

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

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

<p>HOUSTON INDEPENDENT SCHOOL DISTRICT Plaintiff</p> <p>v.</p> <p>THE TEXAS EDUCATION AGENCY and MIKE MORATH, COMMISSIONER OF EDUCATION, in his official capacity; and DORIS DELANEY, in her official capacity Defendants</p>	<p>§ § § § § § § § § § § §</p>	<p>IN THE DISTRICT COURT</p> <p>459TH JUDICIAL DISTRICT</p> <p>TRAVIS COUNTY, TEXAS</p>
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ORDER GRANTING TEMPORARY INJUNCTION AND DENYING SUPERSEDEAS IN CASE OF AN APPEAL OF THIS INJUNCTIVE RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

11. This Temporary Injunction shall become effective immediately.

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

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

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

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

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

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

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


District Judge Presiding