

February 1, 2024

Horacio D. Gonzalez, Superintendent – [h.gonzalez3@lajoyaisd.net](mailto:h.gonzalez3@lajoyaisd.net)

A handwritten signature in blue ink, which appears to read 'Christina F. Johnson'. The signature is written in a cursive style and is positioned in the lower right quadrant of the page.

Mike Morath, Commissioner of Education - [Commissioner@tea.texas.gov](mailto:Commissioner@tea.texas.gov)

Steve Lecholop, Deputy Commissioner of Governance - [steve.lecholop@tea.texas.gov](mailto:steve.lecholop@tea.texas.gov)





TEA gathered much of its evidence supporting its two allegations through public records, including tax records, as well as through conducting discovery and interviews. Petitioner does not dispute TEA's documentary evidence or that two of

heed admonishments for large and costly projects, the board enabled criminal conduct that harmed the district. The Commissioner finds unpersuasive Petitioner's argument that its board is not responsible for the myriad

9. TEA considered LJISD's response when formulating its Final Report, which was







29. One of RGV's directors, Victoria Cantu, is married to Trustee Alejandro Cantu, who joined the Board in November 2016.

30. In June 2017, the Board approved a memorandum of understanding (MOU) with RGV to administer LJISD's after-school supper/snack program.

31. Mr. Guajardo filed a Certificate of Interested Parties form, known as a Form 1295,

contracted to serve as its general contractor for a district-wide energy savings project conducted in two phases, which the board unanimously approved in 2017 and 2019. The project, detailed in finding of fact 17, involved expenses of more than \$36 million.<sup>4</sup>

Petitioner selected PSI from Education Service Center Region VIII's "buy board" or interlocal purchasing system, under an energy savings category. While using buy boards is

2018 through August 2018, sold the district sporting goods at inflated prices. Executive Director of Student Services Alex Guajardo (also involved with PSI) approved the purchases. Lopez later pled guilty to federal theft and bribery charges.

On appeal to SOAH, the SOAH administrative law judges found that TEA met its burden of proving, by a preponderance of the evidence, that the board violated Texas Education Code sections 11.051 and 11.1511, even under Petitioner's more narrow interpretation of these sections. The ALJs found that, collectively, the board's lack of oversight and management facilitated at least one criminal scheme. The ALJs found that in its PSI dealings, the board ignored Dr. Benavides's admonishments and voted unanimously to approve the two contract stages, thereby failing to show due diligence. The ALJs rejected Petitioner's argument pointing to its superintendent's responsibility to oversee contracts, citing Texas Education Code section 11.1511(b)(9)'s requirement that the board ensure that its superintendent properly maintains its financial procedures and records. Tex. Educ. Code § 11.1511(b)(9). Thus, they found that the proverbial buck stopped with the board, which needed to, but did not, effectively oversee the contracts.

The Commissioner concurs with the ALJs' findings and conclusions. The board's failure to more closely monitor a district-wide energy savings project valued at over \$36 million; its failure to consider alternative vendors to PSI, even after its superintendent, as its chief executive overseeing contracts, raised concerns about fiscal responsibility and potential conflicts; and its chronic failure to detect conflicts and hundreds of thousands of dollars siphoned as kickbacks, cannot simply be excused as the unfortunate, inevitable result of individuals' covert acts. Petitioner's citation of its

Petitioner misses the point that competent oversight under these circumstances required more than the bare minimum.

Petitioner argued to the Commissioner that this case risks imposing fiduciary liability on



commercial activity of one of the parties. *Id.* § 176.001(1-a). In such cases, the trustee files a conflicts disclosure statement (Form CIS), which the Texas Ethics Commission publishes.<sup>7</sup>

Vendors also must meet disclosure requirements. *See id.* § 176.006(a). The vendor files a conflict-of-interest questionnaire (Form CIQ) if the vendor has an employment or other business relationship with a trustee or the trustee’s family member. *Id.* The required CIS and CIQ forms are filed with the school district’s records administrator, which retains the forms under its retention schedule. *Id.* § 176.0065(2).

x *Disclosures for contract execution: Form 1295.* Texas Government Code section 2252.908 prohibits certain governmental entities, including school districts,<sup>8</sup> from entering into contracts with business entities unless the business entities submit, with their signed contracts, disclosure of interested parties forms. Tex. Gov’t Code § 2252.908(b), (d). The Texas Ethics Commission prescribes the form, called a “Certificate of Interested Parties” or, more colloquially, a Form 1295. *See id.* § 2252.908(e), (g). A contract entered without the required disclosures is voidable in some circumstances. *See id.* § 2252.908(f-1).

Petitioner’s violations of disclosure requirements:

TEA charged Petitioner with failing to meet the disclosure requirements described above through its trustees’ and administrators’ dealings with Xizaka, LLC and with RGV Read and Feed, which are discussed below.

*Xizaka, LLC.*







The required elements of a binding Texas contract are (1) offer, (2) acceptance, (3) meeting of the minds, (4) consent to terms, and (5) execution and delivery with intent to be mutual and binding. *See Wal-Mart Stores, Inc. v. Lopez*, 93 S.W.3d 548, 555 (Tex. App.—Houston [14th Dist.] 2002, no pet.). To be enforceable, a contract must address all essential and material terms with a “reasonable degree of certainty and definiteness.” *Fischer v. CTMI, L.L.C.*, 479 S.W.3d 231, 237 (Tex. 2016) (cleaned up). Nonessential terms need not be addressed with the same certainty and definiteness. Parties can also supply indefinite contract terms through performance, which resolves uncertainty in any missing or indefinite terms. *Id.* at 240 (citing Restatement (Second) of Contracts § 34(2), (3)).

Petitioner argues that the MOU cannot be a contract because it lacked essential terms.

contracted with another facility provider.<sup>10</sup> However, Petitioner and RGV mutually agreed to

Petitioner's efforts to, *inter alia*, shift responsibility for contract monitoring to its superintendent—whose admonitions it failed to heed—reflect serious accountability shortcomings. Petitioner's board missed several marks; it failed to exercise diligence or timely discover multiple criminal acts occurin

board members or the administration clearly defined by the Texas Education Code; or as the Commissioner otherwise determines necessary. Tex. Educ. Code § 39.003(a)(3), (6), (17).

4. Following a special investigation, the board of trustees for a school district may request a hearing before SOAH if it disagrees with the final report or a sanction or intervention recommended by TEA in the report. Tex. Educ. Code § 39.005.

5. Not later than 90 days after the date on which the school district requests a hearing, unless extended, the ALJs conducting the hearing shall issue and submit to the Commissioner findings of fact and conclusions of law. Tex. Educ. Code § 39.005(h). The Commissioner shall provide an opportunity for the parties to present oral argument. *Id.* § 39.006(a). Then, after considering the parties' arguments, the ALJs' findings of fact and conclusions of law, and the hearing record before SOAH, the Commissioner shall issue a written decision containing findings of fact, conclusions of law, and sanctions, interventions, or other actions authorized by law. *Id.* § 39.006(b), (c).<sup>14</sup>

6. TEA has the burden of proof in this proceeding by a preponderance of the evidence. 19 Tex. Admin. Code § 155.427; *Granek v. Tex. St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

## **ALLEGATION ONE**

7. An independent school district is governed by a board of trustees. Section 11.051 of the Texas Education Code lays out the general requirements of a board of trustees, “who, as a body corporate,” shall oversee the management of the district and ensure that the superintendent implements and monitors plans, procedures, programs, and systems to achieve appropriate, clearly defined, and desired results in the major areas of district operations. Tex. Educ. Code § 11.051(a)(1)–(2).

8. A board of trustees shall “seek to establish working relationships with other public entities to make effective use of community resources and to serve the needs of public school

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<sup>14</sup> The Commissioner amends the ALJs' conclusion of law to add





22. Trustee Cantu failed to file an affidavit stating that he had a substantial business interest in RGV while RGV was under a MOU with LJISD, in violation of Texas Local Government Code section 171.004(a).

23. Trustee Cantu failed to abstain from participating in the Board's deliberations regarding the possible termination of the MOU with RGV, in violation of Texas Local Government Code section 171.004(a).

24. Trustee Cantu's violations of Texas Local Government Code section 171.004(a) were committed knowingly and constituted offenses under Texas Local Government Code section 171.003(a)(1).

25. Until June 2019, Trustee Cantu knowingly failed to file a Form CIS with respect to RGV, as required because of his family relationship with one of its directors, in violation of Texas Local Government Code section 176.003(a).

26. Trustee Cantu had an employment relationship with RGV and received sums above the threshold amount of taxable income from a vendor doing business with LJISD for two separate years. Trustee Cantu violated Texas Local Government Code section 176.003(a) when he failed to file a conflicts disclosure statement.

27. Mr. Guajardo violated Texas Government Code section 2252.908(d) when he failed to disclose interested parties of RGV.

28. Mr. Lopez failed to disclose himself as an interested party for Xizaka on a Form 1295 prior to engaging in business transactions with LJISD, in violation of Texas Government Code section 2252.908(d).

### ORDER

After due consideration of the record, matters officially noticed, the foregoing Findings of Fact and Conclusions of Law, and the parties' respective oral arguments to the Commissioner, in my capacity as Commissioner of Education, it is hereby ORDERED that Pof (n)2 (,)2 5yt (f)3 ( L)n3J-0.00

It is further ORDERED that the Texas Education Agency established Allegations One and Two by a preponderance of the evidence. Allegations One and Two are SUSTAINED.

Finally, it is ORDERED that a board of managers be appointed, as authorized by law, to govern the La Joya Independent School District in lieu of its elected board of trustees, until such time that the Commissioner discharges the board of managers, upon finding that no further intervention is required.

SIGNED AND ISSUED this 1st day of February 2024.

A handwritten signature in black ink, appearing to read "Mike Morath", is written over a thick, solid black horizontal line. The signature is cursive and somewhat stylized.

MIKE MORATH  
COMMISSIONER OF EDUCATION