

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

CY-FAIR AMERICAN FEDERATION OF  
TEACHERS,

*Plaintiff,*

v.

MARK HENRY, SUPERINTENDENT of  
CYPRESS-FAIRBANKS INDEPENDENT  
SCHOOL DISTRICT, in his official capacity,  
*Defendant*

§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S VERIFIED ORIGINAL PETITION, APPLICATION FOR TEMPORARY  
RESTRAINING ORDER, AND REQUEST FOR TEMPORARY AND PERMANENT  
INJUNCTION**

TO THE HONORABLE COURT:

COMES NOW plaintiff, Cy-Fair American Federation of Teachers ("Cy-Fair AFT"), a labor organization representing employees of Cypress-Fairbanks Independent School District ("Cy-Fair ISD" or the "District"), seeking declaratory, equitable and injunctive relief against the defendant pursuant to the provisions of the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code Section 37.001 *et seq.*, as well as Tex. Civ. Prac. & Rem. Code Section 65.001 *et seq.*

**I. INTRODUCTION**

On behalf of its members, plaintiff files this petition seeking relief from the actions of Dr. Mark Henry, Superintendent of Cy-Fair ISD, that violate COVID-19 local health orders issued by Harris County Public Health and Houston Health Department. These actions put their health at imminent and unnecessary risk. This lawsuit challenges the District's requirement that over 7,800 teachers and other school personnel attend in-person, on-campus professional development prior to the start of the 2020-2021 school year for students. Cy-Fair ISD, through its superintendent, is requiring teachers to return to their campuses for three weeks, beginning on August 14, and to

congregate together in groups for various activities, such as group instruction, team “breakout” sessions, assembling in common areas to collect materials, picking up breakfast at the campus cafeterias, and even a “scavenger hunt.” All of these activities are in direct violation of a lawful order by the local health authorities. Additionally, Cy-Fair ISD’s in-person professional development violates the Harris County COVID-19 Threat Level System requirements for “Red Level 1,” including staying home except for essential activities, avoiding and canceling all gatherings of any size and avoiding all non-essential business and personal travel. Unless enjoined, Cy-Fair ISD’s in-person professional development will cause immediate and irreparable harm to Cy-Fair AFT’s members by exposing them and, by extension, their family and loved ones, to risk of COVID-19 transmission and illness. Plaintiff seeks to have the Court enjoin this requirement and order the District to allow teachers and staff to engage in their professional development remotely.

## **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 Section 15.002(a)(1), in that Cy-Fair AFT members work on campuses within Harris County, the majority of Cy-Fair ISD campuses are within Harris County, Cy-Fair AFT’s office is located within Harris County, and all or a substantial part 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 Rule 47 of the Texas Rules of Civil Procedure, plaintiff in good faith plead that at this

*Original Petition, Application for Temporary  
Injunction & Restraining Order*

junction, it seeks non-monetary relief and attorney's fees and costs less than \$100,000.

#### **IV. PARTIES**

5. Plaintiff Cy-Fair AFT is a labor organization that represents approximately 1,700 employees in matters related to their wages, hours, and terms and conditions of employment. Its members are teachers, paraprofessionals, nurses, librarians, custodians and other employees who work for the District. It brings the suit on behalf of its members. Cy-Fair AFT is affiliated with Texas AFT, a state-wide labor organization, and the American Federation of Teachers (AFT), a national labor organization. As required of labor organizations representing public employees in Texas, Cy-Fair AFT does not claim the right to strike. Cy-Fair AFT's address is 17461 A Village Green Dr. Houston, TX 77040-1004.

6. Defendant Mark Henry is the Superintendent of Cy-Fair ISD. By law, as superintendent, he is the "education leader and chief executive officer of the school district." TEX. EDUC. CODE § 11.201(a). According to the Education Code, he bears administrative responsibility and leadership "for the planning, organization, operation, supervision, and evaluation of the education programs, services and facilities of the district." *Id.* at §11.201(d)(1). Dr. Henry is sued in his official capacity only. He may be served with process at Cy-Fair ISD, 10300 Jones Road, Houston, Texas 77065.

#### **V. ASSOCIATIONAL STANDING**

7. Cy-Fair AFT has approximately 1,700 members employed by the school district, and is the largest labor union representing Cy-Fair ISD's teachers and other employees. Cy-Fair AFT is interested in enforcing and protecting the employment rights and benefits of its members, including the right to work and teach in a safe environment. Remaining infection-free and preventing their friends, families and loved ones from contracting and further spreading the virus in their homes and

communities is of vital interest to its members. Cy-Fair AFT's members are aggrieved by the actions of the defendant and the union brings this declaratory judgment action on their behalf.

8. Cy-Fair AFT 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.

9. Cy-Fair AFT's members who are aggrieved by the actions of the defendant have standing to file this action on their own behalf.

10. Neither the claims asserted herein 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**

### **A. CY-FAIR ISD**

11. Cy-Fair ISD is a large school district within the boundaries of Harris County, the county in Texas that has been hit the hardest by COVID-19. It has over 90 campuses with over 117,000 students. It employs over 14,000 full-time equivalent ("FTE") staff, including over 7,800 teachers. It is the third-largest school district in the state. *See* Cypress Fairbanks Independent School District, 2018-2019 State of the District at 5.<sup>1</sup>

### **B. COVID-19**

12. COVID-19 is "a highly contagious virus that spreads through person-to-person contact and continues to ravage communities across the globe." *See* Harris County Judge, ORDER BY THE COUNTY JUDGE OF HARRIS COUNTY (Temporarily controlling the occupancy of a

---

<sup>1</sup> Available at [https://www.cfisd.net/download\\_file/view/20962/1561](https://www.cfisd.net/download_file/view/20962/1561) (last visited Aug. 13, 2020).

premises) at 1 (July 30, 2020),<sup>2</sup> *hereinafter* “Occupancy of Premises Order.” COVID-19 is a respiratory illness. According to the federal Centers for Disease Control and Prevention (“CDC”), the severity of the illness can range from mild/moderate (mild symptoms up to mild pneumonia) to severe in 14% of cases (including dyspnea, hypoxia, or more than 50% lung involvement on imaging) to critical in 5% of cases (respiratory failure, shock, or multiorgan system dysfunction). *See* CDC, Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19) (June 30, 2020).<sup>3</sup>

13. As of the date of this filing, there have been over 513,000 confirmed cases of COVID-19 in Texas, including over 88,000 in Harris County (the highest of any county in the state). Texas Health & Human Services Commission & Texas Department of State Health Services, COVID-19 in Texas (Dashboard).<sup>4</sup> As of the same date, there have been nearly 9,300 deaths in Texas and over 1,700 deaths in Harris County (twice as many as in the next-highest county in Texas). *Id.*

14. The virus is believed to spread mainly from person to person, including by close contact and through droplets from an infected person’s coughs or sneezes. COVID 19 may be spread by people who are not showing any symptoms. *See* Texas Health & Human Services Commission & Texas Department of State Health Services, Coronavirus Disease 2019 (COVID-19).<sup>5</sup> Additionally, “[t]he virus may also be spread through surfaces,” including “[b]y a person touching a surface or object that has virus on it and then touching their own mouth, nose, or possibly their

---

<sup>2</sup> Available at <https://agenda.harriscountytexas.gov/2020/20200730Order.pdf> (last visited Aug. 13, 2020).

<sup>3</sup> Available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html> (last visited Aug. 13, 2020).

<sup>4</sup> Available at <https://dshs.texas.gov/coronavirus/cases.aspx> (last visited Aug. 13, 2020).

<sup>5</sup> Available at <https://dshs.texas.gov/coronavirus/> (last visited Aug. 13, 2020).

eyes.” *Id.* COVID-19 may also be spread through aerosols, in indoor spaces and because of inadequate ventilation. *See* Lidia Morawska & Donald K. Milton, *It is Time to Address Airborne Transmission of COVID-19*, CLINICAL INFECTIOUS DISEASES, (July 6, 2020).<sup>6</sup>

### **C. THE JOINT CONTROL ORDER**

15. Under Chapter 81 of the Texas Health and Safety Code, a “health authority” has the power to issue “communicable disease control measures.” Dr. Umair A. Shah is the “health authority” for Harris County, and Dr. David Persse is the “health authority” for the City of Houston for purposes of Chapter 81 of the Texas Health and Safety Code.

16. Absent preemptive action by the Texas Department of State Health Services or by the governor under Chapter 418 of the Government Code, which has not occurred in this case, a health authority may impose disease control measures that the health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health. *See* TEX. HEALTH & SAFETY CODE §§ 81.084(k) and 81.085(c).

17. On July 24, Harris County Public Health, via Dr. Shah, jointly with the Houston Health Department, via Dr. Persse, issued a “Joint Control Order” regarding the safe reopening of schools in Houston and in Harris County. *See* Harris County Public Health & Houston Health Department, Joint Control Order of the Local Health Authorities for Harris County and the City of Houston Regarding Public and Non-Religious Private Schools (July 24, 2020),<sup>7</sup> *hereinafter* “Joint Control Order.” *See* Joint Control Order at 1-2, attached and incorporated herein as Ex. A.

---

<sup>6</sup> Available at <https://doi.org/10.1093/cid/ciaa939> (last visited Aug. 13, 2020).

<sup>7</sup> Available at <https://publichealth.harriscountytexas.gov/Portals/27/Documents/News/CJO-Order-Education-SeptReopening-20200724125347539.pdf> (last visited Aug. 13, 2020).

Under the authority conferred to them under Chapter 81 of the Texas Health and Safety Code to implement “control measures,” the local health authorities issued, in relevant part, the following orders to all public and non-religious private schools operating within their jurisdiction: :

- School Systems must not re-open schools for the 2020-2021 school year to students for on-campus, face-to-face instruction until after September 7, 2020.
- Virtual instruction is allowed consistent with individual district or school academic plans. Instructors may use classrooms for video streaming if they are alone in the classroom and building occupancy does not exceed 10%.
- All school sponsored events and activities, including but not limited to clubs, sports, extra-curricular activities, fairs, exhibitions, academic and/or athletic competitions, must not take place in-person, on or off campus, until school systems resume on-campus instruction.

*See Ex. A.*

**D. STATE and LOCAL DISASTER DECLARATIONS and THREAT LEVEL SYSTEM**

18. State and local disaster declarations preceded the issuance of the Joint Control Order on July 24. In her Local Disaster Declaration, issued on March 11, the Harris County Judge stated that “[e]xtraordinary measures must be taken to contain COVID-19 and prevent its spread throughout Harris County, including the quarantine of individuals, groups of individuals, and property and, additionally, including compelling individuals, groups of individuals, or property to undergo additional health measures that prevent or control the spread of disease.” *See Harris County Judge, Declaration of Local Disaster for Public Health Emergency (Mar. 11, 2020)*,<sup>8</sup> *hereinafter*

---

<sup>8</sup> Available at <https://agenda.harriscountytexas.gov/2020/DisasterDeclaration.pdf> (last visited Aug. 13, 2020).

“Local Disaster Declaration.” On June 30, the Harris County Commissioners Court extended the Local Disaster Declaration to August 26. *See* Harris County, Order of Commissioners Court To Extend the Declaration of Local Disaster for Public Health Emergency (June 30, 2020).<sup>9</sup>

19. On March 13, Governor Greg Abbott issued a Declaration of State of Disaster, certifying under Section 418.014 of the Texas Government Code that COVID-19 poses an imminent threat of disaster for all counties in the State of Texas and to thus take additional steps to prepare for, respond to, and mitigate the spread of COVID-19 to protect the health and welfare of Texans. *See* Governor Greg Abbott, A proclamation certifying that COVID-19 poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas.<sup>10</sup> The governor’s declaration is a declaration of a “public health disaster” for purposes of Chapter 81 of the Texas Health and Safety Code. *See* Texas Health & Safety Code § 81.003(7)(A). Since then, Governor Abbott has extended or renewed the disaster declaration multiple times, most recently on August 8. *See* Governor Greg Abbott, A proclamation renewing the declaration stating that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in Texas (Aug. 8, 2020).<sup>11</sup>

20. Additionally, on June 11, Harris County implemented a COVID-19 Threat Level System that provides color coded levels of risk based on the incidence of COVID-19 and its transmission level in Harris County and provides corresponding recommendations to the public. *See*

---

<sup>9</sup> Available at <https://agenda.harriscountytexas.gov/2020/20200630DLDDOrder.pdf> (last visited Aug. 13, 2020).

<sup>10</sup> Available at [https://gov.texas.gov/uploads/files/press/DISASTER\\_covid19\\_disaster\\_proclamation\\_IMAGE\\_03-13-2020.pdf](https://gov.texas.gov/uploads/files/press/DISASTER_covid19_disaster_proclamation_IMAGE_03-13-2020.pdf) (last visited Aug. 13, 2020).

<sup>11</sup> Available at [https://gov.texas.gov/uploads/files/press/DISASTER\\_renewing\\_covid19\\_disaster\\_proclamation\\_IMAGE\\_08-08-2020.pdf](https://gov.texas.gov/uploads/files/press/DISASTER_renewing_covid19_disaster_proclamation_IMAGE_08-08-2020.pdf) (last visited Aug. 13, 2020).

Occupancy of Premises Order at 3. The system has four levels, numbered 1 through 4. Level 1—the most serious—is coded red and is labeled “Stay Home.” *See* Harris County, Stay Safe.<sup>12</sup> As of the date of this filing, the Harris County Threat Level System is at “Level 1.” *See* Stay Safe. “Level one signifies a severe and uncontrolled level of COVID-19 in Harris County, meaning **outbreaks are present and worsening** and that testing and contact tracing capacity is strained or exceeded. At this level, residents take action to **minimize contacts with others wherever possible and avoid leaving home except for the most essential needs** like going to the grocery store for food and medicine.” *See id.*

21. It is Harris County Public Health’s and Harris County’s formal position that schools should not be open for any in-person instruction or activities at COVID-19 Level Red. *See* Harris County, Ready Harris > A Roadmap to Reopen Schools.<sup>13</sup>

#### **E. PROFESSIONAL DEVELOPMENT in CY-FAIR**

22. Despite the Joint Control Order and the Red Level 1 Threat restrictions, Cy-Fair ISD has ordered all teachers to return to campus on August 14 for a three-week long period of in-person professional development, rather than conducting the professional development remotely. During the in-person professional development dates, teachers will be required to interact, in close quarters, with other teachers, administrators and staff. Further, even assuming that it were acceptable to require teachers and other personnel to be physically present on their campuses, Cy-Fair ISD has not implemented adequate control measures to ensure that teachers are not congregated together for activities but work alone in their classrooms for remote instruction as stated in the Joint Control

---

<sup>12</sup> Available at <https://www.readyharris.org/Stay-Safe> (last visited Aug. 13, 2020).

<sup>13</sup> Available at <https://www.readyharris.org/a-roadmap-to-reopen-schools> (last visited Aug. 13, 2020).

Order. Cy-Fair ISD has not justified why teachers and other staff must be physically present on campus for professional development.

23. The schedules at various schools reflect the faculty's activities:

24. Rowe Middle School: Face-to-face activities the entire afternoon of Friday, August 14, in a mix of large-group and rotations, culminating with a "scavenger hunt." Subsequent weeks will include daily "rotations" and a "full staff meeting." See Rowe Middle School Campus Staff Development Overview – August 2020, attached hereto as Exhibit B.

25. Aragon Middle School: During "Week 1" (August 17-21), paraprofessionals have to report to the school's front office, while it is not clear whether teachers' professional development on "district content" will be in-person or virtual. During weeks 2 and 3, staff will be required to engage in daily face-to-face sessions, including "rotations." See Aragon Professional Development 2020, attached hereto as Exhibit C.

26. Campbell Middle School: While some professional development at Campbell will occur virtually, other group activities ("[w]ork collaboratively with teams . . .") appear to be scheduled to occur in person. See Campbell Middle School Staff Development – Building Gator Greatness! – August 2020, attached hereto as Exhibit D.

27. Anthony Middle School: Staff will be provided meals (in the cafeteria) on certain days, and teachers will be required to attend a group lunch meeting on September 2. See 2020 Anthony Middle School's FAQ's, attached hereto as Exhibit E.

28. Bane Elementary: ("our home away from home starting this Friday, August 14th") While the agenda states that there are in person and Zoom options, some in-person sessions appear to be required. Additionally, if teachers experience technical difficulties and are unable to join the Zoom meeting, they are required to join the in-person sessions. See Bane Elementary, Welcome to

Bane, attached hereto as Exhibit F.

29. Langham Creek High School: professional development will be conducted in-person, face-to-face, in spaces like the auditorium, the library, the “Commons” and the “Teaching Theater. See 2020-2021 Langham Creek HS August Staff Development Week, attached hereto as Exhibit G.

30. On August 10, Cy-Fair AFT and many employees made a presentation in the open forum portion of the meeting of Cy-Fair ISD’s board of trustees, requesting that the board take action to halt the in-person professional development. No change was made. Cy-Fair AFT’s president and the president of the statewide Texas American Federation of Teachers wrote a joint letter to Cy-Fair ISD officials raising alarms. Despite Cy-Fair AFT’s requests, the superintendent has not altered his plan to go forward with in-person professional development.

31. The in-person training will expose Cy-Fair AFT members to significant risk of COVID-19 infection and resulting illness or even death. This risk is unnecessary and avoidable.

## **VII. CLAIMS**

32. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, plaintiff reallege and incorporate all allegations set forth herein.

33. Cy-Fair ISD is violating the Joint Control Order and Red Level 1 Threat restrictions by requiring teachers to participate in in-person, on-campus professional development in close proximity with other teachers, administrators and staff.

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

34. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, plaintiff reallege and incorporate all allegations set forth herein.

35. Plaintiff’s application for a temporary restraining order is authorized by Texas Civil

Practice & Remedies Code Section 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 defendant as they relate to plaintiff Cy-Fair AFT's members. Defendant is about to perform or allow performance of an act relating to the subject of this litigation, in violation of the rights of Cy-Fair AFT members, and defendant's actions would tend to render the judgment in this action ineffectual.

29. If equitable relief is not granted, Cy-Fair AFT members will not be able to recover relief that adequately or fairly compensates them for the high risk of contagion, illness and even death that will occur if they are compelled to attend in-person professional development. Further, as a direct result of defendant's actions, Cy-Fair AFT members will suffer irreparable and immediate harm because they will not be able to vindicate their rights after the fact. No legal remedy could compensate Cy-Fair AFT members for their loss and threatened loss as a result of defendant's illegal conduct.

36. It is probable that plaintiff will prevail over defendant after a trial on the merits:

37. Under the Joint Control Order, “[a]ll school sponsored events and activities, including but not limited to clubs, sports, extra-curricular activities, fairs, exhibitions, academic and/or athletic competitions, **must not take place in-person, on or off campus, until school systems resume on-campus instruction.**” Joint Control Order at 2 (emphasis added). Further, “[v]irtual instruction is allowed consistent with individual district or school academic plans. **Instructors may use classrooms for video streaming if they are alone in the classroom** and building occupancy does not exceed 10%.” *Id.* (emphasis added).

38. In-person professional development is a “school-sponsored event and activity.” Additionally, professional development is training and instruction for teachers. While some of this training and instruction on some campuses may take place while teachers are alone in their

classrooms, the schedules attached to this petition are replete with group activities taking place in common areas. *See* Exs. B-G.

39. Pursuant to the Joint Control Order, Cy-Fair’s in-person professional development must not occur prior to September 7, which the current Joint Control Order states is the earliest that in-person, on-campus instruction may resume. Moreover, under the Red Level 1 Threat restrictions, schools should not be open for any in-person instruction or activities, including professional development.

40. The Joint Control Order and the Harris County COVID-19 Threat Level System are lawful “control measures” by the health authority of Harris County under Chapter 81 of the Texas Health & Safety Code. The control measures have not been superseded or modified by the Texas Department of State Health Services.<sup>14</sup>

---

<sup>14</sup> On July 28, 2020, Attorney General Ken Paxton issued an advisory opinion stating that local health authorities may not “order the closures of schools.” *See* Letter from Texas Attorney General Ken Paxton to Doug Svien, Mayor of City of Stephenville (July 28, 2020), *available at* [https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Disaster%20Counsel%20Letter%20to%20Stephenville%20re%20Local%20Health%20Orders\\_07282020.pdf](https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Disaster%20Counsel%20Letter%20to%20Stephenville%20re%20Local%20Health%20Orders_07282020.pdf) (last visited Aug. 13, 2020). Attorney General Paxton’s opinion is inapposite to the issues in this case. Plaintiff does not seek to “close” Cy-Fair ISD. Instead, it seeks to have the Court declare that the in-person professional development as described herein violates the Joint Control Order and, as a remedy, asks the Court to order that such professional development take place remotely. Further, the Attorney General’s opinion is advisory only and is not controlling on the courts. *Vick v. Pioneer Oil Co., Western Division*, 569 S.W.2d 631 (Tex. Civ. App. – Amarillo 1978, no writ). While an Attorney General’s opinion may be treated as persuasive, no such deference is due here. The Attorney General errs in treating the specific provisions of TEX. HEALTH & SAFETY CODE §§ 81.083–.086 as an exhaustive list of the ways a health authority can use the broad powers granted in TEX. HEALTH & SAFETY CODE § 81.082 to impose communicable disease control measures. The better reading of the statutory scheme is that TEX. HEALTH & SAFETY CODE §§ 81.083–.086 contain limitations for certain uses of the control-measure power, but do not attempt to address every possible use of that power. In TEX. HEALTH & SAFETY CODE § 81.084, which applies to “application of control measures to property,” and which General Paxton says is the authority for the Joint Control Order, subsection (k) explicitly provides, “In a public health disaster, the department or a health authority may impose additional control measures the department or health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.” Attorney General Paxton does not even mention this provision. Further, Attorney General Paxton erroneously claims that the Joint Control Order is superseded because it conflicts with Governor Abbott’s Executive Order GA-28. The portion of Order GA-28 that Attorney General Paxton points to says, “For the remainder of the 2019–2020 school year, public schools may resume operations for the summer as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency (TEA).” However, the Joint Control Order does not contain any provision concerning operations for the summer of the 2019–2020 school year; instead, the Joint Control Order is directed exclusively at the 2020–2021 school year. As such, there is no conflict between the Joint *Original Petition, Application for Temporary Injunction & Restraining Order*

41. Government officials, such as defendant, must act with lawful authority and must not violate the law, including obeying the lawfully adopted control measures imposed by the Harris County health authority. 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.* The Joint Order is provided for by law. "A health authority is a state officer when performing duties prescribed by state law." TEX. HEALTH & SAFETY CODE § 121.024(a). *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).

42. If plaintiff's application is not granted, plaintiff's members will suffer a probable, if not certain, injury. Harm is imminent because the superintendent is requiring teachers to attend in-person professional development beginning on **August 14**. If the application is not granted, attendance will expose Cy-Fair AFT members to the risk of contagion and illness in violation of Joint Control Order and Red Level 1 Threat restrictions. If plaintiff's application is not granted, the

---

Control Order and GA-28. It is undisputed that a public health disaster declaration is still in effect. The health authorities have imposed the control measures at issue because they consider them necessary and most appropriate to arrest, control, and eradicate the threat to public health. There is clear statutory authority supporting their authority to act in this manner. If the Texas Department of State Health Services did not believe that the Joint Control Order was necessary, it has the authority to modify it.

harm that will occur is irreparable and plaintiff have no adequate remedy at law. 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.

43. 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 defendant would not suffer any harm by allowing teachers and other staff to receive professional development training remotely from the safety of their homes. Cy-Fair AFT members, on the other hand, will suffer from exposure to a deadly contagion, which they will then potentially transmit to others, feeding the growing pandemic. The equities heavily favor the plaintiff and public health.

44. Plaintiff is willing to post bond. However, plaintiff notes that under TEX.R. CIV. P. 684, because defendant is a governmental official and has no pecuniary interest in the suit and no monetary damages can be shown, the Court has discretion to fix the sum of the bond.

45. Plaintiff is making attempts to provide notice to the defendant by notifying his legal counsel so that a hearing may be held on this application. However, because Cy-Fair ISD's action is 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.

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

47. Exhibit A: Joint Control Order prohibiting in-person, on-campus instruction and school-sponsored activities.

48. Exhibits B-H: Sample Cy-Fair ISD professional development agendas

49. Therefore, Cy-Fair AFT requests a Temporary Restraining Order and Temporary and

Permanent Injunctions that in accordance with the Joint Control Order and Red Level 1 Threat restrictions, defendant is restrained from the illegal in-person, on-campus professional development for members of Cy-Fair AFT but should instead conduct such activities remotely through September 7, 2020.

#### **IX. REQUEST FOR TEMPORARY INJUNCTION**

50. Plaintiff asks the Court to set its application for temporary restraining order/temporary injunction for a hearing, and after the hearing, issue a temporary injunction against defendant.

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

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

52. Plaintiff requests that this Court declare and determine the rights and obligations afforded by the Joint Control Order and Red Level 1 Threat restrictions, as well as whether the defendant's actions described herein, violate those rights.

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

53. Plaintiff is entitled to all these forms of relief. Defendant is 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, defendant is not protected by any form of immunity, and is 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**

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

### **XIII. RELIEF REQUESTED**

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

1. The defendant be cited to appear and answer.
2. The Court declare and determine that the Joint Control Order and Red Level 1 Threat restrictions prohibit Cy-Fair ISD from requiring in-person, on-campus professional development prior to September 7.
3. The Court issue a temporary restraining order and temporary injunction barring the defendant from requiring in-person, on-campus professional development prior to September 7.
4. The Court issue an order requiring Cy-Fair professional development to be held remotely.
5. That upon final hearing, the Court issue the declaratory relief requested and permanently enjoin defendant from requiring in-person, on-campus professional development prior to September 7 or otherwise require Cy-Fair AFT members to participate in in-person teaching or other on-campus school-sponsored events or activities in violation of orders and directives by the local health authorities.
6. That plaintiff be awarded reasonable attorneys fees and expenses, as provided for under Tex. Civ. Prac. & Rem. Code Section 37.009.
7. That plaintiff be awarded all other relief to which the Court may find them entitled.

Respectfully submitted,

/s/ Martha Owen

Martha Owen  
[mowen@ddollaw.com](mailto:mowen@ddollaw.com)  
State Bar No. 15369800  
Manuel Quinto-Pozos  
[mqp@ddollaw.com](mailto:mqp@ddollaw.com)  
State Bar No. 24070459  
DEATS, DURST & OWEN, P.L.L.C.  
707 W. 34th St., Suite 3  
Austin, Texas 78705  
(512) 474-6200  
Fax No.: (512) 474-7896

**ATTORNEYS FOR PLAINTIFF**

**VERIFICATION**

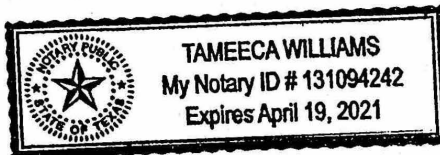
Before me, a notary public, on this 14th day of August, 2020, personally appeared Nikki Cowart, President of Cy-Fair AFT, known to me to be the person whose name is subscribed to the foregoing Original Petition, Application for Temporary Restraining Order, Request for Temporary Injunction and being by me first duly sworn, declared that she has read the factual statements therein contained, that she has personal knowledge of the facts alleged herein, and that they are true and correct.

Signature

Nikki Cowart  
Printed Name

SUBSCRIBED AND SWORN TO BEFORE ME on this 14<sup>TH</sup> day of August, 2020, to certify which witness my hand and official seal of office.

Notary Public, State of Texas



Tamecca Williams

Printed Name of Notary

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to the persons listed below \_\_\_\_ via hand delivery, \_\_\_\_ via regular mail, \_\_\_\_ via certified mail, return receipt requested, X via facsimile, \_\_\_\_ via overnight delivery, X via email, on this 14th day of August 2020, to wit:

Marney Collins Sims, Esq.  
General Counsel  
Cypress Fairbanks Independent School District  
10300 Jones Road  
Houston, Texas 77065  
Fax: 281-517-2125  
[marney.sims@cfisd.net](mailto:marney.sims@cfisd.net)

/s/ Martha Owen

---

Martha Owen