

101-912

**Via Certified Mail,
Regular Mail & Email**

March 15, 2023

Mr. Millard House, II, Superintendent
Ms. Dani Hernandez, Board President
Ms. Myrna Guidry, Board First Vice President
Ms. Bridget Wade, Board Second Vice President
Mr. Kendall Baker, Board Secretary
Ms. Kathy Blueford-Daniels, Board Assistant Secretary
Ms. Elizabeth Santos, Board Member
Dr. Patricia K. Allen, Board Member
Ms. Sue Deigaard, Board Member
Ms. Judith Cruz, Board Member
Houston Independent School District
4400 W. 18th St.
Houston, TX 77092

RE: Appointment of Board of Managers

Dear Mr. House and Trustees:

In November 2019, I notified Houston Independent School District (Houston ISD or district) of my intent to appoint a Board of Managers and superintendent for the district. This intervention was necessary because of the consecutive unacceptable academic accountability ratings received by Wheatley High School, a Special Accreditation Investigation that demonstrated multiple violations of law in the district, and the fact that the continued appointment of a conservator had been necessary in the district for at least two school years to ensure changes were made to improve student academic performance. Soon after that order, the district obtained an injunction, and I have been prevented from taking that required intervention action since then. This January, the Texas Supreme Court delivered an opinion that vacated this long-standing injunction, and the injunction was formally dissolved on March 1, 2023.

I have carefully reviewed the Texas Supreme Court's opinion. I have also considered the information presented by the district during the previously granted formal review. As a result of those deliberations, and to best support the students, teachers, parents, and school community of Houston ISD, I am appointing a Board of Managers to the district as an intervention action required by law. As detailed in this letter, the Board of Managers and superintendent will be named in subsequent correspondence later this year.

Per this letter, the Board of Managers is being appointed on two legal grounds. First, a Board of Managers is being appointed because one of the district's campuses received unacceptable academic accountability ratings for five consecutive years, requiring me to either close the campus

or appoint a Board of Managers to govern the district.¹ Second, the Board of Managers is being appointed because the district has had a conservator assigned for more than two consecutive school years.² These two grounds are subject to an administrative review process described below in accordance with current law.

A Chronology of This Intervention

In correspondence dated November 6, 2019, I notified the district of my decision to lower the district's 2018-2019 accreditation status to Accredited-Warning based on the results of a Special Accreditation Investigation.³ The letter also gave notice of my intent to appoint a Board of Managers and a superintendent for the district based on the Special Accreditation Investigation, the lowered accreditation status, the unacceptable performance of a district campus, and the length of a conservator appointment.⁴ The district then requested a formal review of the appointment of a Board of Managers.⁵

On December 20, 2019, I conducted the formal review, but I was enjoined by court order on January 8, 2020, from taking any additional actions to make the official Board of Managers and superintendent appointments. The Texas Education Agency (TEA or agency) appealed that injunction.

In the time since that injunction was imposed, a former Board President, the district's chief operating officer, and four district administrators either pled guilty or were indicted for illegal activity related to a bribery scheme.

Also during the time since the injunction was imposed, the agency conducted an additional Special Accreditation Investigation (currently known as a Special Investigation) related to the district's noncompliance with special education requirements. On December 22, 2020, I appointed a management team of multiple conservators to address the findings of this investigation.

On January 13, 2023, the Texas Supreme Court delivered an opinion that reversed lower court rulings and vacated the injunction. The Supreme Court's opinion became enforceable on March 1, 2023, after its mandate was issued. The district subsequently filed a motion to dismiss its lawsuit against the agency on March 10, 2023.

Background

In prior years, Houston ISD was governed by a Board of Trustees that did not focus on improving student outcomes. Instead, the Board conducted chaotic board meetings marred by infighting while Board members routinely exceeded their authority, directing staff in violation of the school laws of Texas. A former Board majority blatantly violated the Texas Open Meetings Act, and Board members broke Texas procurement law.

¹ Texas Education Code (TEC) §39A.111, as it existed in 2019.

² TEC §39A.006(b).

³ TEC §§39.003(d), and 39.052(d), and 19 Texas Administrative Code (TAC) §§97.1055, 97.1057 and 97.1059.

⁴ Pursuant to the authority granted by TEC, §§39.003(d), 39.052(d), 39A.004, 39A.006, 39A.111, 39A.201, 39A.202, 39A.906, and 19 TAC §§97.1057, 97.1059, 97.1061, and 97.1073.

⁵ The formal review was provided pursuant to 19 TAC §157.1131, which has since been amended.

I recognize that several members of the Board of Trustees have been newly elected since 2019 and that current Board members, individually and as a team, have tried to make progress since then. I certainly commend the current Board for voting last week to end its lawsuit against TEA, yet another indication that the current members of the Board of Trustees are trying to move forward for students. But prior academic performance issues continue to require action under state law. Even with a delay of three full years caused by legal proceedings, systemic problems in Houston ISD continue to impact students most in need of our collective support.

Texas law authorizes the appointment of a Board of Managers based on the district's inability to improve student achievement at its low-performing campuses. In particular, Wheatley High School earned seven consecutive unacceptable academic ratings for the school years from 2011 through 2019. For the 2021-2022 school year, Wheatley earned an acceptable academic rating, driven by an increase in the award of Microsoft Office Specialist Word certifications among graduating seniors.⁶ However, Wheatley's acceptable rating this year does not abrogate my prior legal requirement to intervene based on the seven consecutive unacceptable ratings that were addressed by the original Board of Managers order.

Furthermore, while Wheatley was earning seven years of unacceptable academic performance ratings, multiple other campuses received inadequate district support leading to persistently poor performance. To note one example, Kashmere High School had eight consecutive unacceptable academic ratings starting in the 2008-2009 school year. In 2016, I appointed a conservator to ensure and oversee district-level support for Kashmere. As a result of that intervention, Kashmere finally earned an acceptable academic rating for the 2018-2019 school year. However, while the injunction was in place—which limited the authority of the previously placed conservator—Kashmere High School's performance regressed, as it received a "Not Rated" accountability rating for the 2021-2022 school year with a scale score of 68 out of 100. To note another example, Highland Heights Elementary School has not earned an acceptable performance rating since 2011.

The district's approach to supporting students with disabilities also continues to violate state and federal law. Starting with internal reviews going back to 2011, there has long been recognition from Houston ISD itself of problems in this area. Substantive action was not taken until a management team of conservators was appointed. Since then, Houston ISD has seen some improvements related to basic Child Find obligations. But there are still significant systemic compliance problems, including an ongoing inability to provide special education services to students without delays, which harms their academic progress.

Even with governance challenges, many students are flourishing in Houston ISD schools, due in no small part to the extraordinary work of the district's teachers and staff. In fact, Houston ISD operates some of the highest performing schools in the state of Texas. But district procedures have also allowed it to operate schools where the support provided to students is not adequate. The governing body of a school system bears ultimate responsibility for the outcomes of all students. While the current Board of Trustees has made progress, systemic problems in Houston ISD continue to impact district students.

⁶ The Microsoft Office Specialist Word Industry Based Certification (IBC) was identified in 2022 as not meeting the criteria required for improving student preparedness for success in entering the workforce and is therefore being sunset for academic accountability purposes.

Board of Managers Order

Under state law, the Commissioner is required to either appoint a Board of Managers to govern the school district or order the closure of the campus when a campus has an unacceptable performance rating for five consecutive school years.⁷ The appointment of a Board of Managers is authorized because Houston ISD's governing board was unable to address the academic deficiencies at Wheatley High School, which resulted in seven consecutive unacceptable ratings in the 2010-2011, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2018-2019 school years (SYs).⁸

The Commissioner is also authorized to appoint a Board of Managers if the district has had a conservator or management team assigned for two consecutive school years, including the current school year.⁹ Dr. Doris Delaney is a conservator and was appointed to the district in September of 2016. She has served as conservator in Houston ISD for most of the 2016-2017 school year, all of the 2017-2018, 2018-2019, 2019-2020, 2020-2021, and 2021-2022 school years, and during the current 2022-2023 school year. This Board of Managers appointment is thus authorized because the district has had a conservator appointed for more than two consecutive school years, including the current school year.¹⁰

I am ordering a Board of Managers to oversee governance of Houston ISD for these two reasons, with the members of that Board to be named in future correspondence. State law also requires that I appoint a superintendent.¹¹ I will similarly announce that appointment in future correspondence. Until that announcement the current governance team remains. The district's current superintendent, Millard House II, will continue exercising the superintendent's authority as authorized under law and with the full support of the agency conservators during this time of transition. Mr. House is a student-focused man of integrity, and I commend his commitment to the district, to Houston ISD teachers, and the school children and families in the district.

In addition to the above, TEA reserves the right to implement all other available interventions and sanctions under TEC, Chapters 39, 39A, and 19 TAC Chapter 97, to address any past, current, or future deficiencies identified in the district or any campus within the district, including but not limited to imposing future interventions based on the Special Accreditation Investigation that was completed in October 2019,¹² the continued appointment of the management team of conservators overseeing special education improvements, or otherwise.

Certain Board of Managers Procedures

Separate from this correspondence, I am announcing today an open call for Houstonians who are interested and willing to serve on the Board of Managers. The appointed Board of Managers will consist of members of the Houston ISD community who are committed to serving on behalf of the students of the district and the community. The members of the Board of Managers will be responsible for overseeing the management of Houston ISD, including oversight of the district's

⁷ TEC §39A.111

⁸ Ratings were not issued in the 2011-2012 SY due to the transition from the TAKS test to the STAAR test and were not issued in 2017-2018 SY due to the impacts of Hurricane Harvey.

⁹ TEC §39A.006(b)

¹⁰ TEC §39A.006 and 19 TAC §97.1057(d).

¹¹ TEC §39A.202

¹² The Special Accreditation Investigation addressed allegations of board misconduct, among other things.

efforts to address and correct the deficiencies identified above, and for implementation of effective structural and procedural improvement strategies for long-term positive change.

During the period of the appointment of the Board of Managers, the powers of the Board of Trustees will be suspended. The Board of Managers shall possess all powers of the Board of Trustees and shall continue to order the elections of the members of the Board of Trustees as required by applicable law.¹³

Assignment of a Board of Managers to a district is not permanent. Timeline requirements under statute related to a Board of Managers appointment are included as a reference in an appendix to this letter, and my future decision related to ending the Board of Managers appointment will ultimately depend on evidence of improvement, including no more multi-year failing campuses, a special education program that operates in compliance with legal requirements, and board procedures and conduct that meet a focus on students consistent with high performing governance teams.

Upon conclusion of the Board of Managers appointment, the individuals who have then been most recently elected to be members of the Board of Trustees will phase into positions of governing authority over the district. While the Board of Managers is in place, my hope is that members of the Board of Trustees will choose to continue to be engaged by members of the Board of Managers in an advisory capacity, to help facilitate a seamless return for those local elected officials when the time comes.

Regardless of whether the district elects an administrative review by the State Office of Administrative Hearings (SOAH) as described below, I will not take action to name a superintendent or install the Board of Managers prior to June 1, 2023 in order to ensure sufficient time for the recruitment, selection, and training of the Board of Managers.

Opportunity for Review by the SOAH

The district may, but is not required to, request an administrative review with the SOAH related to the appointment of the Board of Managers pursuant to TEC §39A.301 if the district first satisfies the requirements of 19 TAC §157.1155. Pursuant to 19 TAC §157.1155, a petition for review of this decision must be received no later than **fifteen (15) calendar days after the date of this letter**. If a petition for review complying with the requirements contained in 19 TAC §157.1155 is received by the deadline, it will be forwarded to SOAH for a hearing.

If the petition for review does not meet the requirements of 19 TAC §157.1155, the petition for review will be dismissed without further review and without referral to SOAH. Any written response or other correspondence pertaining to this notice must be sent to:

Sarah Wolfe, Senior Counsel of Litigation and Governance
Texas Education Agency
1701 North Congress Avenue Suite 2-150
Austin, Texas 78701

¹³ TEC §§39A.202(a)(1) and 39A.208(a)

The administrative law judge must uphold my decision unless the administrative law judge finds the decision is not supported by substantial evidence.¹⁴ The decision of the administrative law judge is final and may not be appealed.¹⁵

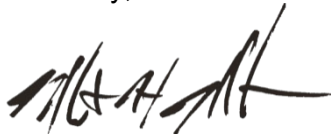
If a petition for review is not submitted by the deadline, my decision will become final and unappealable.¹⁶

Compliance and Cooperation

A school board has a solemn responsibility to focus above all else on serving all students enrolled in its school system. It does this by ensuring its superintendent is positioned to provide a strong set of supports for district teachers and staff who work directly with those students, not just on some of its campuses, but all of them. The intervention I am ordering is focused on ensuring the Houston ISD governing team is better supporting its students.

The Houstonians who are selected to serve on the Board of Managers, once installed, will be in charge of governing Houston ISD. It is my expectation that the Board of Managers will keep me apprised of the conditions in the district—and TEA will continue to monitor the district's performance and its cooperation with the agency's interventions—but governance and strategic decision-making will lie with these local public servants. It is my sincere desire that the agency, the district, the Board of Trustees, the Board of Managers, and the community work together in a cooperative and productive manner for the best interest of Houston ISD students during the current period of transition and throughout the period of the Board of Managers appointment.

Sincerely,

A handwritten signature in black ink, appearing to read 'MM', with a stylized flourish extending to the right.

Mike Morath
Commissioner of Education

MM/lm

Enclosure

¹⁴ TEC §39A.301(b)

¹⁵ TEC §39A.301(c)(3).

¹⁶ TEC §39A.301 and 19 TAC §157.1155(a) and (b).

TEXAS EDUCATION AGENCY

Houston ISD

Appendix

Expiration of Board of Managers Appointment

Appendix

Tex. Educ. Code Sec. 39A.208. EXPIRATION OF APPOINTMENT.

(a) A board of managers shall, during the period of the appointment, order the election of members of the board of trustees of the school district in accordance with applicable provisions of law. Except as provided by Subsection (b), the members of the board of trustees do not assume any powers or duties after the election until the appointment of the board of managers expires.

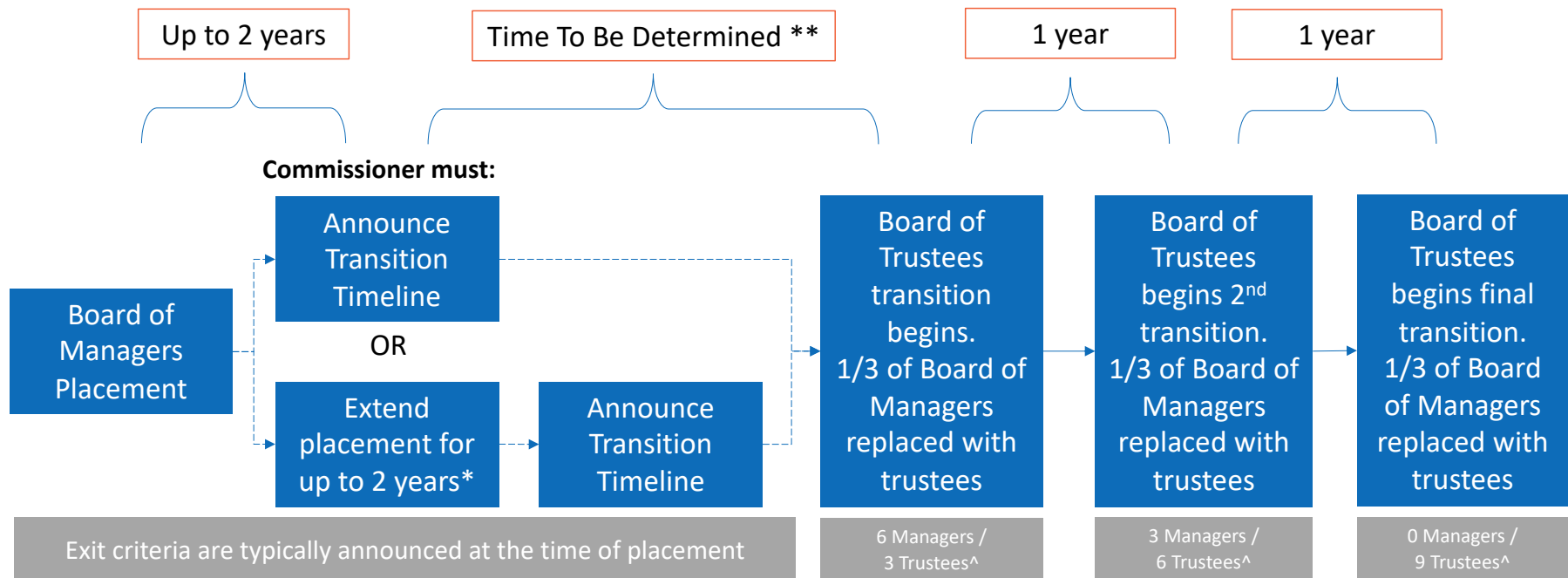
(b) Except as otherwise provided by Subsection (c), not later than the second anniversary of the date the board of managers of a school district was appointed, the commissioner shall notify the board of managers and the board of trustees of the date on which the appointment of the board of managers will expire. Following each of the last three years of the period of the appointment, one-third of the members of the board of managers shall be replaced by the number of members of the board of trustees of the district who were elected at an election ordered under Subsection (a) that constitutes, as closely as possible, one-third of the membership of the board of trustees.

(c) If, before the second anniversary of the date the board of managers of a school district was appointed, the commissioner determines, after receiving local feedback, that insufficient progress has been made toward improving the academic or financial performance of the district, the commissioner may extend the authority of the board of managers for a period of up to two additional years.

(d) On the expiration of the appointment of the board of managers, the board of trustees assumes all of the powers and duties assigned to a board of trustees by law, rule, or regulation.

(e) Following the expiration of the period of appointment of a board of managers for a school district, the commissioner shall provide training in effective leadership strategies to the board of trustees of the district.

Timeline for Return to Elected Trustee Control



*Per Tex. Educ. Code § 39A.208(c), Commissioner's decision to extend placement depends on local feedback as to whether sufficient academic progress has been made.

**Per Tex. Educ. Code § 39A.209(a), BOM required to continue until the campus which serves as a basis for the appointment has an acceptable academic performance rating for two consecutive years.

[^] Transition structure assumes 9-member board of managers