

DOCKET NO. 015-LH-10-2023

UNITED INDEPENDENT
SCHOOL DISTRICT

vs.

DAVID H. GONZALEZ

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BEFORE THE

BOARD OF TRUSTEES

United Independent

School District

THE STATE OF TEXAS

RECOMMENDATION OF THE INDEPENDENT HEARING EXAMINER

Statement of the Case

United Independent School District (“UISD”), Petitioner has proposed the termination of David H. Gonzalez, Respondent’s term contract under Texas Education Code Section 21.211.

Respondent is represented by Hon. Tomas “Tommy” Ramirez, III of The Law Office of Tomas Ramirez, III, in Devine, Texas.

The Petitioner is represented by Hon. Celina Vinson and Hon. Stephanie A. Hamm of Thompson & Horton, LLP, in Houston, Texas.

This Independent Hearing Examiner is ever so mindful of Respondent’s burden of proof of being by a “preponderance of the evidence”, i.e., the greater weight of the credible evidence presented in this case pursuant to Texas Education Code Section 21.256(h).

The sole issue for this Independent Hearing Examiner (IHE) to decide is whether “good cause” exists for the termination of Mr. Gonzalez’s term contract from the greater weight of the *credible* evidence presented in this case. “Credible” is defined as “deserving belief”.

Findings of Fact

After due consideration of the evidence and matters officially noticed, the following Findings of Fact have been proven by a preponderance of the evidence:

1. Respondent David Gonzalez is employed as the superintendent of the United Independent School District pursuant to a term contract governed by Chapter 21 of the Texas Education Code (the “Contract”). [Exh. R-1].

2. On May 12, 2021, the United ISD Board of Trustees and Respondent David Gonzalez executed an employment contract naming Respondent as the Superintendent under a three-year educator term contract with the effective date beginning July 1, 2021, and ending June 30, 2024. *Joint Stipulation of Facts dated January 12, 2024, of the parties.*

3. On June 27, 2022, the United ISD Board of Trustees moved to extend Respondent’s contract for an additional two years beginning July 1, 2024, and ending on June 30, 2026. *Joint Stipulation of Facts dated January 12, 2024, of the parties.*

4. The initial term of Respondent’s Contract was July 1, 2021, through June 30, 2024. [Exh. R-1, § 4]. Pursuant to an addendum dated June 27, 2022, UISD’s Board of Trustees (“the Board”) extended the term of the Contract by an additional two (2) years, ending June 30, 2026. [Exh. R-1, p. 20].

5. The Contract charges Respondent with the “responsibilities of performing the duties pertaining to the office of Superintendent, as prescribed by law, this contract, Board policy, the job description, and lawful Board directive, as is currently in force and as may be hereinafter modified or amended from time to time during the term of the Superintendent’s employment with UISD.” [Exh. R-1, § 10].

6. The Contract provides that “[t]he Superintendent shall be subject to and comply with the lawfully adopted Board policies, federal and state law and regulations, the Code of Ethics and Standard Practices for Texas Educators, Texas Professional Standards for Superintendency,

and rules and lawful directives of the Board, now in place and as may be modified or amended from time to time during the term of his employment with UISD.” [Exh. R-1, § 10].

7. The Contract states that Respondent’s employment may be terminated during the term of the Contract for “good cause as determined by the Board and as further set forth in Section 39 of this Contract.” [Exh. R-1, § 36].

8. Section 39 of the Contract states that Respondent “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.” [Exh. R-1, ¶ 39].

9. The Contract states that “[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 may be grounds for termination of nonrenewal, as applicable.” [Exh. R-1, ¶ 9.3].

10. On August 19, 2023, Respondent was placed on administrative leave with pay pending an investigation by the District. *Joint Stipulation of Facts dated January 12, 2024, of the parties.*

11. The Board voted to propose the termination of Respondent’s employment on October 10, 2023. [Exh. R-11; *see also* Exh. P-8] and *Joint Stipulation of Facts dated January 12, 2024 of the parties.*

12. On October 20, 2023, Respondent received the District’s Original Notice of Proposed Termination. *Joint Stipulation of Facts dated January 12, 2024, of the parties.*

13. On October 26, 2023, Respondent requested a hearing on the District’s proposed termination of his term contract. *Joint Stipulation of Facts dated January 12, 2024, of the parties.*

United ISD filed its First Amended Notice of Proposed Termination on December 12, 2023, and a Second Amended Notice of Proposed Termination on January 11, 2023. *Joint Stipulation of Facts dated January 12, 2024, of the parties.*

14. Respondent filed a First Amended Request for a Hearing on the District’s proposed termination of his contract on January 9, 2024. *Joint Stipulation of Facts dated January 12, 2024, of the parties.*

15. On August 9, 2023, a grievance was filed against Respondent by United ISD (“UISD”) employee, Ana Cordova. *Joint Stipulation of Facts dated January 12, 2024, of the parties.*

16. It is undisputed that the events that ultimately led to Respondent’s proposed termination started in 2011 and culminated at the beginning of the 2023-2024 school year. *Record as a whole.*

A. 2011 Sexual Harassment Complaint Against Respondent

17. In August of 2011, Respondent was employed as the principal of UISD’s Washington Middle School. [Tr. Vol. 1, 120:7–13].

18. On August 9, 2011, Ana Cordova, a Language Proficiency Assessment Committee (LPAC) Clerk who also worked at UISD’s Washington Middle School, filed a sexual harassment complaint against Respondent, alleging that Respondent had made unwelcome verbal remarks and subjected her to unwelcome physical contact and sexual advances on several occasions going back to November of 2010. [Exh. P-1; Tr. Vol. 1, 120:7–122:20].

19. Ms. Cordova’s sexual harassment complaint was documented-wise, investigated by David Garcia, then-Assistant Superintendent of Human Resources. [Exh. R-8]. On direct examination, Respondent testified that he was not friends with Mr. Garcia in 2011. [Tr. Vol.

132:25-17]. But on cross-examination (and during his deposition) Respondent testified that, at the time of the investigation, Mr. Garcia was both a “colleague” of his and a “friend.” [Tr. Vol. 4, 99:21–100:12, 135:11–136:24].

20. Respondent also testified that if Mr. Garcia “called me today and wanted me to help, I would help him.” [Tr. Vol. 4, 99:21–101:9].

21. On September 12, 2011, Mr. Garcia issued a five-sentence document entitled “Investigative Findings,” which stated, that “[a] thorough investigation of the allegations was conducted and based on the information I obtained, there is no evidence to corroborate the allegations you reported.” [Exh. R-8].

22. Mr. Garcia then prepared a “Letter of Conference” dated September 16, 2021, which, among other things, admonished Ms. Cordova for “bec[oming] upset and question[ing] the integrity of the investigation.” [Exh. R-9]. The Letter of Conference included several other allegations against Ms. Cordova. [Exh. R-9]. Ms. Cordova testified that the statements in the Letter of Conference were untrue and that she had never seen the document before her deposition in this matter. [See, e.g., Tr. Vol. 1, 164:23–174:22]. Documentation produced by the District in rebuttal confirmed that Ms. Cordova did not receive a copy of the Letter of Conference in 2011, as mailing was “returned to sender” and corroborated her testimony. [Exh. P-47; see also Tr. Vol. 1, 202:11–206:3].

23. Ms. Cordova testified that she did not agree with the outcome of Mr. Garcia’s investigation “because [the sexual harassment] did happen.” [Tr. Vol. 1, 123:2–20]. Additionally, as referenced above, Ms. Cordova also testified that she does not agree with the accuracy of Mr. Garcia’s statements contained in the September 16, 2021, Letter of Conference that she never received.

24. Trustee Aliza Oliveros testified that she does not consider Mr. Garcia to be credible or trustworthy. [Tr. Vol. 1, 317:17–319:24; Tr. Vol. 2, 86:4–87:5]. She further testified that she understood Mr. Garcia left the District following allegations that he engaged in inappropriate behavior with another employee. [Tr. Vol. 2, 86:4–19]. Trustee Oliveros described Mr. Garcia as someone with a “reputation” who made her feel “uncomfortable” and “a little creeped out.” [Tr. Vol. 2, 86:23–87:5].

25. Respondent was questioned regarding the reasons Mr. Garcia no longer worked for the District. Respondent testified he understood Mr. Garcia retired. He also testified that he had “no knowledge” of his friend being accused of improper conduct with employees, and further testified that he did not think it was true that Mr. Garcia had been accused of improper conduct with employees. [Tr. Vol. 4, 100:10–102:13].

26. On October 5, 2021, the District received an anonymous complaint against Mr. Garcia from a former employee, alleging that she had to leave her employment with the District as a result of Mr. Garcia’s inappropriate comments and inappropriate touching; and that he is dirty and has a dirty mind. [Exh. P-50]. On October 21, 2021, a complaint was filed against Mr. Garcia alleging sexual harassment, hostile work environment, abuse of authority, retaliation, inappropriate work comments, inappropriate advances, and inappropriate physical contact against a female employee. [Exh. P-51].

27. On January 21, 2022, Respondent issued an outcome letter to Mr. Garcia that stated that an investigation found that the allegations against him did not have “legal merit” and did not rise to the level of “unlawful conduct.” [Exh. P-51]. At the same time, Respondent directed Mr. Garcia—the Associate Superintendent of Human Resources—to attend communication training, sexual harassment training “with a focus on refraining from making off-hand comments, colorful

jokes, colorful stories, compliments that may be misconstrued by female employees, or insensitive remarks to employees.” [Exh. P-51]. Respondent also directed Respondent to “conduct yourself in a professional manner,” including by recognizing and respecting the rights of other employees, and to treat all employment with the same level of response, dignity, and respect.” [Exh. P-51].

28. Respondent’s testimony that he had no knowledge of the allegations against Mr. Garcia is questionable and frankly, lacks credibility, in light of Respondent’s direct involvement in the complaints that led to Mr. Garcia’s departure from the District and lends credence to the claims that Mr. Garcia and Respondent were friends and that Mr. Garcia did not adequately and/or appropriately investigate Ana Cordova’s sexual harassment claims against Respondent. It also draws a reasonable inference that the investigations of each other lack objectivity and the conclusions of each were wrong.

B. 2017 Hostile Work Environment Complaints Against Respondent

29. On April 29, 2017, Rosalinda Perez—an educational diagnostician employed by the District—filed a complaint alleging that Respondent (who at that time was the Assistant Superintendent of Curriculum & Instruction) was having multiple affairs with his subordinates, including Linda (Perez) Garza (“Linda Garza”), a Licensed Specialist in School Psychology (LSSP). [Exh. P-10, pp. 13–17]. The complaint alleged that Respondent was giving these subordinates preferential treatment and was creating a hostile work environment. [Exh. P-10, p. 13–17].

30. A few days later, another educational diagnostician named Laura Regalado filed a similar complaint regarding Respondent and Linda Garza. [Exh. P-10, pp. 42–76; Exh. P-12].

31. The complaints were investigated by the outside law firm, Walsh, Gallegos, Trevino, Russo & Kyle, P.C. [Exh. P-10].

32. During the investigation, Respondent denied the allegations against him, and referred to them as “defamation” and “slanderous.” [Exh. P-10, pp. 18–21]. Additionally, Respondent did not disclose any information suggesting that he had an inappropriate relationship, whether via email work corresponding or otherwise, with Linda Garza or anyone else. [Tr. Vol. 3, 237: 7–25, 247:4–24; Tr. Vol. 4, 106:2 -12].

33. Linda Garza denied that Respondent had behaved inappropriately with her and denied any inappropriate relationship or affair with Respondent. [Exh. P-10, p. 6]. She then filed an internal grievance against Rosalinda Perez, in which she referred to the allegations as “false” and “harmful to my professional integrity and reputation.” [Exh. P-10, p. 100].

34. The investigation report referenced and attached a copy of Ana Cordova’s 2011 sexual harassment complaint against Respondent as well as the complaint filed by Laura Regalado, but the investigation did not substantiate Ms. Perez’s allegations. [Exh. P-10, pp. 10–11, 80–84].

35. The investigation reported noted that “no one corroborated” the allegations that Respondent was having an affair, and that “no person reported any inappropriate relationship or conversations by Mr. Gonzalez.” [Exh. P-10, p. 11].

C. Respondent’s 2021 Application for Superintendent

36. In 2021, Respondent applied for the position of superintendent of UISD. [Tr. Vol. 3, 14–20].

37. Joseph Michael Garza (“Mike Garza”), the Associate Superintendent for Administration Operations, also applied for the position of superintendent. Mike Garza testified that Respondent called him at 11:00 p.m. the night that they both applied, “pretty desperate saying that he was not going to apply because of the investigation that have – he didn’t want that to get out.” [Tr. Vol. 4, 175:10–177:1; *see also* Tr. Vol. 4, 178:21–179:3 (“Q: So David Gonzalez has,

prior to becoming superintendent, been concerned about concealing information so that it would not come out and harm his career? A: That was the call that I got the night that we applied for superintendent. He was like, hey, you do it, you take it, you know, hire me as your deputy superintendent. That was the conversation.”)].

38. Mike Garza also recounted an incident in the 2016/2017 timeframe, in which Respondent came to him in tears about an open records request from the Laredo Morning Times relating to an investigation against Respondent and requesting that Mike Garza call the publisher of the newspaper to intervene on his behalf. [Tr. Vol. 4, 177:1- 178:20].

39. During an interview with the Board on Monday, April 19, 2021, Trustee Aliza Oliveros and Trustee Javier Montemayor asked Respondent several questions about whether there was anything they needed to be aware of in regard to any allegations of sexual harassment, because they were concerned about the fact that he had been accused of improper conduct in the past. [Tr. Vol. 1, 241:15-246:14; Tr. Vol. 3, 75:1-77:5; *see also* Tr. Vol. 2 282:16-284:4, 323:3-19]. Respondent denied any wrongdoing and denied that there was anything the Trustees needed to know. [Tr. Vol. 2, 264:264:12-265:5; 282:16-284:4; Tr. Vol. 3, 75:1-77:5].

40. Section 552.126 of the Texas Government Code states that the board of trustees of a public school district “must give public notice of the name or names of the finalists being considered for the position [of superintendent] at least 21 days before the date of the meeting at which a final action or vote is to be taken on the employment of the person.”

41. At a duly called special Board meeting held at 5:30 p.m. on April 19, 2021, the Board voted to name Respondent as the lone finalist for the position of superintendent. [Exh. P-2]. This triggered the 21 days waiting period set forth in Texas Government Code § 552.126.

D. Respondent's April 21, 2021, Telephone Call with Ana Cordova

42. On Wednesday, April 21, 2021, two days after being named the lone finalist for the position of superintendent—and two days after being questioned by the Board about his history of complaints— Respondent had a telephone call with Ana Cordova, the employee who filed a sexual harassment complaint against Respondent in 2011. [Exh. P-3; Exh. P-4].

43. Ms. Cordova took Respondent's call on her office phone. [Tr. Vol. 1, 136:6–22]. Before answering the call, Ms. Cordova activated the video recording function on her cell phone and recorded the telephone conversation with Respondent. [Exh. P-3; Exh. P-4; *see also* Tr. Vol. 1, 136:23–137:16].

44. During the telephone call, Respondent used his position as lone finalist for superintendent to offer Ms. Cordova protection and preferential treatment, in exchange for her agreement to recant her prior sexual harassment complaint allegations:

Okay look. And I told you, look. Within this . . . now there's twenty (20) days, where they can ask for open records on somebody, and they may. And if it's mentioned, that stuff is gonna come out, so your name is gonna be on there and mine is gonna be on there. In the event, and I'm not telling you to do it, Ana. I don't want you to think that I'm telling you to do this, I'm telling you what options you could do. If you'd write something saying that you did it because you're upset at me and I was making you resign or whatever, uh, that would pretty much set the case. And they'd say, "you know what, then there was no such harassment.

...

And I guarantee you right now, look who's calling right now on the phone. Here . . . here we're looking at a congressman. As the next superintendent, in my position right now, I'm the incoming one, I will tell [unintelligible] Santos, uh, "We need to close this case and move on, and I don't want . . . we're not gonna touch Ana Cordova." And I'll also . . . I'll tell Santos, "You do something, it's going to be a mess and then you're gonna have a bigger . . . bigger problem on your hands." So, I'm gonna protect you, Ana. I promise you, I give you my word as uh, as your friend.¹

¹During the telephone call with Ms. Cordova, Respondent spoke in both English and in Spanish. Petitioner provided a certified transcription and translation of the phone call. [Exh. P-4]. For ease of reference, the statements identified herein as being made by Respondent during his April 21, 2021, telephone call with Ms. Cordova are based on the certified transcription and translation, unless otherwise noted.

[Exh. P-4, pp. 1-2].

Uh, uh, I will tell you Ana, if you have a problem, you call me and I will take care of it. And if you gotta get moved somewhere else, if there's any opening, I give you my word and as a man, I will do that for you, because you doing this will avoid an embarrassment for both of us.

...

So, if you're gonna do that, you tell me. Call me tomorrow or whatever. Get with Lorena [Chavez] and I'll take care of it, and what I'll do first is I will call Mr. Santos, I'll go, "Look, this lady reached out to me, they're willing to do it, but she's only gonna do it if we're not gonna touch her." [] I'll say, "Leave her alone." She tells me that, and I'll take care of it. But I promise you Ana, they're not going to do anything to you, cause I will not allow it.

[Exh. P-4, p. 3].

Well Ana, there . . . I mean, I'm suggesting you write something like, "Back in 2011, I made an accu . . . I made an accusation against David Gonzalez, President of Washington Middle School for sexual harassment, uh, this is to make it . . . make it very clear that at no time he ever did that. I did it . . . I was upset because this happened. I apologized to him, uh, I . . . I don't wanna cause any problems right now with his future. I understand he's [unintelligible] for superintendent . . . Just keep it real simple, don't make it long. []

But you don't have to . . . but you don't even have to put that last part. Just put, you know, uh, I . . . I . . . I . . . eh, eh . . . it was done outta . . . I was emotional, that was the decision, and it was not done uh, to hurt him in any way or whatever. Just put . . . just very simple. But see, what . . . what HR will look at is, these are the accusations, even though this should have no finding, now she's saying she didn't, we're gonna close the case. And that's it, it's over.

[Exh. P-4, p. 7].

45. During the telephone call with Ms. Cordova, Respondent also seemingly, gratuitously apologized to Ms. Cordova for any pain he caused her in the past:

I'm gonna tell you again what I told you yesterday. Whatever pain I caused you, whatever problem . . . because I was also a jerk and an idiot, because I am, and there's no excuse, there's no excuse, Ana. I apologize to you as a man. I even went to confession with the priest and everything, I mean, I had to.

Uh, when I went for the interview, my final last interview on Monday, uh, I went to confession first. And I told the priest, but . . . I said "I commit adultery every day." The priest said, "What do you mean?" I said, "Well Sir, the bible says that

when you think of it” . . . and he started laughing. The priest was like . . . [unintelligible] But the bible says, and then you think about it, you’re sinning.

...

I’m being very sincere, I’ll repeat this to you, I am sorry for whatever pain I caused you or whatever. I don’t know what’s going on at your campus, but if you’re having issues, in my position Ana, you do this for me and for yourself too, cause you’re protecting your name also.

[Exh. P-4, pp. 2–3].

46. In response to Ms. Cordova questioning whether recanting her prior complaint would harm her or her employment, Respondent stated:

I will make sure that it won’t. I’ll make sure that it won’t. Okay? And if it is, like I told you, Ana if I . . . if I find out that it is, then I’m gonna tell you not to do it, okay? Because I’m not going to hurt you, either. [] I’ve done enough hurting to you already, okay?

[Exh. P-4, p. 8].

47. During the telephone call with Ms. Cordova, Respondent also discussed issues relating to another employee and that employee’s child, who was a student of UISD. [Exh. P-4, pp. 5–6]. Respondent did not offer any evidence demonstrating a legitimate business or educational purpose to justify sharing this personnel or student information with Ms. Cordova.

48. Respondent’s expert witness, Abe Saavedra (a former school district superintendent and Professor at Texas A&M University), testified that Respondent’s conversation with Ms. Cordova reflected “poor judgment.” [Tr. Vol. 4, 234:19–235:2; Exh. R-29].

49. Mr. Saavedra further testified that, in his expert opinion, Respondent’s statement: “I am sorry for whatever pain I caused you or whatever. I don’t know what’s going on at your campus; but if you’re having issues, in my position, Ana, you do this for me and for yourself too, because you’re protecting your name, also” was not appropriate and that he never would have made such a statement as a superintendent, as a lone finalist for superintendent, or “as in anything. I just wouldn’t make it.” [Tr. Vol. 4, 253:25–254:12].

50. Ms. Cordova testified that the recording fairly and accurately reflects the conversation she had with Respondent on April 21, 2021. [Tr. Vol. 1, 137:17–138:18, 141:12–144:22]. Ms. Cordova further testified that she did not fabricate the recording, and that she has no special training or knowledge relating to artificial intelligence or similar technology. [Tr. Vol. 1, 119:3–5, 148:18–149:16, 195:6–19, 209:18–210:11].

51. It is undisputed that Ms. Cordova did not provide the District with a copy of the telephone recording in 2021.

52. Ms. Cordova did not recant her 2011 sexual harassment complaint against Respondent. She testified that it would not have been accurate to say that the harassment never happened. [Tr. Vol. 1, 147:20–148:6].

53. At a duly called special Board meeting held on May 10, 2021, the Board took final action to employ Respondent as the superintendent of UISD and to approve his Contract. [Exh. R-1].

E. Linda Garza, Ph.D.’s Promotion to Lead School Psychologist

54. Effective at the beginning of the 2023–2024 school year, Linda Garza was promoted from an LSSP to a newly-created position of Lead School Psychologist. [Exh. P-17]. This promotion increased Linda Garza’s annual salary by approximately \$25,000.00. [*Compare* Exh. P-16 *with* Exh. P-17].

55. David Canales, the Associate Superintendent of Human Resources, testified that the process leading up to Linda Garza’s promotion was not the District’s normal practice. [Tr. Vol. 2, 161:1–14]. Mike Garza similarly testified that the process was “highly unusual.” [Tr. Vol. 4, 189:2–4].

56. Both Mr. Canales and Mr. Garza testified that it is the District's normal practice for job descriptions to be drafted by the person with immediate supervisory authority over the position. [Tr. Vol. 2, 161:4–14; Tr. Vol. 4, 186:24–187:12]. In this case, the newly created Lead School Psychologist positions reported directly to Mike Garza, meaning that Mike Garza would normally be the one to create the job description. [Tr. Vol. 2, 161:4–14; Tr. Vol. 4, 186:24–187:12]. However, Linda Garza and/or Respondent drafted the job description for the Lead School Psychologist position, including the required qualifications and job duties for the position. [Exh. P-49; Tr. Vol. 4, 188:12–189:1]. Linda Garza submitted the job description to Mike Garza and David Canales, copying Respondent, at 8:35 a.m. on June 15, 2023. [Exh. P-49].

57. At 2:23 p.m. on June 15, 2023, Mike Garza sent Respondent an email “recommending that a new area related to Safety and Mental Health be created,” and attaching “a job description of the lead psychologist who will oversee the department.” [Exh. R-18]. Mike Garza testified that he sent the email to Respondent at Respondent's specific request and direction. [Tr. Vol. 4, 184:14–186:7]. He further testified that Respondent “had already said he was going to hire [Linda Garza] Like, that was already known.” [Tr. Vol. 4, 186:8–9]. According to Mike Garza, this was not normal practice: “As a matter of fact, in my 26, 27 years at the District, I've never, ever been given a job description, like, from the superintendent. You know, this is the job description and, basically, this is who you're going to hire.” [Tr. Vol. 4, 186:9–13; *see also* Tr. Vol. 4, 187:22–188:1 (“Q: And so it's your testimony that it was already a foregone conclusion, even though the job hadn't been created, hadn't been posted yet that [Linda Garza] was going to be the successful candidate? A: It's clear. It was clear, yes, ma'am.”)].

58. Mike Garza also testified that, during Respondent's first 30 days as superintendent, Respondent told him that he wanted to create a mental health task force. Mike Garza testified that

he and another administrator found this “very strange” at the time but that, in retrospect, it was clear to him that Respondent was “laying the groundwork” to promote Linda Garza. [Tr. Vol. 4, 184:16–185:9]. Similarly, Trustee Oliveros testified that shortly after her husband passed away in 2022, Respondent pressured her into presenting at a conference with Linda Garza. [Tr. Vol. 1, 284:17–288:11]. Trustee Oliveros testified that she felt like Respondent was using her to help Linda Garza’s career, and that he was trying to gain her support for “everything that was to come,” including Linda Garza’s promotion. [Tr. Vol. 1, 288:12–289:14].

59. On June 27, 2023—less than two weeks after Mike Garza “recommended” the creation of the Lead School Psychologist position—Linda Garza was identified as the finalist for the position. [Exh. P-18]. No one else applied for the position, which, per the job description, preferred a doctoral degree. [See Exh. P-49, p. 2]. Mike Garza testified that, to his knowledge, Linda Garza was the only District LSSP with a doctorate at that time. [Tr. Vol. 4, 189:5–190:9].

60. At a duly called special Board meeting held on June 29, 2023, Respondent recommended Linda Garza’s appointment to the newly created position of Lead School Psychologist. It is undisputed that, in doing so, Respondent did not disclose to the Board, or anyone else, that he had any potential conflict of interest with respect to Linda Garza. [Tr. Vol. 2, 96:20–97:8; Tr. Vol. 3, 90:6–91:16, 235:9–25].

61. It is also undisputed that Respondent did not inform the Board that the salary recommendation he took to the Board for the new Lead School Psychologist position was a full pay grade higher than what a Texas Association of School Board (TASB) consultant recommended for the position. [See Exh. R-27; *see also* Tr. Vol. 2, 156:3–160:8; Tr. Vol. 3, 53:20–54:7, 92:22–95:9].

62. Board President Veliz testified that the Board did not initiate Linda Garza's promotion or salary increase. [Tr. Vol. 3, 24:1–26:19]

63. Mike Garza testified that he attended a meeting with both Respondent and Linda Garza in which Respondent asked Linda Garza what she “needed” to be paid in order to turn down a job in the private sector. [Tr. Vol. 4, 190:10–192:5].

64. Trustee Olivero testified that the way Respondent advocated for Linda Garza's promotion was unusual, including the fact that everything happened “rather abruptly”, and that Respondent called her to tell her that Linda Garza was the only person qualified for the position. [Tr. Vol. 1, 270:14–271:6].

65. Mike Garza later modified the Lead School Psychologist position—which falls under Safety and Crisis Management to require Linda Garza to provide mental health services to students and to conduct necessary threat assessments. [Tr. Vol. 4, 192:9–21]. Mike Garza testified that Respondent attempted to intervene and was “very adamant about what her job duties were going to be” and what they were not going to be. [Tr. Vol. 4, p. 193:4–22]. Mike Garza further testified that Linda Garza has filed a grievance against him for changing her job duties. [Tr. Vol. 4, 193:23–194:6].

66. Respondent's claim that he was not directly involved in Linda Garza's promotion lacks credibility. (See findings of fact above nos. 54-61 and 63-65 and below 67 and 113).

67. The record is devoid of any written disclosure by Respondent to the Board that he was not advocating or taking a position in the hire of Linda Garza. *Record as a whole.*

68. Linda Garza was the only applicant for the position and the position opening was opened and posted beforehand [Tr. Vol. 3, 26:7–19].

69. Respondent's expert witness, Abe Saavedra, testified that, with respect to a superintendent's duty to disclose potential conflicts of interest, a "Board should have as much information as is available." [Tr. Vol. 4, 232:22–233:25].

F. Ana Cordova's 2023 Sexual Harassment and Retaliation Complaint Against Respondent

70. On August 10, 2023, Ana Cordova (through her attorney, George Altgelt) filed a Level One grievance against Respondent pursuant to Board Policy DGBA. [Exh. P-5].

71. Ms. Cordova's 2023 grievance complained of "sexual harassment" and "retaliation" that was "ongoing and reoccurring," with the most recent incident occurring on August 9, 2023. [Exh. P-5, pp. 2, 6.] It also alleged violations of Board Policy DIA (Local) and "Chapter 21, Texas Labor Code and Title VII of the Civil Rights Act," and attached a copy of a Charge of Discrimination that Ms. Cordova had filed with the Equal Employment Opportunity Commission, which alleged sexual harassment, sex discrimination, and retaliation. [Exh. P-5, pp. 2–3, 15]. And, in response to the question: "Are you alleging that your supervisor either violated the law in the workplace or has unlawfully harassed you?," Ms. Cordova answered "Yes." [Exh. P-5, p. 3].

72. Ms. Cordova's 2023 grievance attached, among other things, a true and correct copy of the recording of her telephone conversation with Respondent on April 21, 2021. [Exh. P-5; Tr. Vol. 1, 141:12–142:5]. It is undisputed that Ms. Cordova did not provide the District with a copy of the recording prior to August 10, 2023.

73. USD employee complaints and grievance are generally governed by Board Policies DGBA (Legal) and (Local). [Exh. P-41; Exh. P-42]. However, Board Policy DGBA (Local) states:

Employee complaints shall be filed in accordance with this policy, except as required by the policies listed below. Some of these policies require appeals to be submitted in accordance with DGBA after the relevant complaint process:

1. Complaints alleging discrimination, including violations of Title IX (gender), Title VII (sex, race, color, religion, national origin), ADEA (age), or Section 504 (disability), shall be submitted in accordance with DIA.
2. Complaints alleging certain forms of harassment, including harassment by a supervisor and violation of Title VII, shall be submitted in accordance with DIA.
3. Complaints concerning retaliation relating to discrimination and harassment shall be submitted in accordance with DIA.

[Exh. P-42, p. 1].

74. Board Policies DIA (Legal) and (Local) prohibit unlawful employment discrimination, including illegal harassment, as well as retaliation. [Exh. P-43, Exh. P-44]. These policies specifically apply to claimed violations of certain statutes, including Title VII of the Civil Rights Act of 1964 and Chapter 21 of the Texas Labor Code (also known as the Texas Commission on Human Rights Act). [See Exh. P-43, pp. 1-2].

75. Board Policy DIA (Legal) states that “[a] district has an affirmative duty, under Title VII, to maintain a working environment free of harassment on the basis of sex, race, color, religion, and national origin.” [Exh. P-43, p. 2].

76. Board Policy DIA (Local) defines “prohibited conduct” to include “discrimination, harassment, and retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.” [Exh. P-44, p. 1].

77. Board Policy DIA (Local) requires the District to investigate allegations or prohibited conduct: “Upon receipt or notice of a report, the District official shall determine whether the allegations, if proved, would constitute prohibited conduct as defined by this policy. If so, the District shall immediately authorize or undertake an investigation, regardless of whether a criminal

or regulatory investigation regarding the same or similar allegations in pending.” [Exh. P-44, p. 3]. It also requires the District to “promptly take interim action calculated to prevent prohibited conduct during the course of an investigation. [Exh. P-44, p. 3].

78. Under Board Policy DIA (Local), “[i]f the results of an investigation indicate that prohibited conduct occurred, the District shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the conduct.” [Exh. P-44, p. 4]. However, “[t]he District may take action based on the results of an investigation, even if the conduct did not rise to the level of prohibited or unlawful conduct.” [Exh. P-44, p. 4].

79. Although Board Policy DIA (Local) states that “reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act,” in order to “ensure the District’s prompt investigation,” the policy does not include a specific time limit for reporting prohibited conduct, nor does it allow for complaints filed after a certain period of time to be summarily dismissed without investigation. [Exh. P-44, p. 3].

80. Because Ms. Cordova’s 2023 grievance contained allegations that, if true, would constitute illegal discrimination, harassment, and/or retaliation under Title VII and Chapter 21 of the Texas Labor Code, the District dismissed Ms. Cordova’s DGBA grievance and informed her that “her allegations are being routed through the process outlined in UISD Board Policy DIA (Local).” [Exh. R-2; Tr. Vol. 132:19–133:12; *see also* Tr. Vol. 1, 219:13–222:7, 223:15–25]. The District further notified Ms. Cordova that “[o]nce the DIA (Local) investigation has been completed, this matter, including the [DGBA] Grievance, will have concluded unless you file an appeal. As per DIA (Local), a complainant who is dissatisfied with the outcome of the DIA investigation may appeal through DGBA (Local), beginning at the appropriate level.” [Exh. R-2].

81. Ms. Cordova's 2023 allegations were investigated by an independent law firm, Schulman, Lopez, Hoffer & Adelstein, LLP, pursuant to Board Policies DIA (Legal) and (Local). [See Exhs. R-2 & 4]. During the pendency of the investigation, the District placed Respondent on paid administrative leave effective August 21, 2023. [Exh. R-7].

82. On October 11, 2023, Respondent received notice of the outcome of the investigation, including a finding that his 2021 telephone conversation with Ms. Cordova reflected numerous policy and ethical violations. [Exh. R-4, pp. 3–5].

83. As noted above, Ms. Cordova testified that the recording she submitted with her 2023 grievance fairly and accurately reflected the telephone conversation she had with Respondent on April 21, 2021, and that she had not altered or modified the recording in any way. [Tr. Vol. 1, 137:17–138:18; *see also* Tr. Vol. 1, 119:3–5, 148:18–149:16, 195:6–19, 209:18–210:11].

84. George Altgelt testified that he himself or office under his direction, obtained a copy of the recording directly from Ms. Cordova's cell phone and described the process of scrolling back in time through the files on Ms. Cordova's phone to locate the recording. [Tr. Vol. 1, 214:8–216:18]. Mr. Altgelt testified that he did not alter the recording in any way. [Tr. Vol. 1, 216:19–23]. He also testified that he had no reason to believe that the recording was not accurate or authentic. [Tr. Vol. 1, 231:14–233:19].

85. Trustee Oliveros testified that the male voice on the recording sounded like Respondent, including his laugh and his manner of speaking (switching between English and Spanish). [Tr. Vol. 1, 251:19–252:14]. She also testified that she has no reason to doubt the authenticity of the recording. [Tr. Vol. 1, 252:15–18].

86. Board President Ramiro Veliz, III, testified that he not only recognized Respondent's voice on the recording, but also "his mannerisms, the way he talks." [Tr. Vol. 2,

293:3–12]. Board President Veliz also testified that there was nothing about the recording that made him think it was made up or fake. [Tr. Vol. 2, 293:17–19].

87. Trustee Javier Montemayor testified that he recognized Respondent’s voice on the recording and that he has no doubt that it is Respondent on the recording. [Tr. Vol. 3, 84:1–21]. He also testified that it did not sound like the recording had been altered. [Tr. Vol. 3, 84:14–18].

88. David Canales testified that, after the recording was released, Respondent came to him and said something to the effect that he had made a mistake, but that he could not recall the exact words Respondent used. [Tr. Vol. 2, 149:1–5]. Mr. Canales did not recall Respondent saying anything about the recording being fabricated or about it not being Respondent’s voice on the recording. [Tr. Vol 2, 149:9–15].

89. Mike Garza testified that he spoke with Respondent two days after the recording was released and asked Respondent, “What the hell were you thinking?” [Tr. Vol. 4, 181:2–20]. Mike Garza testified that Respondent initially stated that Lorena Chavez, his executive secretary, made him do it, but then “recanted and said, no, it was my decision. I made the call.” [Tr. Vol. 4, 181:21–184:13]. Mike Garza also testified that there is no doubt in his mind that Respondent is the person on the recording released by Ana Cordova and that, based on his experience with Respondent, he is not surprised by the fact that Respondent would try to pressure Ms. Cordova into recanting her prior sexual harassment complaint. [Tr. Vol. 4, 180:7–181:7].

90. Jim Stafford, a certified, court-qualified expert in Video Forensics, Image Analysis, Audio Forensics, Digital Forensics, and Mobile Device Forensics, performed an independent review of the video file to determine whether the video file had been edited in any way. [Exh. P-6; Exh. P-7; *see also* Exh. FH-3]. Mr. Stafford concluded, based on his education, training,

experience, and expertise, that the video file had not been edited. [Exh. P-7; *see also* Tr. Vol. 3, 282:23–313:1].

91. Mr. Stafford also testified that he would be able to tell if Ms. Cordova had used her phone to record another recording, as opposed to an actual telephone conversation, based on the proximity of the voices and the integrity of the audio. [Tr. Vol. 3, 328:2–329:16; *see also* Tr. Vol. 3, 330:4–332:8]. Mr. Stafford stated: “If you had, say, a recording here and a phone here, I would be able to tell that this was in a room. That there was room noise, there was additional distance between the integrity of the two items. Yes, I would be able to tell that.” [Tr. Vol. 3, 329:5–9]. Mr. Stafford testified that he “saw no evidence of that.” [Tr. Vol. 3, 329: 10–16].

92. Respondent did not rebut Mr. Stafford’s expert opinion that the recording is authentic.

93. Respondent did not rebut Mr. Stafford’s expert opinion that the recording had not been altered.

94. Respondent did not rebut Mr. Stafford’s expert opinion that Ms. Cordova did not fabricate the recording using multiple recording devices.

95. Respondent did not rebut Mr. Stafford’s expert opinion that the integrity of the audio confirms that the recording reflects a telephone conversation.

96. Respondent admitted to taking the call with Ms. Cordova and that the person on the recording “sounded” like him but denied that the recording was genuine or authentic. [Tr. Vol. 3, 187:23–188:3; Tr. Vol. 4, 58:21–59:3]. However, Respondent did not offer any testimony or other evidence in support of his claim that the recording was altered or fabricated.

97. Respondent admitted that the following statements on the recording were improper: “You do something, it’s going to be a mess, you’re going to have bigger problems on your hands,

so I'm going to protect you, Ana. I promise you. I give you my word as your friend." [Tr. Vol. 3, 201:2–202:1].

98. Respondent admitted that the following statement on the recording is an improper abuse of power: "I promise you, Ana, they're not going to do anything to you because I will not allow it." [Tr. Vol. 3, 209:2–8].

99. The dissemination of the recording was by attorney, George Altgelt and not the District. [Tr. Vol. 1, 216:24-25 & 217:1–14].

G. United ISD's Discovery of Further Inappropriate Conduct by Respondent

100. After Respondent was placed on paid administrative leave, the District with advice of counsel, commissioned and reviewed Respondent's District emails. [Tr. Vol. 4, 157:16–25, 158:1-7, 12-25, 159:1-4, 1-20: and 160:7–17].

101. The District's review of Respondent's District email account revealed numerous communications of a romantic nature between Respondent and Linda Garza during the 2015–2016 timeframe. [Exh. P-11]. For example, Respondent and Linda Garza exchanged numerous YouTube links to love songs, including "Let's Make Love," "I Wanna Grow Old with You," "Beautiful Girl," "I Only Have Eyes for You," and "We Belong Together." [Exh. P-11; Exh. P-48]. When Linda Garza sent Respondent the link to "Let's Make Love," she stated: "Alone . . . outside w/stars and a fireplacc." Respondent replied: "Love the vedio [sic], the song, scene . . . u." [Exh. P-11, p. 7].

102. Respondent and his counsel described his relationship with Linda Garza during this time frame as a "lovey-dovey email relationship," and described the emails as stupid and inappropriate, but simultaneously claimed that he was "not guilty of having an improper relationship with this individual" and did not need to disclose anything to the Board. [Tr. Vol. 4,

71:18–72:6, 109:2–10]. Yet, when criticizing the Board for not finding his inappropriate emails earlier, Respondent testified that “[w]ith the emails and the way that was going on, it was stupid of me. And it was improper, yes.” [Tr. Vol. 3, 227:20–228:8]. He also agreed that he should not have exchanged these emails with Linda Garza. [Tr. Vol. 3, 273:12–20].

103. The emails between Respondent and Linda Garza speak for themselves and clearly are not emails that should be exchanged on work emails much less during work hours. *Record as a whole*; and Exh. P-11.

104. At 8:23 p.m. on Friday, November 27, 2020 (the day after Thanksgiving), Linda Garza emailed Respondent a copy of the 2017 investigation into Rosalinda Perez’s complaint. [Exh. P-10]. In the body of the email, Linda Garza wrote: “Since I have a copy of it . . . it no LONGER IS ATTORNEY CLIENT PRIVILEGES [sic].” [Exh. P-10, p. 1]. Additionally, in very large font, Linda Garza wrote: “SEXUAL HARASSMENT INVESTIGATIONS.” [Exh. P-10, p. 1].

105. Respondent testified that he did not communicate with Linda Garza through his personal email and that he did not have a personal email account in 2015 and 2016. [Tr. Vol. 3, 218:14–21]. But the emails contained in Petitioner’s Exhibit 11 reflect that Respondent did, in fact have a personal email account during this timeframe and that he did, in fact, use a personal email account to communicate with Linda Garza. [See, e.g., Exh. P-11, p. 8; see also Tr. Vol. 3, 218:14–220:2]. The emails also reflect that Linda Garza forwarded Respondent’s emails from her United ISD email account to her personal email account. [See, e.g., Exh. P-11, pp. 2, 4, 12, 14, 18, 20, 22, 24, 25].

106. Respondent did not produce any emails from his personal email account in response to the District’s discovery requests, and he testified that he made no efforts to recover the emails

from the personal email account he used to communicate with Linda Garza. [Tr. Vol. 3, 221:17–23].

107. In an email dated September 18, 2016, Respondent asked Linda Garza if he could go see her. [Exh. P-11] Respondent admitted he went to her home. [Tr. Vol. 3, 217:23–281:5].

108. The emails between Respondent and Linda Garza were disclosed to the Board in October of 2023. [Tr. Vol. 1, 264:12–23, 265:8–20]. Prior to that time, the Board was not aware of any evidence of an inappropriate relationship between Respondent and Linda Garza. [Tr. Vol. 1, 264:12–23, 265:8–20; Tr. Vol. 3, 7:9–19]. The IHE does also find that the District knew of alleged special treatment to Garza by Respondent as evidenced with the complaints in 2017 (see findings nos. 29 and 30 above).

109. During the District’s 2017 investigation of Respondent regarding accusations that he was having an affair with Linda Garza and giving her preferential treatment, Respondent did not produce or reveal the 2015 and 2016 emails between him and Linda Garza or inform the investigator about his email relationship with her. [Tr. Vol. 3, 239:3–240:3].

110. The IHE finds the recorded conversation is that of Respondent and Ana Cordova. *Record as a whole.*

111. The IHE finds Respondent had an inappropriate work e-mail relationship with Linda Garza, Ph.D. from approximately 2015 to 2017. Exhs. P-10 and 11.

112. The IHE finds Respondent used bad judgment in visiting Linda Garza, Ph.D. at her residence. The presence of his vehicle at the Lakeview Apartments at 7615 Laguna Del Mar Ct. in Larcdo, Texas, has the appearance of impropriety and non-professionalism. Exh. P-24.

113. The IHE finds Respondent failed to abstain or remove himself from the process of Linda Garza, Ph.D. being hired for the new position and salary within the District or carrying it forward. (See findings of fact above nos. 54-61 and 63-67).

114. The IHE finds Respondent used bad judgment in the telephone conversation with Ana Cordova on April 21, 2021. *Record as a whole.*

115. The IHE finds the District did not disseminate the telephone recording between Respondent and Ana Cordova. [Tr. Vol. 1, 216:24-25 & 217:1-14].

116. The IHE finds the telephone recording between Respondent and Ana Cordova was disseminated by attorney, George Altgelt. [Tr. Vol. 1, 216:24-25 & 217:1-14].

117. The IHE finds the telephone recording between Respondent and Ana Cordova was not illegal. *Record as a whole.*

118. The IHE finds Respondent's lack of admission to the telephone recording with Ana Cordova of April 21, 2021, bears on his credibility and forthcoming to the Board and ability for all parties to work together and keep the District moving in a positive direction. *Record as a whole.*

119. The IHE finds Respondent's lack of admission to being part of "carrying" the Linda Garza promotion, bears on his credibility and forthcoming to the Board and ability for all parties to work together and keep the District moving in a positive direction. *Record as a whole.*

120. The IHE finds Respondent's lack of admission to emails from his District email with Linda Garza being inappropriate and lending an inference the parties are more than romantic emailers to each other, bears on his credibility and forthcoming to the Board and ability for all parties to work together and keep the District moving in a positive direction. *Record as a whole.*

121. The IHE finds Respondent's lack of admission to being part of "carrying" the Linda Garza promotion, bears on his credibility and forthcoming to the Board and ability for all parties to work together and keep the District moving in a positive direction. *Record as a whole.*

122. The IHE finds Respondent's lack of admission to the circumstances of David Garcia's, then-Assistant Superintendent of Human Resources, resignation bears on his credibility and forthcoming to the Board and ability for all parties to work together and keep the District moving in a positive direction. *Record as a whole.*

123. The IHE finds Respondent was named the lone finalist for superintendent on April 19, 2021. Exh. P-2.

124. The IHE finds the District's media statement was a valid neutral statement given in the face of allegations of impropriety that in turn reflects on UISD as an organization and its board. Exh. P-26.

125. The IHE finds the Respondent being placed on administrative leave and recording with Cordova by attorney Altgelt being disseminated, caused a media stir. [Exh. P-5, p. 1; Tr. Vol. 216:24–217:16]; [Exh. P-25; Exh. P-26; Exh. P-27; Exh. P-28; Exh. P-29; Exh. P-30]; and [Exh. P-19; Exh. P-20; Exh. P-21; Exh. P-22; Exh. P-23; Exh. P-24].

H. Negative Attention to the District and Respondent's Relationship with the Board of Trustees and the Community

126. When Ms. Cordova provided the District with a copy of the recording of her 2021 telephone conversation with Respondent as part of her 2023 grievance, her attorney also provided a copy of the recording to KGNS Laredo (a local television station), the Laredo Morning Times, the San Antonio Express News, and other members of the media. [Exh. P-5, p. 1; Tr. Vol. 216:24–217:16]. The recording—and the allegations in Ms. Cordova's 2023 grievance—received media attention from the Laredo Morning Times and other news outlets. [Exh. P-25; Exh. P-26; Exh. P-

27; Exh. P-28; Exh. P-29; Exh. P-30]. It also garnered a lot of sensational attention on social media. [Exh. P-19; Exh. P-20; Exh. P-21; Exh. P-22; Exh. P-23; Exh. P-24].

127. Trustee Oliveros testified that the negative publicity surrounding Respondent was a distraction to the District, especially given that it all unfolded at the beginning of a new academic year. [Tr. Vol. 1, 263:19–264:2].

128. Trustee Oliveros also testified that she no longer trusts Respondent due to his lack of truthfulness, and that she does not believe it is possible for him to effectively carry out the duties of superintendent. [Tr. Vol. 2, 96:4–97:8]. In particular, Trustee Oliveros testified that she believed the statements Respondent made to Ana Cordova in April 2021 were highly inappropriate and violated multiple Board policies, that Respondent’s behavior damaged his relationship with the Board, and that Respondent had two separate opportunities to disclose his personal relationship with Linda Garza, but failed to do so. [Tr. Vol. 1, 252:19–254:23, 256:6–263:18, 267:4–284:13; Tr. Vol. 2, 96:4–97:8].

129. Board President Veliz testified that the negative publicity surrounding Respondent has “brought a negative look” to the District and has become a distraction for the District and the Board. [Tr. Vol. 2, 316:11–320:11].

130. Board President Veliz also testified that he believes Respondent provided false information, and/or failed to disclose material information, during the superintendent interview process, in violation of his Contract and various Board policies. [Tr. Vol. 2, 301:10–304:24, 323:25–324:8]. Board President Veliz testified that he believes that Respondent’s conduct—including the statements he made to Ana Cordova in April 2021, his public statements about the authenticity of the recording after it was released, and his failure to disclose information relating to Linda Garza—has diminished the Board’s trust in Respondent. [Tr. Vol. 2, 303: 23–304:8,

313:18–316:10]. He further testified that he no longer considers Respondent to be trustworthy or of good moral character, and that he does not believe it is in the District’s best interest for Respondent to continue as the superintendent. [Tr. Vol. 2, 319:7–320:11].

131. Trustee Montemayor testified that the negative publicity surrounding Respondent has been widespread, and has been a “very, very severe distraction for our staff, our students, and United as a district.” [Tr. Vol. 3, 87:22–88:7, 99:10–112:9]. He further testified that Respondent “put us in a position of ridicule . . . and we need to rebuild now.” [Tr. Vol. 3, 89:2–4].

132. Trustee Montemayor also testified that he was “shocked” and “disappointed” to hear what Respondent said to Ana Cordova in April 2021, and that he has lost trust in Respondent. [Tr. Vol. 3, 83:24–87:5]. Trustee Montemayor testified:

[W]e had questioned him specifically about this during his interview process. We were told by Mr. Gonzalez, he looked us in the eye and said, no, absolutely not, those allegations are not true. They’ve been investigated, they were closed. Fine.

This recording indicated to me that I had been lied to by Mr. Gonzalez, indicated to me that there was a relationship of some sort that had been going on between Mr. Gonzalez and Ms. Cordova. It indicated to me that Mr. Gonzalez was asking her to lie for him, to give something in writing so he could present it to the trustees, that way they won’t – they’ll get past these questions of his – of his relationships.

...
... It’s questionable behavior, it’s unethical behavior. Mind you, it happened during – this call happened during the period – the waiting period before Mr. Gonzalez was actually contracted as our – as our superintendent.

Nevertheless, had this been disclosed, this is a material – in my mind, it’s a material – it’s a material fact. It should have been disclosed.

[Tr. Vol. 3, 85:3–86:6]. In light of all of the information about the Ana Cordova recording and the Linda Garza relationship that has come to light, Trustee Montemayor described the relationship between United ISD and Respondent as “irreparable” and testified that he does not see a path forward with Respondent as the superintendent of the District due to his diminished effectiveness. [Tr. Vol. 3, 88:14–100:11, 135:1–23].

133. Respondent does not dispute that there has been a significant amount of media attention since the Ana Cordova recording was released to the media, nor does he dispute that it has been a distraction to the District. [Tr. Vol. 3, 247:25–248:6].

I. United ISD’s Grounds for Respondent’s Proposed Termination

134. The Texas Education Code states that a “board of trustees may terminate a term contract and discharge [an employee] for [] good cause as determined by the board.” TEX. EDUC. CODE § 21.211(a)(1). The Texas Education Code also states that a board of trustees is not prohibited “from discharging a superintendent for good cause during the term of a contract.” TEX. EDUC. CODE § 21.212(d).

135. At a duly called special Board meeting held on October 10, 2023, the Board voted to propose the termination of Respondent’s employment. [Exh. R-11].

136. UISD’s Second Amended Notice of Proposed Termination sets forth several grounds for the mid-contract termination of Respondent’s employment for good cause: (1) unethical conduct towards colleagues and lack of character; (2) failure to maintain a professional and positive working relationship with the Board and the community; and (3) conflict of interest and lack of trust. [Exh. P-8].

137. The first ground—unethical conduct toward colleagues and lack of character—is premised as per the District on Respondent’s April 21, 2021, telephone conversation with Ana Cordova, which the Board first learned about on August 10, 2023. [Exh. P-8, pp. 1–3; *see also* Exh. P-3; Exh. P-4]. The District contends that Respondent committed numerous policy violations during the telephone call with Ms. Cordova, including violations of the Employee Standard of Conduct set forth in Board Policy DH (Local), and the Educators’ Code of Ethics set forth in Board Policy DH (Exhibit).

138. Board Policy DH (Legal) states that UISD employees are required to comply with standard practices and ethical conduct towards students, professional colleagues, school officials, parents, and members of the community. [Exh. P-33].

139. Board Policy DIH (Local) states that “[e]ach District employee shall perform his or her duties in accordance with state and federal law, District policy, and ethical standards,” and that “[c]ach employee shall comply with the standards of conduct set out in this policy and with any other policies, regulations, and guidelines that impose duties, requirements, or standards attendant to his or her status as a District employee.” [Exh. P-34, p. 1].

140. Board Policy DH (Local) states that “[t]he District holds all employees accountable to the Educators’ Code of Ethics.” [Exh. P-34, p. 1].

141. The Educators’ Code of Ethics in Board Policy DII (Exhibit) includes the following standards of conduct:

- Standard 1.4: The educator shall not use institutional or professional privileges for personal or partisan advantage.
- Standard 1.6: The educator shall not falsify records, or direct or coerce others to do so.
- Standard 1.7: The educator shall comply with state regulations, written local school board policies, and other state and federal laws.
- Standard 1.10: The educator shall be of good moral character and be worthy to instruct or supervise the youth of this state.
- Standard 2.1: The educator shall not reveal confidential health or personnel information concerning colleagues unless disclosure serves lawful professional purposes or is required by law.
- Standard 2.3: The educator shall adhere to written local school board policies and state and federal laws regarding the hiring, evaluation, and dismissal or personnel.
- Standard 2.6: The educator shall not use coercive means or promise of special treatment in order to influence professional decisions or colleagues.

Standard 3.1: The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.

[Exh. P-35, pp. 1–2].

142. Board Policy DII (Local), provides that “[v]iolation of any policies, regulations, or guidelines, including intentionally making a false claim, offering a false statement, or refusing to cooperate with a District investigation, may result in disciplinary action, including termination of employment.” [Exh. P-34, p. 1].

143. The second ground—failure to maintain a professional and positive working relationship with the Board and the community—the District alleges is premised on the widespread negative publicity stemming from the recording of Respondent’s April 21, 2021 telephone conversation with Ana Cordova as well as Respondent’s public statements following the August 2023 release of the recording, all of which the District contends have destroyed Respondent’s working relationship with the Board and the community, and have eliminated his ability to effectively lead the District. [Exh. P-8, pp. 3–5; *see also* Exh. P-3; Exh. P-4; Exhs. P-19–P-30].

144. Board Policy BJA (Legal) states that a superintendent “is the educational leader and chief executive officer of a district.” [Exh. P-38, p. 1]. It also states that “a superintendent shall, on a day-to-day basis, ensure the implementation of the policies created by the board.” [Exh. P-38, p. 2].

145. Board Policy BJA (Local) requires the Superintendent, “[i]n addition to responsibilities specifically provided by law or in the Superintendent’s contract,” to “provide educational leadership, demonstrate district management, and maintain positive Board and community relations.” [Exh. P-39].

146. Board Policy DH (Local) states that “[c]ach District employee shall recognize and respect the rights of students, parents, other employees, and members of the community and shall work cooperatively with others to serve the best interests of the District.” [Exh. P-34, p. 1].

147. Additionally, as noted above, Board Policy DII (Local) provides that “[v]iolation of any policies, regulations, or guidelines, including intentionally making a false claim, offering a false statement, or refusing to cooperate with a District investigation, may result in disciplinary action, including termination of employment.” [Exh. P-34, p. 1].

148. The third ground—conflict of interest and lack of trust—the District alleges is premised on the District’s recent discovery of Respondent’s emails with Linda Garza. [Exh. P-8, pp. 5; *see also* Exh. P-10; Exh. P-11]. The District contends that the Respondent improperly failed to disclose his inappropriate relationship with Linda Garza and failed to abstain from employment decisions relating to Linda Garza, in violation of Board Policy DBD (Local), Board Policy DH (Local), and the express terms of his Contract.

149. Board Policy DBD (Local) states that an employee “shall disclose to his or her immediate supervisor a personal financial interest, a business interest, or any other obligation or relationship that in any way creates a potential conflict of interest with the proper discharge of assigned duties and responsibilities or with the best interest of the District.” [Exh. P-37, p. 1].

150. Board Policy DH (Local) requires District employees to “[c]ooperate with the investigative process by answering questions, furnishing written statements, and volunteering information important to the investigation.” [Exh. P-34, p. 2].

151. Board Policy DII (Local) also states that, “[t]hroughout the course of an official District investigation or inquiry, every District employee has an affirmative duty to provide all relevant and factual information about the situation to his or her supervisor or any other District

official investigating the matter.” [Exh. P-34, p. 2]. “Intentional falsification, misstatement, or the concealment of a material fact in connection with the investigation shall be grounds for disciplinary action up to and including termination.” [Exh. P-34, p. 2].

152. Section 9.3 of Respondent’s Contract states: “The Superintendent represents that any records or information provided in connection with his employment application are true and correct. Any false statements, misrepresentations, omissions of requested information, or fraud by the Superintendent in or concerning any required records or in the employment application may be grounds for termination or nonrenewal, as applicable.” [Exh. R-1, § 9.3].

153. As noted in the previous findings, Board Policy DH (Local) provides that “[v]iolation of any policies, regulations, or guidelines, including intentionally making a false claim, offering a false statement, or refusing to cooperate with a District investigation, may result in disciplinary action, including termination of employment.” [Exh. P-34, p. 1].

154. Respondent timely requested a hearing on his proposed termination pursuant to Chapter 21 of the Texas Education Code.

155. The hearing on Respondent’s request commenced on January 15, 2024, and evidence closed on January 18, 2024.

156. The record as a whole establishes by a preponderance of the credible evidence that Respondent: engaged in improper, bad judgment and unethical conduct with or toward colleagues; failed to maintain a positive working relationship with the Board and the community and professional one with the community; failed to disclose a potential conflict of interest; failed to disclose material information to the Board during his superintendent information; failed to disclose relevant information during the District’s 2017 investigation; used his institutional or professional privileges for personal or partisan advantage; directed or encouraged another employee to falsify

matters of a past complaint; failed to comply with state regulations, written local school board policies, and other state and federal laws; engaged in matters that gave the appearance of impropriety; failed to be of good moral character as an employee of the District and prospective and current superintendent; revealed and/or engaged in conversation about confidential personnel and/or private information of another employee, student or parent, without their consent and with no professional purpose given the conversation itself was wrong and improper; failing to adhere to written local school board policies and state and federal laws regarding the hiring or continued employment, evaluation, and dismissal of personnel; used coercive means or promises of special treatment in order to influence professional decisions or colleagues; revealed confidential information concerning students without consent and during an improper conversation; violated Board Policy DBD (Local); violated Board Policy DH (Legal), (Local), and (Exhibit); violated Board Policy BJA (Legal) and (Local); and engaged in conduct constituting good cause for termination under Board policies and the express terms of his Contract.

157. The record as a whole establishes by a preponderance of the credible evidence that Respondent failed to perform his duties in the scope of employment that a person of ordinary prudence would have done under the same or similar circumstances, and that Respondent's actions were inconsistent with the continued existence of the employer-employee relationship.

158. Standard 1.1 of the Educators' Code of Ethics provides that: "The Educator shall not intentionally, knowingly or recklessly engage in deceptive practices regarding official policies of the district, educational institution, educator preparation program, the Texas Education Agency, or the State Board for Educator Certification (SBEC) and its certification process." Exh. P – 35.

159. The Texas Educators' Code of Ethics purpose and scope requires a Texas educator such as Mr. Gonzalez to "comply with standard practices and ethical conduct toward students,

professional colleagues...” He must “respect and obey the law, demonstrate personal integrity, and exemplify honesty and good moral character”. In “exemplifying ethical relations with colleagues, shall extend just and equitable treatment to all members of the profession”. Exh. P - 35.

160. Standard 2.5 of the Educators’ Code of Ethics provides that “The educator shall not discriminate against or coerce a colleague on the basis of race, color, religion, national origin, age, gender, disability, family status, or sexual orientation.” Exh. P – 35.

161. Standard 3.1 of the Educators’ Code of Ethics provides that “The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.” Exh. P – 35.

162. The Educators’ Code of Ethics further states that: “The Texas educator shall comply with standard practices and ethical conduct towards students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom. The Texas educator, in maintaining the dignity of the profession, shall respect and obey the law, demonstrate personal integrity, and exemplify honesty. The Texas educator, in exemplifying ethical relations with colleagues, shall extend just and equitable treatment to all members of the profession.” Exh. P – 35.

163. The Record as a whole establishes the fact that the Respondent failed to meet the accepted standards of conduct of a term contract employee educator. (*Record as a whole*).

164. The Record as a whole establishes the fact that the Respondent’s proposed termination of his term contract was not done for political reasons. (*Record as a whole*).

165. The Record as a whole establishes the fact that the Respondent failed to comply with standard practices and conduct toward colleagues and failed to enforce school district policy with his own conduct and intentional omissions. (*Record as a whole*).

166. The IHE finds the Growth Plan of January 12, 2023, given to Respondent was unreasonable and unrealistic. Exh. R – 12. See also [Tr. Vol. 4, 256:10-25, 257:1-25, and 258:1-13].

Discussion

This Independent Hearings Examiner (IHE) is tasked with passing judgment on an educator who has been employed as an educator or teacher up through Superintendent in some form or fashion for over 23 years with United ISD. His performance evaluations as Superintendent for school years 2021 – 2022 and 2022-2023 were either meeting expectations, exceeding expectations and/or clearly outstanding performance. Exhs. R – 15 and 16.

Respondent had been the subject of three complaints, two of which stem from the same time period of August 29, 2011 (Ana Cordova), and resurfacing on August 10, 2023 (Ana Cordova), and the other of April 29, 2017 (Rosalinda Perez). The August 29, 2011, one found “no evidence to corroborate the allegations” and the other no evidence to support of June 21, 2017. Exhs. R - 8 and 20. The most recent one was re-routed through DIA (LOCAL). Exh. R – 2. The First Cordova complaint was investigated by David Garcia, then Assistant Superintendent of Human Resources, who left the District under allegations of inappropriate comments and touch and with remedial directives issued to avoid “future complaints” from Respondent himself. Exhs. P – 50 and 51.

Respondent was seemingly on his way to being appointed Superintendent and became one. He became the lone finalist on April 19, 2021, and started as school superintendent for UISD on July 1, 2021. The initial term of Respondent's Contract was July 1, 2021, through June 30, 2024. [Exh. R-1, § 4]. Pursuant to an addendum dated June 27, 2022, UISD's Board of Trustees ("the Board") extended the term of the Contract by an additional two (2) years, ending June 30, 2026. [Exh. R-1, p. 20].

But two days after Respondent being named the finalist, a recorded telephone conversation would be his undoing and unravel serious matters from his past that in light of further unravelling call into serious question the objectivity and merits of disposition of the prior complaints.

Essentially, the Respondent's position is he had nothing to disclose to the Board as the matters had found no wrongdoing and the latest complaint was a "new and improved" reinvention of the Cordova 2011 complaint.

The problem with Respondent's position is the recorded conversation lends credence to the Cordova allegations made in 2011. Further, evidence from the hearing calls into serious question the objectivity and impartiality of the investigator. While to date the evidence at the hearing proved a non-sexual improper email and personal relationship between Gonzalez and Linda Garza, it revealed again the exercise of poor judgment by Respondent and his lack of good faith disclosure or abstention on hiring and salary of Garza as a Lead School Psychologist Under Safety and Crisis Management for the District. By doing this, it also calls into serious question the validity and genuine substance of the Perez complaint in 2017.

Having said this, the IIE has serious concerns of the judgment exercised by school district employees and Board members meeting with or socializing with media members/influencers of

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 [1st 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-LH-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-LII-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 IIE 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 DH (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 DH.

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

of the witnesses and the weight to be given their testimony. The findings of fact and conclusions of law supporting this recommendation are consistent with facts found by this IHE. Need to disclose, opportunity to uncover and revisiting the genuineness of evidence and findings, was dissected, and bantered back and forth in sometimes cumulative fashion before a truly *independent* hearing examiner appointed to listen, question, and dissect every point made. The destruction of the legitimate expectation of mutual trust with the school board and superintendent was in full display unfortunately. Reconciliation from the record is non-existent, but not the barometer for a “good cause” determination. Here, the IHE is tasked only with determining if “good cause” exists for the proposed termination. It does is the *only conclusion* warranted by the facts and their application to law.

The IHE so finds based on the facts and record of this case, that the school district has 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. His acts are inconsistent with the continued existence of the employer-employee relationship in this case. Good cause to terminate the term contract does exist.

After full and due consideration of the evidence, record, zealous and competent argument, and presentation on both sides, matters officially noticed, and the foregoing Findings and Conclusions of Law, in my capacity as Independent Hearings Examiner, it is hereby,

RECOMMENDED that the board of trustees of United Independent School District and any administrative personnel should in the future, refrain from requests and/or interactions with social media influencers other than in a professional role during working hours or discharging their roles as duly elected trustees of United Independent School District so as to avoid impropriety and

the appearance of impropriety and so as to act in a manner that promotes public confidence in the integrity and impartiality of their employment or service. It is further,

RECOMMENDED that the board of trustees of United Independent School District and any administrative personnel should in the future present reasonable growth plans in line with reasonable and accepted school board oversight customs, to its superintendents. It is further,

RECOMMENDED that the board of trustees of United Independent School District adopt the foregoing Findings of Fact and Conclusions of Law and enter an order consistent therewith that *good cause* exists to terminate David H. Gonzalez's contract with the District.

SIGNED FOR ENTRY AND ISSUED this 5th day of February 2024.



JAVIER GONZALEZ
INDEPENDENT HEARING EXAMINER

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