

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

HANNAH MAGEE PORTÉE,  
*Plaintiff,*

v.

MIKE MORATH, in his official  
capacity as COMMISSIONER OF  
EDUCATION, TEXAS  
EDUCATION AGENCY, AND  
STATE BOARD FOR  
EDUCATOR CERTIFICATION  
*Defendants.*

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CAUSE NO:

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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O THE HONORABLE COURT:

Plaintiff **HANNAH MAGEE PORTÉE**, by and through her attorney, Brandon J. Grable of Grable Grimshaw PLLC, files this *Complaint for Declaratory and Injunctive Relief*, and respectfully alleges as follows:

**INTRODUCTION**

1. This is an action under the **Servicemembers Civil Relief Act** (“**SCRA**”), 50 U.S.C. § 3901, *et seq.*, for injunctive, declaratory, and other appropriate relief against **MIKE MORATH**, in his official capacity as the Texas **COMMISSIONER OF EDUCATION** (“the **Commissioner**”), the **TEXAS EDUCATION AGENCY** (“**TEA**”), and the Texas **STATE BOARD FOR EDUCATOR CERTIFICATION** (“**SBEC**”). Collectively, the Commissioner, the TEA, and the SBEC are referred herein as the “**Defendants.**”

2. Plaintiff **HANNAH MAGEE PORTÉE** (“**Hannah**”), a military spouse and licensed school counselor, challenges the Defendants’ failure to establish rules consistent with the

SCRA, and as permitted by the Texas Education Code, so her federal right to have her Missouri and Ohio-issued school counselor licenses are recognized as valid in this State by virtue of her status as a military spouse living in Texas solely to support her military husband serving in the national defense of this Country.

3. Hannah seeks declaratory relief declaring that (1) her covered professional license is valid in this State; and (2) Defendants are in violation of the SCRA, specifically 50 U.S.C. § 4025a (*Portability of professional licenses of servicemembers and their spouses*) for failing to recognize—or establish rules that recognize—the portability and validity of Mrs. Portée’s covered licenses in a manner consistent with federal law.

4. Hannah, among other things, seeks to enjoin Defendants from continuing its violation of 50 U.S.C. § 4025a and causing further harm to her.

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the claims arise under the SCRA.

6. Jurisdiction of this Court is found upon 28 U.S.C. § 1331.

7. Venue is properly laid in the Western District of Texas under 28 U.S.C. § 1391(b) because one or more defendants are headquartered at 1701 North Congress Ave, Austin, TX 78701-1494.

### **PARTIES**

8. Plaintiff **HANNAH MAGEE PORTÉE** is a school counselor licensed by Missouri’s and Ohio’s respective Departments of Education. She currently lives in Del Rio, Texas with her husband, David, due to his active-duty military service obligations with the United States Air Force at Laughlin Air Force Base.

9. Defendant **MIKE MORATH**, in his official capacity as the Texas **COMMISSIONER OF EDUCATION**, serves as the educational leader of Texas as well as the executive officer of the TEA. TEX. EDUC. CODE § 7.055(b)(1). The Commissioner is responsible for “adopt[ing] rules establishing exceptions to the examination requirements . . . for an educator from outside the state, including . . . military spouses . . . to obtain a certificate in this state.” *Id.* § 21.052(a-1).

10. Defendant **TEXAS EDUCATION AGENCY** is a state agency tasked by the State Legislature to “administer and monitor compliance with education programs required by federal and state law.” TEX. EDUC. CODE § 7.021(b)(1). Certain staff of the TEA are assigned by the Commissioner to perform the administrative functions and services of the SBEC, including the reviewing and approving a military spouse’s request for an in-state educator certification. 19 TEX. ADMIN. CODE §§ 227.101(b)(5), 228.2(35), 230.117(a), 234.5.

11. Defendant Texas **STATE BOARD FOR EDUCATOR CERTIFICATION** is a state board created by the Texas Legislature to “regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators.” TEX. EDUC. CODE § 21.031(a). The SBEC has authority to implement procedures to issue a certificate to a military spouse with out of state certifications. *Id.* § 21.052.

## **BACKGROUND**

### **A. Overview of the SCRA**

12. The stated purpose of the Servicemembers Civil Relief Act is “to provide for, strengthen, and expedite the national defense” through various protections afforded by the act. 50 U.S.C. § 3902(1).

13. The SCRA applies to any servicemember—“a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard”—on active duty. *Id.* § 3911(1),(2). In some instances, the SCRA affords protection to a Servicemember’s spouse. *See id.* § 4001 (noting an amendment to the SCRA through an act commonly referred to the Military Spouses Residency Relief Act).

14. The SCRA applies everywhere in the United States, including the District of Columbia, and in any territory “subject to the jurisdiction of” the United States. It applies to any civil judicial or administrative proceeding in any court or agency in any jurisdiction subject to the act. However, it does not apply to criminal proceedings. *See id.* § 3912.

15. The SCRA creates a **private cause of action** for “[a]ny person aggrieved by a violation of [the SCRA]” and allows for “appropriate equitable or declaratory relief” and “recover[y] of all other appropriate relief, including monetary damages.” *Id.* § 4042. A prevailing party is also entitled to recover court costs and reasonable attorney fees. *Id.*

**B. A New Amendment to the SCRA: Portability of Professional Licenses of Servicemembers and their Spouses**

16. The SCRA was amended on January 5, 2023, to add the following section to the SCRA at 50 U.S.C. § 4025a:

*(a) In general. In any case in which a servicemember or the spouse of a servicemember has a covered license and such servicemember or spouse relocates his or her residency because of military orders for military service to a location that is not in the jurisdiction of the licensing authority that issued the covered license, such covered license shall be considered valid at a similar scope of practice and in the discipline applied for in the jurisdiction of such new residency for the duration of such military orders if such servicemember or spouse—*

- (1) *provides a copy of such military orders to the licensing authority in the jurisdiction in which the new residency is located;*
- (2) *remains in good standing with—*
  - (A) *the licensing authority that issued the covered license; and*
  - (B) *every other licensing authority that has issued to the servicemember or the spouse of a servicemember a license valid at a similar scope of practice and in the discipline applied in the jurisdiction of such licensing authority;*
- (3) *submits to the authority of the licensing authority in the new jurisdiction for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.*

**(b) Interstate licensure compacts.** *If a servicemember or spouse of a servicemember is licensed and able to operate in multiple jurisdictions through an interstate licensure compact, with respect to services provided in the jurisdiction of the interstate licensure compact by a licensee covered by such compact, the servicemember or spouse of a servicemember shall be subject to the requirements of the compact or the applicable provisions of law of the applicable State and not this section.*

**(c) Covered license defined.** *In this section, the term “covered license” means a professional license or certificate—*

- (1) *that is in good standing with the licensing authority that issued such professional license or certificate;*

- (2) *that the servicemember or spouse of a servicemember has actively used during the two years immediately preceding the relocation described in subsection (a); and*
- (3) *that is not a license to practice law.*

17. The SCRA **does not** impose any threshold requirement that a spouse must first demonstrate two years of full-time, wage-earning experience in the role for what they are certified.

**C. Texas' Educator Certification Process for Military Spouses with Out-of-State Certification**

18. The Texas Education Code prohibits any school district from employing a person as a school counselor “unless the person holds an appropriate certificate or permit issued” by the Commissioner, TEA, or SBEC. TEX. EDUC. CODE § 21.003(a).

19. The Texas Administrative Code provides that applications of military spouses “shall be processed as soon as practicable.” 19 TEX. ADMIN. CODE § 234.5(a).

20. When a military spouse with an out-of-state license applies, submits *required documents*, and completes a criminal background check, then “TEA staff must provide approval for the military spouse to teach in Texas a maximum of three years with credentials issued by another state.” *Id.* § 234.5(e).

21. The Commissioner, TEA, and SBEC require military spouses with out of state credentials to either pass Texas examinations or submit verification of two academic years of full-time, wage-earning experience in a public or private school in the licensed position before issuing a Texas educator certification. *Id.* § 230.113(b).

22. If a military spouse with out of state credentials does not sit for a Texas educator exam **or submit documents demonstrating two years of full-time, wage-earning experience**

**in the role for what they are certified**, then the Commissioner, TEA, and SBEC will not issue a Texas educator certificate to the military spouse, which is inconsistent with federal law.

**FACTUAL ALLEGATIONS**

23. Hannah was licensed as a school counselor through the State of Ohio Department of Education on July 1, 2021. **Exhibit A**. She was then licensed as a school counselor through Missouri's State Board of Education on July 7, 2022. **Exhibit B**.

24. Hannah pursued this career since she is passionate about providing students with a safe place to process their emotions, identify their goals, and achieve their full potential.

25. At the time she completed her education requirements and obtained her first license, she was in a relationship (since 2019) with David Portée, an active-duty Air Force officer stationed at Wright Patterson Air Force Base in Ohio.

26. In April 2022, David was relocated to Scott Air Force Base in Illinois. A few months later, on July 29, 2022, David and Hannah married.

27. During this time, Hannah was employed as a guidance counselor at an elementary school in Missouri, and a long-term substitute counselor at a middle school in Ohio.

28. Hannah terminated her employment so she could relocate to Laughlin Air Force Base here in Texas to be with her husband. David had a report date of January 9, 2023. **Exhibit C**.

29. On October 4, 2022, Hannah applied through Defendants' process (the TEA Educator Certification Online System) to obtain a SBEC-issued school counselor certificate so that she may seek gainful employment as a school counselor in Texas while supporting her husband in defense of this nation. This process included Plaintiff paying for fingerprinting and a background check.

30. Hannah was immediately informed that she failed to provide information verifying two years of full time, wage-earning experience in the role of a school counselor (a State requirement that is more restrictive than the SCRA portability provisions).

31. In November and December 2022, Hannah made several phone calls to Defendants' agents attempting to get a temporary license issued by one or more Defendants so that she could meet Defendants' employment criteria. This was unsuccessful.

32. In February 2023, Hannah discovered that SCRA was recently amended in a way that mandated Defendants to recognize the validity and portability of Hannah's licenses. She again reached out to Defendants' agents to make sure that she complied with her requirements under the SCRA, and to see whether Defendants would recognize her federal protections.

33. On February 27, 2023, Trenton Law, the Director of Educator Credentialing, informed Plaintiff of the following:

*Good morning, Ms. Portee,*

*I appreciate the opportunity to speak with you earlier this morning regarding the review of your out of state credentials for school counselor. Just to recap, in order for us to complete the review of credentials for the School Counselor area, you must either submit documentation verifying two (2) academic years of full time, wage-earning experience in the role of school counselor or provide documentation of a classroom teaching certificate. If you do not have either of these, then completing an [educator preparation program \(EPP\)](#) will be required.*

*During the call, you mentioned an Air Force article stating something to the effect of automatically transferring certifications, however, this would not apply to Texas. [Chapter 230 . Professional Educator Preparation and Certification](#) of the Texas Administrative Code outlines the provisions for certification in Texas. You can also find information at the TEA website at [this link](#), including a very helpful detailed checklist to help you navigate the process.*

*Take care and have a wonderful day!*

*Trenton Law  
Director, Educator Credentialing*

34. Hannah sought legal assistance through the military. On March 1, 2023, Todd Durden, an attorney-advisor employed by the Department of the Air Force at Laughlin Air Force Base, communicated with Trenton Law, detailing the recent amendments to the SCRA and asked to communicate with Defendants' legal department to discuss further. No one responded.

35. On March 27, 2023, Hannah reached back out to Mr. Law, but she did not hear anything.

36. Then, on April 4, 2023, Hannah received written correspondence from Defendants informing her of the following:

*- To be reviewed for a standalone student service or administrative certificate, you must provide verification of 2 academic years of full-time, wage-earning experience in a public or private school as a SCHOOL COUNSELOR, signed by your superintendent or authorized representative on a verification of experience form. For experience earned in a US private school or any school outside the US, a verification of accreditation status form is required. Verification forms are available by going to [tea.texas.gov](http://tea.texas.gov), under Out-of-State Certification.*

*- You have one year from your initial application date of 10/4/2022 to submit the required documents for a review of credentials and test exemption consideration. After a year, you will be required to reapply and resubmit the \$164.00 application fee as per Texas Administrative Code 230.117(b) "An individual who does not submit all required documents for the review at the time of the application will have one year to submit all required documents, or the individual will be required to*

*reapply and resubmit the application fee.”*

37. Plaintiff substantially complied with her requirements under the SCRA. She provided a copy of her husband’s military orders to Defendants, she remains in good standing with Ohio and Missouri licensing authorities, and she agrees to submit to Texas’s continuing education requirements.

38. Defendants do not have any interstate licensure compacts that would exempt them from complying with the SCRA portability provisions.

39. Plaintiff’s license is one covered by the SCRA, and she utilized her license within the last two years as required by the SCRA.

40. Plaintiff was required to seek out the assistance of a licensed attorney to assist her with this matter. She is not able to seek gainful employment as a school counselor because of Defendants’ continued and ongoing violations of the SCRA, so Plaintiff was forced to file this lawsuit.

**COUNT I**  
**VIOLATION OF THE SCRA, 50 U.S.C. § 4025a**

41. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

42. Plaintiff asserts this cause of action against all named Defendants.

43. Section 4025a of the SCRA requires that Defendants construe Plaintiff’s certifications as “valid at a similar scope of practice and in the discipline applied for in the jurisdiction of such new residency for the duration of such military orders” so long as certain requirements are met. 50 U.S.C. § 4025a(a).

44. Despite Plaintiff meeting these requirements, Defendants refuse to process her application or accept the portability of one or more of her covered licenses since she did not have “full time” employment for at least two years prior to moving to Texas.

45. This requirement, imposed at the discretion of Defendants, violates Plaintiff's protections afforded to her under the SCRA.

46. Defendants are violating federal law, and therefore deprive Plaintiff of her enforceable rights secured by federal law.

47. Federal courts of equity have the power to enjoin unlawful actions by state officials. 50 U.S.C. § 4042(a)(1).

48. This Court can and should exercise its equitable power to enter an injunction precluding the Defendants from enforcing any regulation or process that is inconsistent with the SCRA that impacts the portability or validity of Plaintiff's covered licenses as a school counselor in the State of Texas.

49. This Court also has the power to "declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201(a). *See also* 50 U.S.C. § 4042(a)(1) (authorizing an aggrieved person to "obtain any appropriate equitable or declaratory relief with respect to the violation").

50. This Court may and should exercise its equitable power to enter a declaration that the Defendants' failure to recognize the portability and validity of Plaintiff's licenses violate the SCRA and is therefore unlawful.

51. Plaintiff also seeks recovery of all other appropriate relief, including costs of this action, and reasonable attorney fees as permitted by 50 U.S.C. § 4042(a)(2), (b).

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that the Court:

- A. Declare that the Defendants' failure to recognize the portability and validity of Plaintiffs' school counselor license is unlawful.

- B. Declare that federal law protects Plaintiff from Defendants' additional certification requirements that are inconsistent with the SCRA.
- C. Preliminarily and permanently enjoin Defendants, their agents, employees, and all persons acting under their direction or control from taking any action inconsistent with the SCRA, or that interferes with the portability or validity of Plaintiff's school counselor certifications in the State of Texas.
- D. Enter judgment in favor of Plaintiff.
- E. Award Plaintiff her attorney fees and costs.
- F. Award Plaintiff all other relief as the Court deems proper and just.

Respectfully submitted,

**GRABLE GRIMSHAW PLLC**

*/s/ Brandon J. Grable*

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