requests a temporary restraining order and temporary and permanent injunctions to enjoin defendants from implementing the provisions of the revised policy DNA(Local) that was adopted by the board of managers on August 10, 2023 or another version that has not been developed in accordance with the law, and to restore the *status quo ante* in place before the adoption of this illegal policy.

40. Plaintiff's verified application for a temporary restraining order is supported by the following exhibits:

- a) Exhibit A: A true and correct copy of the revised Policy DNA (Local) as adopted by the HISD Board of Managers on August 10, 2023.
- b) Exhibit B: A true and correct copy of the provisions in the Texas Education Code referenced in this pleading.

## **IX. REQUEST FOR TEMPORARY INJUNCTIVE RELIEF**

41. Plaintiff asks the Court to set its application for temporary restraining order/temporary injunction for a hearing, and after the hearing, issue a temporary injunctive relief against defendants.

42. Plaintiff has joined all indispensable parties under TEX.R.CIV. P. 39.

#### **X. SUIT FOR DECLARATORY RELIEF**

43. Plaintiff requests that this Court declare and determine the rights and obligations afforded by TEX. EDUC. CODE §21.352 and the Education Code referenced and incorporated into that section, as well as whether the defendant's actions described herein, violate those rights.

#### **XI. NO SOVEREIGN IMMUNITY FOR CLAIMS**

44. Plaintiff is entitled to all these forms of relief. Defendants are not protected from any of plaintiff's causes of action, or forms of relief, by governmental immunity (or in the alternative, such immunity has been waived). Specifically, a government official in his official capacity is liable for declaratory and injunctive relief if there has been a violation of law, as such actions are illegal and *ultra vires*. Similarly, defendants are not protected by any form of immunity, and are liable to plaintiff for an award of attorney's fees and costs (as determined to be equitable and just), pursuant to, *inter alia*, TEX. CIV. PRAC. & REM. CODE §37.009.

#### **XII. CONDITIONS PRECEDENT**

45. All conditions precedent have been performed or have occurred.

#### **XIII. RELIEF REQUESTED**

**WHEREFORE, PREMISES CONSIDERED,** plaintiff respectfully requests that:

1. The defendants be cited to appear and answer.
2. The Court declare and determine that TEX. EDUC. CODE §21.352 prohibits the defendants from adopting and implementing a local teacher appraisal policy that has

not been developed and approved in accordance with that statute.

3. The Court issue a temporary restraining order and temporary injunction barring the defendants from implementing the version of Policy DNA (Local) that was adopted by the board of managers on August 10, 2023, or another version of a teacher appraisal system that does not meet the requirements of TEX. EDUC. CODE §21.352.
4. That upon final hearing, the Court issue the declaratory relief requested and permanently enjoin defendant from adopting or implementing a local teacher appraisal policy that has not been developed and approved in accordance with TEX. EDUC. CODE §21.352.
5. That plaintiff be awarded reasonable attorneys fees and expenses, as provided for under TEX. CIV. PRAC. & REM. CODE §37.009.
6. That plaintiff be awarded all other relief to which the Court may find them entitled.

Respectfully submitted,

*/Christopher Tritico/*

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/s/

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**ATTORNEYS FOR PLAINTIFF**

**VERIFICATION**

Before me, a notary public, on this \_\_\_\_\_ day of August 2023, personally appeared Jackie Anderson, President of Houston Federation of Teachers, known to me to be the person whose name is subscribed to the foregoing Original Petition, Application for Temporary Restraining Order, Request for Temporary Injunction and being by me duly sworn, declared that she has read the factual statements therein contained, and that they are true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

SUBSCRIBED AND SWORN TO BEFORE ME on this \_\_\_\_\_ day of August, 2023, to certify which witness my hand and official seal of office.

\_\_\_\_\_  
Notary Public, State of Texas

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