



## DISCUSSION

Petitioner contends that Respondent improperly terminated her term contract because there was no good cause to terminate her contract; there was no directive against using profanity; there was no directive against being intoxicated while not on school property and outside of work hours; there was insufficient evidence that Petitioner's email to a parent was disrespectful or unprofessional; there should have been a finding of fact that Petitioner's principal did not complete her appraisals by their deadline; Petitioner was entitled to remediation; and the independent hearing examiner should have allowed Petitioner's counsel to explore the issue of Petitioner's principal's financial relationship with the company that hosted the conference in California. In her Reply Brief, Petitioner also raises the issue that Respondent lacked subject-matter jurisdiction to consider the independent hearing examiner's recommendation because the recommendation was issued outside of the statutory timeline. Respondent denies these claims and asserts that it should prevail because Petitioner did not timely file her brief.

### Did the School Board Have Jurisdiction?

Petitioner contends that Respondent's board of trustees never had jurisdiction to consider the independent hearing examiner's Recommendation because the Recommendation was not timely issued. To demonstrate that the time limits were exceeded, Petitioner relies on the Agreement to Extend time for Recommendation, which was signed by Petitioner's counsel, Respondent's counsel, and the independent hearing examiner, and states in relevant part:

The parties agree to extend the deadline for Independent Hearing Examiner to issue the recommendation to May 18, 2023. Although this date exceeds the 105th day after the date on which the Commissioner of Education received Respondent's request for the assignment of an Independent Hearing Examiner and the additional thirty-day extension granted by the Governor of the State of Texas, this extension of time is unavoidable, due to the duration of the hearing.

While the Recommendation was not timely issued, that did not deprive the school board of jurisdiction to consider it. The statutory consequence of an independent hearing examiner not issuing a timely recommendation is that the independent hearing examiner "may not be assigned by the Commissioner to conduct additional hearings for a period not to exceed one year." *See* Tex. Educ. Code § 21.257(e). The Legislature assessed the penalty on the responsible party,

which is the independent hearing examiner. Petitioner would have a penalty assessed instead against the school district. If a school district cannot consider a recommendation, it cannot terminate a contract. Tex. Educ. Code § 21.258–.259. The Legislature did not intend such a consequence. An independent hearing examiner’s failure to timely issue a recommendation does not deprive a school board of jurisdiction to consider the recommendation.

Petitioner analogizes this case to *Moses v. Dallas Independent School District*, 12 S.W.3d 168, 170–72 (Tex. App.—Dallas 2000, no pet.). In *Moses*, the court found that the Commissioner could not extend his statutory time to issue a decision. However, the applicable statute provides that if the Commissioner fails to timely issue a decision, “the decision of the board is affirmed.” Tex. Educ. Code § 21.304(b). While in that case, the Legislature chose to make an adjudicator’s untimely decision a default victory for one party, such a win could still be appealed to district court. *Id.* § 21.307. It is unreasonable to conclude that the Legislature also intended to make an independent hearing examiner’s untimely recommendation an unappealable victory for the teacher that binds the actual decisionmaker.

### Good Cause

A school district must prove good cause or a financial exigency to terminate a term contract during its term.<sup>1</sup> See Tex. Educ. Code § 21.211. Good cause to terminate a term contract is not defined in the Texas Education Code. *Tave v. Alanis*, 109 S.W.3d 890, 894 (Tex. App.—Dallas 2003, no pet.) The Commissioner and courts have used the definition of good cause found in *Lee-Wright, Inc. v. Hall*, 840 S.W.2d 572, 580 (Tex. App.—Houston [1st Dist.] 1992, no writ):

Good cause for discharging an employee is defined as the employee’s failure to perform the duties in the scope of employment that a person of ordinary prudence would have done under the same or similar circumstances. An employee’s act constitutes good cause for discharge if it is inconsistent with the continued existence of the employer-employee relationship.

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<sup>1</sup> Since Petitioner’s contract was terminated for good cause, not for a financial exigency, only good cause will be addressed.

*Tave*, 109 S.W.3d at 893; *Aleman v. Edcouch Elsa Indep. Sch. Dist.*, 982 F. Supp. 2d 729 (S. Dist. Tex. 2013). As the Commissioner has long held:

Good cause is a high standard. An employee must not only fail to perform as an ordinary employee would, but the failure must be of a serious nature.

*Carpenter v. Daingerfield Lone Star Indep. Sch. Dist.*, Docket No. 010-R2-094 (Comm'r Educ. 1995).

### FML

One reason for finding good cause to terminate Petitioner's contract was her use of the acronym "FML" in a text. The acronym FML commonly "expletive my life." The record reflects that when she sent this text, Petitioner was on a cheerleader trip as the administrative chaperone and, as such, was the ultimate person in charge. One of the parent chaperones reached out to Petitioner for help with an athlete experiencing anxiety and depression. Petitioner's three-letter text response stated only, "FML." The independent hearing examiner correctly found that Petitioner's text was inappropriate, was unprofessional, and lacked ordinary prudence. A person who holds a principal certificate, is an assistant principal, and is the ultimate authority on a school trip should not reply with profanity to a parent chaperone seeking assistance with an athlete in crisis. Petitioner's use of a profane acronym to respond to a parent chaperone seeking assistance is a failure to perform her duties in the scope of her employment that a person of ordinary prudence would have done under the same or similar circumstances. It is also a serious failing. While there may be instances when the use of profanity does not rise to the level of good cause, this is not one of them. Petitioner's use of profanity in this instance constitutes good cause to terminate her contract.

Petitioner appears to be correct that there is no written or oral directive in the record that expressly prohibits profanity. However, a written or oral director is not necessary to show good cause. As the independent hearing examiner noted, this presents a matter of ordinary prudence.

## Evaluations or Appraisals<sup>2</sup>

Teacher evaluations or appraisals are important instruments for ensuring that quality education is being delivered to students. Evaluations and appraisals help teachers improve by identifying improvement areas. They also have a statutory role in term contract nonrenewal, as school boards must consider the most recent evaluations before deciding to nonrenew a contract. Tex. Educ. Code §21.203(a). When an independent hearing examiner hears a termination, nonrenewal, or suspension matter, there is a presumption that an appraisal or evaluation is admissible. *Id.* § 21.256(g).

For these primary reasons, appraisal timing is significant. The Commissioner develops a recommended appraisal process. *Id.* § 21.351. While school districts may adopt their own appraisal process, Respondent almost entirely adopted the Commissioner's T-TESS process. *Id.* § 21.352. A summative annual appraisal conference or end-of-year conference must occur "no later than 15 working days before the last day of instruction for students." 19 Tex. Admin Code § 150.1003(d)(2). A reason for this timeline is that under the T-TESS process, a teacher may request a second appraisal if the teacher disagrees with the initial appraisal, as long as the teacher so requests within ten days of receiving a summative annual appraisal. 19 Tex. Admin. Code § 150.1004. As a teacher can only be appraised during the school year, a failure to timely provide a summative annual appraisal could remove a teacher's right to request and obtain a second appraisal. Even if an appraisal could be conducted on the last day of the school year, such an appraisal could hardly be considered fair. Timely completion of appraisals is a significant duty for administrators. In the case of *Atkinson v. Mercedes Independent School District*, Docket No. 041-R2-0408 (Comm'r Educ. 2008), the Commissioner held:

There is substantial evidence that Petitioner failed to timely evaluate teachers for the 2006-2007 school year. Teacher appraisals are a statutory requirement. Tex. Educ. Code ch. 21, subch. H. This failing is a serious failing which alone is sufficient to constitute good cause to terminate Petitioner's contract.

Thus, failure to timely complete appraisals can be good cause for a term contract termination.

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<sup>2</sup> The term "appraisal" is used for the process and document that appraises teachers in Texas Education Code chapter 21, subchapter H. The term "evaluation" is used in Texas Education Code § 21.203 to refer to the appraisal referenced in Texas Education Code chapter 21, subchapter H.

In the present case, Petitioner was repeatedly informed that May 4, 2022 was the deadline to complete and file summative evaluations. However, Petitioner did not meet this deadline. Petitioner attempted to schedule her summative annual appraisals on May 20, 2020, which is fewer than fifteen days before the last day of instruction. Hence, Petitioner violated 19 Tex. Admin. Code § 150.1003(d)(2). Petitioner completed her summative annual appraisal conferences on May 23, 2022. If the teachers had requested a second appraisal on the last day allowed by that rule, at best, these would be conducted on the last day of the school year. Petitioner's failure to timely conduct her appraisals constitutes good cause to terminate her term contract.

### California Trip

The Notice of Proposed Termination states, in relevant part:

[Y]ou acted inappropriately at a summer professional development conference by drinking too much, text your principal while under the influence of alcohol, and conducting yourself in an unprofessional manner during sessions at the conference.

However, the school board fully adopted the independent hearing examiner's findings and conclusions, and the independent hearing examiner only made findings and conclusions regarding a text to the principal concerning the California trip. While both parties argue about actions other than the text to the principal, what is being appealed is the board's decision, which addresses only the text. The finding of fact at issue reflects that Petitioner's text to the principal stated:

It's soooo annoying that we have toy [sic] deal w/arrangements. In my experience everything is taken care of. Plus this is NOT the town I was expecting to be in.

To\*

Fairfield, California is not exactly what I thought we were bound to.

I would never have agreed to spend vacation time here.

So NOT worth it.

Finding of Fact No. 14. The independent hearing examiner found this text to be disrespectful and unprofessional and to constitute good cause to terminate Petitioner's contract.

The complaint about arrangements refers to the fact that when the group arrived at its destination, group members initially were not allowed to check into their rooms because of a

mix-up with the credit card payment. Petitioner had a valid complaint about the arrangements. As to the complaint about the environs of Fairfield, California, the principal replied, “You are just outside of Napa, lots to see and explore there.” Different folks might see this issue differently. Petitioner had volunteered to attend the conference during her summer vacation time. The next morning, Petitioner apologized for her bad attitude. The text complaining about location does not rise to the level of good cause. For this reason, Finding of Fact No. 14, the discussion section “Castillo’s complaints about the California trip,” and Conclusion of Law No. 5 are not adopted.

### Remediation

There is no authority establishing a right to remediation when a term contract is terminated. *Matthews v. Scott*, 268 S.W.3d 162, 175 (Tex. App.—Corpus Christi, 2008, no pet.).

The Commissioner has held:

The only statutory basis for terminating a term contract is “cause.” Tex. Educ. Code § 21.210. Therefore, the basis for remediation must be found in this standard. The cause standard does not allow a contract to be terminated lightly. *Lee-Wright* at 580. Cause involves a failing that the ordinary prudent employee would avoid and must be of such a level that the continued existence of the employer-employee relationship is called into question. There is cause to terminate an employee who is incompetent. In such a case, no remediation is necessary.

In the present case, the use of profanity in dealing with a chaperone and failing to timely appraise teachers after being repeatedly reminded of the deadline does not require remediation. An ordinary prudent employee would avoid these failings, which are serious.

### Evidence of Animus and Bias

Petitioner contends that the independent hearing examiner did not allow her to pursue a line of questioning that might have shown animus and bias by her principal. Petitioner waived this line of questioning by not obtaining a ruling from the independent hearing examiner. *Waldon v. City of Longview*, 855 S.W.2d 875, 880 (Tex. App.—Tyler 1993, no writ). It should be recalled that hearings before independent hearing examiners are “conducted in the same manner as a trial without a jury in a district court of this state.” Tex. Educ. Code § 21.256(e).

Additionally, she waived this error by not raising it before the board of trustees. As the Commissioner has held:

To allow a teacher to neglect to make a legal argument before a school board and then to make the argument before the Commissioner would be to devalue the school board's central role in the contract termination process. If exhaustion of remedies during oral argument were not required, a school board that never considered a legal argument because it was not brought to it would be forced to expend tax dollars to defend itself before the Commissioner.

*Gonzales v. Brownsville Indep. Sch. Dist.*, Docket No. 007-R2-1009 (Comm'r Educ. 2000).

#### Required Finding?

Petitioner contends that she is entitled to a finding of fact that Petitioner's principal did not complete all her T-TESS appraisals for teachers for the 2021–2022 school year by Respondent's deadline, because this is uncontroverted. Petitioner is mistaken that this proposed finding of fact is uncontroverted. Both Petitioner and the principal testified about the conversation in question. Only Petitioner testified that the principal admitted to not completing observations. The principal testified that only Petitioner missed deadlines. Additionally, Petitioner waived this issue by not requesting this finding before either the independent hearing examiner or the school board.

#### Conclusion

Petitioner's appeal is denied because she fails to show that Respondent's decision to terminate her term contract for good cause is unsupported by substantial evidence.

#### 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 case under Texas Education Code § 21.301.
2. An independent hearing examiner's failure to timely issue a recommendation does not deprive a school board of jurisdiction to consider the recommendation.

3. The independent hearing examiner's failure to timely issue a recommendation in this case does not deprive Respondent's school board of jurisdiction to consider the recommendation.

4. Good cause to terminate a term contract is not defined in the Texas Education Code. The Commissioner and courts have used the definition of good cause found in *Lee-Wright, Inc. v. Hall*, 840 S.W.2d 572, 580 (Tex. App.—Houston [1st Dist.] 1992, no writ):

Good cause for discharging an employee is defined as the employee's failure to perform the duties in the scope of employment that a person of ordinary prudence would have done under the same or similar circumstances. An employee's act constitutes good cause for discharge if it is inconsistent with the continued existence of the employer-employee relationship.

Good cause is a high standard. An employee must not only fail to perform as an ordinary employee would, but the failure must be of a serious nature.

5. A person who holds a principal certificate, is an assistant principal, and is the ultimate authority on a school trip should not reply with profanity to a parent chaperone seeking assistance with an athlete in crisis. Petitioner's use of a profane acronym to respond to a parent chaperone is a failure to perform her duties in the scope of her employment that a person of ordinary prudence would have done under the same or similar circumstances. It is also a serious failing. It constitutes good cause to terminate Petitioner's term contract.

6. The timing of teacher appraisals is significant. The Commissioner's rules, which Respondent has adopted, require that the end of year conference occur "no later than 15 working days before the last day of instruction for students.: 19 Tex. Admin. Code § 150.1003(d)(2). Complying with this timeline allows teachers to exercise their right to a second appraisal. Petitioner's failure to complete end-of-year conferences until 19 days after Rule 150.1003's deadline is a failure to perform her duties in the scope of her employment that a person of ordinary prudence would have done under the same or similar circumstances. It is also a serious failing. It constitutes good cause to terminate Petitioner's term contract.

7. The text that Petitioner sent to her principal complaining about the California trip, while perhaps inadvisable, is not a serious failing and does not constitute good cause to terminate Petitioner's contract.

8. Petitioner is not entitled to remediation concerning her use of a profane acronym with a parent chaperone seeking assistance with a student or concerning her late appraisals, after being admonished about deadlines.

9. Hearings before independent hearing examiners are “conducted in the same manner as a trial without a jury in a district court of this state.” Tex. Educ. Code § 21.256(e). To preserve error, one must obtain a ruling. Petitioner failed to obtain a ruling on her offer of proof. Therefore, she has not preserved error on this point.

10. Legal arguments must be made before the board of trustees or board subcommittee to preserve error. Petitioner did not make an argument before the board of trustees that the independent hearing examiner had improperly excluded evidence. Therefore, she has not preserved error on this point.

11. Petitioner is not entitled to a finding of fact that Petitioner’s principal did not complete all her T-TESS appraisals for teachers for the 2021–2022 school year by Respondent’s deadline because this a controverted issue and Petitioner failed to request this before the independent hearing examiner and the school board.

12. Because Respondent had good cause to terminate Petitioner’s contract, Petitioner’s appeal should be 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 28 day of July 2023.

**Mike Morath** Digitally signed by Mike Morath  
Date: 2023.07.27 21:51:04 -05'00'  

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MIKE MORATH  
COMMISSIONER OF EDUCATION

**Recommendation for Decision**

**DOCKET NO. 026-LH-12-2022**

<b>ALAMO HEIGHTS INDEPENDENT SCHOOL DISTRICT, PETITIONER</b>	<b>§ § § § § § §</b>	<b>BEFORE THE INDEPENDENT HEARING EXAMINER</b>
<b>v.</b>		<b>SUSAN CONE KILGORE</b>
<b>VANESSA CASTILLO RESPONDENT</b>		<b>THE STATE OF TEXAS</b>

**RECOMMENDATION OF INDEPENDENT HEARING EXAMINER**

Petitioner, Alamo Heights Independent School District (Alamo Heights ISD or Petitioner) proposed the termination of the 2022-24 term contract of Respondent, Vanessa Castillo (Castillo or Respondent). The Commissioner of Education of the Texas Education Agency appointed Independent Hearing Examiner Susan Cone Kilgore to hear this case. Ricardo Lopez and Joe Joyce of Schulman, Lopez, Hoffer & Adelstein, LLP, of San Antonio, Texas represent Petitioner. Kevin O’Hanlon of O’Hanlon, Demerath & Castillo, of Austin, Texas represents Respondent.

Petitioner bears the burden of proof by a preponderance of the evidence. TEX. EDUC. CODE §21.256(h).

**FINDINGS OF FACT**

Citations to the record are not exhaustive, but are intended to indicate some of the bases for the particular finding.

1. In August 2018, Castillo entered a plea of guilty to a Class B misdemeanor. Exhibit P 2.

2. In 2019 and 2020, Castillo applied for employment with Alamo Heights ISD. On both employment applications, Castillo indicated, among other things, that she had never pleaded guilty to a felony or misdemeanor other than minor traffic violations. Exhibit J 1.

3. In July 2020, Alamo Heights ISD employed Castillo as an Assistant Principal under a two-year term contract. Exhibit J 2.

4. From July 2020 until June 21, 2022, Castillo served as the assistant principal of Alamo Heights High School. Exhibits J 2, J 3.

5. In 2020, after Castillo began her employment, Alamo Heights ISD learned that Castillo pleaded guilty to a Class B Misdemeanor. R. Vol. 4, Page 530, R. Vol. 4, Page 412.

6. Before April 14, 2022, the district was aware of Castillo's conduct involving her nieces during a bomb threat and a cheerleading trip.

7. On April 14, 2022, Castillo signed an Assistant Principal contract with Alamo Heights ISD for the 2022-2024 school years. Exhibit J 3.

8. Alamo Heights ISD required teachers' T-TESS Written Summative End of Year Conferences to be completed and entered in STRIVE by May 4, 2022 and required all other personnel T-TESS Summatives to be completed and documented in STRIVE by May 13, 2022. Exhibits J 6, J 7.

9. In May of 2022, the district learned that in February 2022, while on Alamo Heights ISD duty, in response to a parent chaperone's concern about student, Castillo texted "FML" to the parent chaperone. Exhibit P 4, R. Vol 4, p. 427.

10. On May 20, 2022, the district learned that Castillo had not completed the T-TESS Written Summative End of Year Conferences and had not submitted the STRIVE entries for the teachers under her supervision. Exhibit J 8.

11. On June 7, 2022, Principal Smith completed Castillo's evaluation with the notice to Castillo to "Be mindful of deadlines and communicate with principal if additional time is needed to complete a task or assignment." Exhibit R 1.

12. On June 21, 2022, the Alamo Heights 2021-2022 contract school year ended. *Stipulation of Parties*, R. Vol 4. P 470.

13. From June 26 - 27, 2022, Castillo and district colleagues attended professional development in California.

14. On June 26, 2022, Castillo sent her principal and colleagues group text messages stating, inter alia,

It's soooo annoying that we have toy [sic] deal w/ arrangements. In my experience everything is taken care of. Plus this is NOT the town I was expecting to be in.

To\*

Fairfield, California is not exactly what I thought we were bound to.

I would have never agreed to spend vacation time here.

So NOT worth it.

Exhibit P 6, P 10A.

15. The Alamo Heights ISD 2022-2023 contract year began in the week of July 11, 2022. *Stipulation of Parties*, R. Vol 4. P 470.

16. In July 2022, Dr. Bashara lost confidence in Castillo's professionalism; determined that Castillo did not demonstrate appropriate judgment for an Alamo Heights

ISD assistant principal; directed that Castillo be reassigned to a position at the Junior School; and directed that Castillo be offered the option to resign R. Vol. 4, pp 435-437.

17. On July 21, 2022, Dr. Bashara decided to reassign Castillo. Exhibit J 11.

18. On July 21, 2022, Castillo filed a Level I grievance, grieving Alamo Heights ISD's attempts to reassign Castillo to a teaching position, citing, inter alia, Castillo's July 21, 2022 conversation with Dr. Bashara. Exhibit J 9.

19. At the time of the grievance filing Castillo was employed under contract as an Assistant Principal. Exhibit J 4, Exhibits J 2 – J 3.

20. Alamo Heights ISD's proposal to terminate Castillo's 2022-2024 term contract is based on Castillo's actions before the 2022-2023 contract year began.

## **DISCUSSION**

### **Whether evidence of conduct prior to the current contract may be considered.**

As a general rule, a district cannot take action against a teacher's contract for actions taken in a prior school year. This general rule, however, is not an absolute bar. When a school district learns of conduct constituting good cause after a contract has been put in place, the district has not waived its right to take action against the teacher's contract. *Goodfriend v. Houston ISD*, Docket No. 079-R2-703 (Comm'r Educ. 2003).

In this proposed action, the school district was aware of some of Castillo's conduct that occurred before the district offered Castillo a new contract and before Castillo signed the new contract on April 14, 2022. One example of this conduct is that Castillo pleaded guilty to a Misdemeanor B, which she did not disclose on her job applications. That

conduct, and other conduct which the district knew before offering the 2022-2024 contract, cannot be evidence supporting good cause for termination.

However, it was after April 14, 2022, that the school district learned of Castillo's communication to a parent during the Florida cheerleading trip. Because Alamo Heights ISD learned of that conduct after April 14, 2022, the district has not waived its right to take action against Castillo's 2022-2024 contract. This evidence of Castillo's conduct in the 2021-2022 school year may be considered.

**Whether good cause exists for the termination of Castillo's contract.**

A Texas school district employee employed under a term contract may be discharged during the term of the contract for good cause determined by the board of trustees. TEX. EDUC. CODE §21.211(a). Because "good cause" for terminating a term contract is not defined in statute, the definition of "good cause" found in case law is used:

Good cause for discharging an employee is defined as the employee's failure to perform the duties in the scope of employment that a person of ordinary prudence would have done under the same or similar circumstances. An employee's act constitutes good cause for discharge if it is inconsistent with the continued existence of the employer-employee relationship.

Tave v. Alanis, 109 S.W.3d 890 (Tex. App.--Dallas 2003, no pet.) citing Lee-Wright, Inc. v. Hall, 840 S.W.2d 572, 580 (Tex. App.--Houston [1st Dist.] 1992, no writ).

In this proposed action, Alamo Heights ISD offered three accepted standards of conduct or reasonable rules and the failure to meet those standards or the violation of those rules. The three events: the unprofessional communication with a parent, the failure

to meet the T-TESS deadline, and the unprofessional communications to her supervisor and colleagues, severally and/or jointly, support a finding of good cause for termination.

**The communication with the Alamo Heights ISD parent during the Florida trip.**

In February 2022, Castillo texted the acronym “FML” meaning “fuck my life” to a parent chaperone. This text to a parent chaperone was inappropriate and unprofessional. Castillo’s communication as a district employee to a parent chaperone did not demonstrate ordinary prudence. Castillo’s text constitutes good cause for termination of her term contract.

**Castillo’s failure to complete the T-TESS evaluations by the school district deadline.**

By May 5, 2022, Castillo missed the deadline to complete the T-TESS requirements. Failing to timely evaluate teachers “is a serious failing which alone is sufficient to constitute good cause to terminate [Respondent’s] contract.” *Atkinson v. Mercedes Indep. Sch. Dist.*, Dkt. No. 041-R2-0408 (Comm’r Educ. 2008).

**Castillo’s complaints about the California trip.**

The Alamo Heights ISD 2021-2022 contract year ended June 21, 2022 and the California trip occurred June 26 - 27, 2022. Castillo and her colleagues who participated in the California trip were voluntarily giving their time for professional development. The social times and non-meeting times were off-duty times. Castillo’s off-duty text messages complaining to her colleagues and Principal Smith were disrespectful and unprofessional. Castillo’s complaints addressed lodging and location – not work or work conditions. The text messages did not constitute a complaint concerning work conditions and therefore,

are not protected by Tex. Const. Art I, Sec. 27, Tex. Gov't Code § 617.005, and AHISD Policies DGBA (Legal) and DGBA (Local).

**Whether Alamo Heights ISD was required to provide Castillo an opportunity to remediate her conduct.**

Remediation is not required. See *Atkinson v. Mercedes Indep. Sch. Dist.*, Dkt. No. 041-R2-0408 (Comm'r Educ. 2008) (“In some cases, conduct will not amount to good cause unless an employee is given an opportunity to remediate. But remediation is not required, and there is no right to remediation; failing to timely evaluate teachers “is a serious failing which alone is alone sufficient to constitute good cause to terminate Petitioner’s contract”); see also *Matthews v. Scott*, 268 S.W.3d 162, 175 (Tex. App.—Corpus Christi–Edinburg 2008, no pet.) (“Matthews cites no authority, nor can we locate any, for the proposition that a district employee must be afforded an opportunity to cure his or her defective performance before the employee can be terminated”). The district was not required to provide Castillo with an opportunity remediate her conduct.

**Whether Alamo Heights ISD proposed the termination of Castillo’s contract in retaliation for Castillo’s complaints regarding the California trip and Castillo’s grievance.**

As discussed above, Castillo’s text message complaints regarding the California trip did not constitute a complaint concerning work conditions and therefore, are not protected. Before Castillo filed her grievance, Dr. Bashara determined that Castillo’s conduct was incompatible with Castillo’s continued employment with the district.

Although the contract termination was proposed after the conclusion of the grievance, the

grievance was not the cause of the proposed termination of the contract. Castillo’s conduct before July 2022 cause the district to propose the termination of her contract.

**CONCLUSIONS OF LAW**


1. The Independent Hearing Examiner has jurisdiction over this case pursuant to TEX. EDUC. CODE §21.251 - 21.257.
2. An Assistant Principal employed under a term contract may be discharged during the term of the contract for good cause determined by the board of trustees. TEX. EDUC. CODE §21.211.
3. Castillo's use of a profane acronym to a parent chaperone is evidence of good cause.
4. Castillo's failure to meet the T-TESS deadlines is evidence of good cause.
5. Castillo's text messages complaining to her supervisor and colleagues, regarding the trip to California, is evidence of good cause.
6. Good cause exists for the termination or discharge of Castillo's term contract.
7. The proposed termination of Castillo's term contract is supported by the evidence presented.
8. The proposed termination of Castillo’s contract was not motivated by retaliation.

## RECOMMENDATION

After due consideration of the three days of hearing on the merits and the evidence presented, it is

RECOMMENDED that the board of trustees of Alamo Heights Independent School District adopt the foregoing Findings of Fact and Conclusions of Law and enter an order consistent therewith.

DONE and SIGNED this 18th day of May 2023.



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Susan Cone Kilgore  
Independent Hearing Examiner