

the public, that while they (media) do, do a service of bringing matters (good or bad) to the public, raises questions on motives and impartiality of said school district employees and Board members. The IHE does distinguish between good faith school district employees and Board members giving formal interviews or statements and general involvement with their constituents and politicking and by no means directs a “chilling effect” on such behavior, but school district employees and Board members should always be mindful of the appearance of impropriety and non-professionalism.

Reviewing the record as a whole and findings of fact noted above, should leave only one conclusion in one’s mind about whether “good cause” exists for contract termination. It has nothing to do with contriteness on the part of Respondent. Willingness to work with the District’s Board while the evidence strongly prays for divorce of the parties, is simply without value. It is noted Respondent’s denials in the face of credible evidence reflect poorly on Respondent’s credibility with the seemingly loudest denial being placed on such a basic premise of whether a voice is one’s and those words, or its message spoken.

While the issues present in this case are not couched in terms of whether Respondent is a sinner, individuals in such high roles must always remember that in those roles, their conduct is subject to high scrutiny.

As much as IHE is appreciative of Respondent’s favor in the community and support with some Board members, this IHE is controlled by law and must only answer the following simple question after applying the law to the facts:

**Whether good cause exists to discharge Respondent, employed under a term contract.**

“*Good cause*” is defined under Section 21.211 read in conjunction with 21.156 of the Texas Education Code as being the failure to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts in this state”.

To show “*good cause*”, the district for this IHE was tasked with showing Mr. Gonzalez’s conduct amounted to a failure to meet accepted standards of conduct for his profession as generally recognized and applied for similarly situated school districts in this state. Under Respondent’s contract he could be “discharged for good cause as determined by the Board before the completion of the term fixed in the contract in accordance with Texas Education Code, Chapter 21, and Board policy.” Exh. R – 1.

It is within these stated parameters, that the IHE must test the findings of fact found above against to see if good cause is the conclusion warranted; and not whether Mr. Gonzalez was absolved from prior complaints, has support from the community and/or engaged in sinful behavior. Likewise, this IHE is not tasked with delving into or finding out whether Respondent is remorseful and/or the 2011 or 2017 complaint outcomes would change with the newly discovered evidence; or whether the re-routed complaint of August 10, 2023 will succeed; or whether Gonzalez can work with the current Board or how much support he has from this current Board and/or community. Put simply, the IHE is tasked with taking the *credible evidence* adduced at the four-day hearing supports *good cause* to terminate the term contract for Superintendent. Put bluntly, the IHE must surrender to the greater weight of the *credible* evidence presented in this case.

This case comes down to the lack of disclosures, engagement of questionable conduct and one damning telephone conversation to put it frankly. This IHE does so find that the reasons given for the proposed termination fall in line with the above findings of fact, that in turn, support good cause to terminate. While looking at the facts in this case and record, the IHE would gladly find acceptable evaluations of Gonzalez for the two school years referenced above and an unworkable growth plan as referenced above in the fact findings. Remediation some would believe were not

allowed or now, should now be allowed after comment by IHE in this recommendation. But the bright line test for the IHE is whether the *credible evidence* in facts supports “good cause”. Here it does the IHE so finds.

Poignantly, this IHE finds himself with the only conclusion that the “facts found above” cannot translate to “accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts in this state” for any school in this district, county, state or nation. IHE notes *Durhl Caussey vs. Fort Worth Independent School District* Dk. No. 303-R2-694, and *Baker vs. Rice CISD*, Dk. No. 227-R2-493 are the “grandfather” cases in describing what good cause to terminate means. In essence, in *Durhl*, The Commissioner of Education adopted the holding found in *Lee-Wright, Inc. v. Hall*, 840 S.W.2d 572,580 (Tex. App.-Houston [1<sup>st</sup> Dist.] 1992, no writ). The Court stated the following:

*“An employee must not only fail to perform as an ordinary employee would, but the failure must be of a serious nature. The Commissioner of Education has adopted this standard. The Commissioner has consistently held that for a teacher or administrator to be terminated, there must be a serious failing.”*

Here the IHE finds, based on the record before him, that there is a serious failing on the part of Mr. Gonzalez for in its basic form, the lack of disclosures, conduct engaged in and telephone conference.

IHE is unmoved by Respondent’s suggestion that lesser remedial measures should have been taken or more training or opportunity to work with the current Board and/or step-up phasing of growth plan goals initiated. *Rosario M. Martinez v. Brownsville Independent School District* Dk. No. 106-LH-700 is instructive. While *Rosario*, is instructive on exploring remediation prior to termination, it also indicates remediation is only required when a teacher’s actions are not sufficiently serious to warrant termination. The findings of fact above are sufficiently serious to warrant termination. There are no hard and fast rules as to how much remediation is required in a particular

circumstance. Each case must be examined individually to determine if cause exists. The issue still remains, whether Gonzalez's conduct rose to the level of good cause. See *Baker v. Rice Independent School District*, Docket No. 227-R2-493 (Comm'r Educ.1995). The IHE answers yes.

Further, here Mr. Gonzalez was asked if the recording was of him and of making or stating the things in the telephone conversation with Cordova on April 21, 2021. This was within the twenty (20) day window of being named the District Superintendent. [Tr. Vol. 3, 190:8-13]. The *reasonable* expectation would be one would remember such a *striking memory* where the call is asking the other person on the call to do things or "coach them" to revise facts from a previous complaint; making apologetic admissions; or agreeing to "protect them" in exchange. One would expect an *unequivocal "no" that is not me* and/or *"no I never said those things"*. Instead, the furthest to the events that Wednesday in April, Respondent would admit to was he took a call, it sounded like him and he did not recall making those statements. [Tr. Vol. 3, 186:14-25, 187:1-19, 188:1-8, 15-20, 189:1-25, 190:1-25, 194:1-25, 201:1-25 and 273:2-6].

Respondent further admitted the 2015-2017 work emails with Linda Garza were poor judgment and/or improper. He also admitted the recording coming out caused a spectacle for the District and caused angst for a starting school year. [Tr. Vol. 3, 212:18-25, 213:4-24, 247:25, 248:1-6]. He also admitted the need to have good character in comporting as a Superintendent and to work with the Board; and to improprieties; and hypothetically, if the allegations essentially were true would they be improper, to which Respondent and his experts agreed and/or conceded. [Tr. Vol. 3, 201:17-25, 202:1, 206:4-25, 207:1-3, 208:20-25, 209:1-25, 210:1-25, 212:10-17, 213:25, 214:1-25, 215:1-19, 217:23-25, 218:6-9, 14-25, 219:1-25, 220:1-25, 221:1-25, 222:1-25, 223:1-25, 224:1-24, 225:1-18, 228:5-8, 233:25, 234:1-8, 235:3-8, 236:18-25, 237:1-25, 238:1-25, 239:1-

25, 240:1-25, 241:1-25, 242:1-25, 245:6-24, 246:4-8, 247:4-25, 248:1-6, 249:1-20, 250:21-25, 251:1-25, 252:1-21, 254:6-12, 20-22, 256:12-25, 257:6-10, 20-25, 258:1-25, 259:1-25, 260:1-20, 23-25, 262:15-25, 264:21-25, 265:17-25, 266:1-25, 267:1-10, 268:6-25, 269:1-25, 270:1-25, 271:1-16, 273:2-20, 274:15-25, 275:1-21]. See also experts' live testimony – Edward A. Vara: [Tr. Vol. 2, 187:23-25, 188:1-23, 189:3-5, 190:7-25, 191:1-12, 192:11-25, 193:1-9, 195:17-25, and 196:1-10] and Aberlardo Saavedra: [Tr. Vol. 4, 225:1-24, 226:5-10, 228:25, 229:1-25, 230:1-4, 231:15-25, 232:1-25, 233:1-25, 234:1-25, 235:1-25, 236:1-25, 237:1-25, 238:1-25, 239:1-5, 242:23-25, 243:1-25, 244:1-25, 245:1-6, 246:14-25, 247:1-25, 248:1-25, 249:1-4, 22-25, 250:1-11, 251:23-25, 253:25, and 254:1-12].

### **Conclusions of Law**

After due consideration of the record, matters officially noticed, and the foregoing Findings, in my capacity as Independent Hearings Examiner, I make the following Conclusions of Law:

1. Jurisdiction is proper under the applicable provisions of the Texas Education Code and 21.251(a)(2).
2. Respondent timely filed a written request for hearing before an independent hearing examiner. TEX. EDUC. CODE § 21.253.
3. The proposed termination of the term contract of Mr. Gonzalez is properly before this Honorable Independent Hearing Examiner.
4. A hearing examiner is required to use a preponderance of the evidence standard in making Findings of Fact and in drafting the Recommendation for Decision.
5. The standard of proof is the preponderance of the evidence. TEX. EDUC. CODE § 21.256(h).

6. The Board of Trustees may terminate a superintendent's term contract for good cause as determined by the Board. TEX. EDUC. CODE § 21.211.

7. "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." *Lee-Wright Inc. v. Hall*, 840 S.W.2d 572, 580 (Tex. App.–Houston [1st Dist.] 1992, no writ); *Atkinson v. Mercedes Indep. Sch. Dist.*, Docket No. 041-R2-0408 (Comm'r Educ. 2008).

8. Additionally, "[u]nlike other employee terminations, the termination of a superintendent's contract can contain the additional element of superintendent-board of trustee relations. As chief executive officer for the district, the superintendent is required to implement and carry out the policies of the board on a day-to-day basis. An expectation exists that, as the board's employee, the superintendent can be trusted to act on behalf of the board, in full compliance of board policy and directives." *South San Antonio Indep. Sch. Dist. v. Durbon*, TEA Docket No. 370-I.H-0711, \*11 (Comm'r Educ. 2011); *see also Kinsey v. Quinlan Indep. Sch. Dist.*, TEA Docket No. 104-R2-598 (Comm'r Educ. 1998) (school district had good cause to terminate superintendent "for failure to meet acceptable standards of conduct in his relationship with the board").

9. Respondent's superintendent contract with UISD further defines good cause to include "[a]ny false statements, misrepresentations, omissions of requested information, or fraud by the Superintendent in or concerning any required records or in the employment application." [Exh. R-1, ¶ 9.3; *see also* Exh. R-1 at ¶ 39 ("The Superintendent may be discharged for good cause

as determined by the Board before the completion of the term fixed in this contract in accordance with Texas Education Code, Chapter 21, and Board policy.”)].

10. “As a general rule, a[n educator]’s contract can only be terminated for the events of the current school year [or contract term]. An exception to this rule would occur if a district just discovered [the educator]’s wrongful conduct.” *Dallas Indep. Sch. Dist. v. Johnson*, TEA Docket No. 001-LH-902, \*5 (Comm’r Educ. 2002); *see, e.g., Hitchcock Indep. Sch. Dist. v. Walker*, TEA Docket No. 008-LH-0909, \*9 (Comm’r Educ. 2009) (“[M]isconduct before the current contract term may be grounds for termination if . . . they were just discovered . . . .”); *Dallas Indep. Sch. Dist. v. Harrison*, TEA Docket No. 009-LH-1003, \*8 (Comm’r Educ. 2003) (same); *Nassar v. Dallas Indep. Sch. Dist.*, TEA Docket No. 063-R3-1198, \*4 (Comm’r Educ. 1999) (“Good cause may only be demonstrated based on current school year failings unless the district just learned of the failings or a previous year’s failings are introduced to show that a similar error was previously pointed out to the employee.”) (emphasis added); *Anderson v. Jacksonville Indep. Sch. Dist.*, TEA Docket No. 014-R1-397 (Comm’r Educ. 1997) (“A violation that occurred prior to the current contract cannot be used to non-renew the current contract unless the district did not know of the violation at the time it occurred.”); *see also Dallas Indep. Sch. Dist. v. Lindsey*, TEA Docket No. 120-LH-802, \*2 (Comm’r Educ. 2002) (“Given that a school district must meet a greater burden of proof in a contract termination than in a contract non-renewal, it follows that the Commissioner’s ruling in *Anderson v. Jacksonville ISD* applies to a termination proceeding as well.”).

11. The IHE finds the telephone recording between Respondent and Ana Cordova was not illegal and complies with a one-party consent for Texas.

12. The IHE finds quid pro quo harassment does exist legally.

13. United ISD has sustained its burden of a preponderance of credible evidence to terminate Respondent's term Contract for good cause.

14. The District is entitled to rely on Respondent's misconduct from prior school years for purposes of establishing good cause, including misconduct that occurred prior to the term of Respondent's current Contract, because the District was not fully aware of Respondent's misconduct until the beginning of the 2023–2024 school year.

15. Respondent failed to comply with the Educators' Code of Ethics, in violation of Section 10 of his Contract and Board Policies DII (Local) and (Exhibit). Specifically, through his actions and omissions outlined in the Findings of Fact above—including Respondent's conduct toward Ana Cordova in 2011; his known inappropriate email correspondence with Linda Garza in 2015 and 2016; his failure to truthfully cooperate with the District's investigation relating to Linda Garza in 2017; his failure to truthfully disclose information requested by the Board during his 2021 superintendent interview; his attempts in 2021 to induce Ana Cordova into recanting her 2011 sexual harassment complaint in exchange for protection or special treatment; his disclosure of confidential personnel and student information to Ana Cordova without a lawful professional purpose; his failure to disclose his relationship with Linda Garza to the Board when he recommended her promotion in 2023; and his failure to abstain from employment decisions relating to Linda Garza:

- a. Respondent violated Standard 1.4 by using his institutional or professional privileges for personal or partisan advantage.
- b. Respondent violated Standard 1.6 by directing or coercing another employee to falsify records.
- c. Respondent violated Standard 1.7 by failing to comply with state regulations, written local school board policies, and other state and federal laws.
- d. Respondent violated Standard 1.10 by failing to be of good moral character.
- e. Respondent violated Standard 2.1 by revealing confidential personnel information without a lawful professional purpose.

- f. Respondent violated Standard 2.3 by failing to adhere to written local school board policies and state and federal laws regarding the hiring, evaluation, and dismissal or personnel.
- g. Respondent violated Standard 2.6 by using coercive means or promises of special treatment in order to influence professional decisions or colleagues.
- h. Respondent violated Standard 3.1 by revealing confidential information concerning students without a lawful professional purpose.

16. Respondent made false statements and misrepresentations, and also omitted material information requested by the Board, in connection with the application process for the position of superintendent. Such actions and omissions violated his Contract and constitute good cause to terminate his employment pursuant to Section 9.3 of his Contract and Board Policy DII.

17. Respondent failed to disclose to the Board that he had a potential conflict of interest with respect to Linda Garza, and also failed to recuse himself from decisions relating to Linda Garza's promotion and salary increase in 2023, in violation of Board Policy DBD (Local).

18. Respondent failed to truthfully cooperate with and volunteer relevant information during the District's 2017 investigation into allegations that Respondent was giving Linda Garza preferential treatment, in violation of Board Policy DH (Local).

19. Respondent's statements to Ana Cordova in the April 21, 2021, recording that revealed confidential personnel information and student information violated Board Policy DH (Local).

20. Respondent failed to maintain and cannot maintain an effective working relationship with the Board, in violation of Board Policy DH (Local) and Board Policy BJA (Local).

21. Respondent's failures to comply with Board policies and the terms of his Contract, as outlined in the above Findings of Fact, constitute good cause to terminate Respondent's Contract.

22. Respondent failed to perform the duties in the scope of employment that a person of ordinary prudence would have done under the same or similar circumstances, and his conduct is inconsistent with the continued existence of the employer-employee relationship.

23. Respondent's violation of Board policies in using his professional privileges for personal gain by promising to take care of Ana Cordova in exchange for her retracting her sexual harassment complaint against him, and in withholding material information during the District's 2017 investigation and his 2021 interview with the Board, are acts of a serious nature which are inconsistent with the continued existence of the Board-superintendent relationship.

24. Respondent failed to implement and carry out the policies of the Board on a day-to-day basis.

25. Respondent's conduct demonstrates that he cannot be trusted or relied upon to act on behalf of the Board, in full compliance with Board policies and directives.

26. Respondent's conduct and failures to disclose have destroyed the trust between Respondent and the Board, and Respondent's working relationship with the Board is irreparable.

27. Respondent failed to meet acceptable standards of conduct in his relationship with the Board and to maintain a positive impression of the District in the community.

28. Respondent's conduct and failures to disclose renders him unable to effectively lead the District.

29. Respondent admits that the extensive publicity surrounding the allegations against him is a distraction for the District.

30. Respondent's conduct has caused significant angst and embarrassment for the District and tarnished the impression of the District with the community.

31. The evidence consistent with the Findings of Fact above and with Respondent's violations of Board policies and his breach of his Contract, establishes that each of the actions listed therein individually or in conjunction, constitute good cause for terminating Respondent's Contract.

32. The evidence and Findings of Fact above establish that each of the violations listed in these Conclusions of Law, collectively or individually, constitute good cause for terminating Respondent's Contract.

33. In *Jasso v. Southside Independent School District*, TEA Docket No. 041-R2-02-2014 (Comm'r Educ. 2014), a superintendent challenged the school board's good cause termination of his contract for failing to maintain a positive and professional relationship with the board of trustees. Specifically, the superintendent stated in open session during a board meeting that a decision of the board was "very, very unethical," and then implied during a televised interview that the board was not interested in improving the district. The Commissioner of Education upheld the termination, finding that statements did not have to rise to the level of defamation in order to support a good cause termination, and that the superintendent could have raised his concerns about the ethics of the board in a setting more private than a school board meeting. Additionally, statements made by the superintendent were determined to have destroyed the trust between him and the Board, which also supported the good cause termination of his contract. The Commissioner determined that the district's decision to terminate his contract was not arbitrary, capricious, or unlawful.

34. In *Aleman v. Edcouch-Elsa Independent School District*, TEA Docket No. 073-R2-0412 (Comm'r Educ. 2012), a superintendent challenged the school board's termination of his contract based on his failure to maintain a working relationship with the board, among other

reasons. The independent hearing examiner upheld the termination based, in part, on the superintendent's disparaging statements to the press. On appeal, the Commissioner of Education noted that the superintendent's negative statements to the press, including telling the media that the board was "dysfunctional" and "reactionary," supported the district's claim that the superintendent failed to maintain a professional and positive working relationship with the board and supported the good cause termination of his contract.

35. In *Trujillo v. Ysleta Independent School District*, TEA Docket No. 082-R2-199 (Comm'r Educ. 1999), the school district had good cause to terminate the superintendent because the superintendent breached his contract and destroyed the legitimate expectation of mutual trust with the school board.

36. In *Kinsey v. Quinlan Independent School District*, TEA Docket No. 104-R2-598 (Comm'r Educ. 1998), the school district had good cause to terminate the superintendent because, among other things, he failed to meet acceptable standards of conduct with respect to his relationship with the school board.

37. Respondent's claim that Ana Cordova fabricated or altered the April 21, 2021, recording that she submitted with her 2023 grievance is not credible, and is not supported by any evidence, much less any credible evidence.

38. Respondent's claim that he did not sexually harass Ana Cordova in 2011 is not credible in light of his admissions in the April 21, 2021, recording.

39. Respondent's claim that he was not required to disclose his relationship with Linda Garza during the District's 2017 investigation is not credible and is contrary to the requirements set forth in Board Policy DH (Local).

40. Respondent's claim that he was not required to disclose his relationship with Linda Garza when recommending her promotion is not credible and is contrary to the requirements set forth in Board Policy DBD (Local).

41. Respondent's claim that he was not required to abstain from being involved in Linda Garza's 2023 promotion is not credible and is contrary to the requirements set forth in Board Policy DBD (Local).

47. Mr. Gonzalez, among other things, violated Standards 1.1, 1.4, 1.7, 1.10, 2.1, 2.2, 2.5, 2.6, 2.8, 3.1 and 3.3 of the Educators' Code of Ethics.

48. The evidence consistent with the Findings of Fact above establishes that each of the actions or failures to disclose listed above, individually or in conjunction, constitutes good cause for terminating Mr. Gonzalez's term contract.

49. The evidence and Findings of Fact above establish that each of the actions or failures to disclose listed in these Conclusions of Law, collectively or individually, constitutes good cause for terminating Mr. Gonzalez's term contract.

50. There is a preponderance of credible evidence supporting the termination of Respondent's contract.

51. Good cause exists to terminate Respondent's term contract as per Section 21.211 of the Texas Education Code and Respondent's contract.

### **Recommendation**

IHE notes that for 4 days on January 15 through 18, 2024 at the UISD board room in Laredo, Texas, he faithfully and attentively, followed and listened to testimony and evidence adduced surrounding actions or in some cases, inactions for failing to disclose, of Respondent, Mr. Gonzalez. The IHE, in arriving at his recommendation herein, is the sole judge of the credibility