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**Re: La Joya ISD v. Texas Education Agency**  
**Docket # 008-R8-06-2023**

To the Counsel and Parties Addressed:

Enclosed is a copy of the **Decision of the Commissioner**, issued by the Commissioner of Education in the above-styled and numbered matters.

Please be advised that a judicial appeal of this decision is governed by Tex. Educ. Code § 39.007.

If I may be of further assistance, please do not hesitate to call me at 512-463-0489.

Sincerely,



Christina Eischens  
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Encl.

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LA JOYA INDEPENDENT SCHOOL DISTRICT,	§	BEFORE THE
	§	
Petitioner,	§	
	§	
v.	§	COMMISSIONER OF EDUCATION
	§	
TEXAS EDUCATION AGENCY,	§	
Respondent.	§	THE STATE OF TEXAS

**DECISION OF THE COMMISSIONER**

**STATEMENT OF THE CASE**

This is a case of first impression following the Legislature’s 2021 enactment of Senate Bill 1365, which amended procedures for the Texas Education Agency’s (TEA)’s special investigations of school districts. The bill also created procedures for school districts to contest TEA’s final investigative reports that recommend certain actions including, as applicable here, appointment of a board of managers. *See* Tex. Educ. Code §§ 39.005–.006.<sup>1</sup> When a school district timely requests an appeal under section 39.005(b), before TEA’s final report reaches the Commissioner, the State Office of Administrative Hearings (SOAH) conducts an evidentiary hearing and makes findings of facts and conclusions of law without recommending relief. *Id.* § 39.005(h). The Commissioner then hears TEA’s and the school district’s respective oral arguments and, after considering those arguments, the hearing record, and SOAH’s findings and conclusions, issues a final decision with findings of fact, conclusions of law, and any sanctions, interventions, or other actions authorized by law. *Id.* §§ 39.006(a)–(c).

For the reasons herein, the Commissioner issues this decision (1) accepting and adopting, as amended, the SOAH administrative law judges’ October 5, 2023 Findings of Fact and Conclusions of Law and (2) finding that this case warrants appointment of a board of managers.

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<sup>1</sup> *See* Acts 2021, 87th Leg., R.S., ch. 1046 (S.B. 1365), § 2.05, effective September 1, 2021. The Commissioner authorizes special investigations under Texas Education Code Chapter 39. *See* Tex. Educ. Code § 39.003(a).

### Procedural background and brief summary

Petitioner is an independent school district located in the Rio Grande Valley of south Texas. In 2022, the U.S. Attorneys' Office charged two of Petitioner's school board trustees and three of its central administrators with various federal financial crimes for actions taken from 2017–2020, while serving the district. Based on these charges and the defendants' guilty pleas,<sup>2</sup> as well as other complaints TEA received about the board's alleged fraud and violations of law, the Commissioner authorized TEA's special investigations unit to conduct a special investigation of Petitioner. *See* Tex. Educ. Code § 39.003(a)(3), (6), (17). After investigating, TEA issued a preliminary report, to which Petitioner responded. After TEA issued its final investigative report recommending appointment of a board of managers, Petitioner timely requested a hearing before SOAH. *See id.* § 39.005(b). SOAH appointed two administrative law judges (ALJs), who held an August 28, 2023 hearing and, after an agreed extension, issued their October 5, 2023 Findings of Fact and Conclusions of Law. *Id.* § 39.005(h). The Commissioner heard the parties' respective oral arguments on October 25, 2023, and after considering those arguments, the SOAH hearing record, and the ALJs' findings of fact and conclusions of law, issues this final decision.

### TEA's special investigation

Based on its investigation's findings, TEA raised the following two allegations against Petitioner:

**A. Allegation One.** TEA charged Petitioner with failing to oversee and manage the school district and to make effective use of community resources to serve the public and students, as required by Texas Education Code sections 11.051 and 11.1511. TEA asserted that these failures created an environment that facilitated trustees' and administrators' engagement in various criminal acts and conspiracies.

**B. Allegation Two.** TEA charged Petitioner with failing to ensure district compliance with disclosure requirements for certain business and familial relationships.

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<sup>2</sup> The five defendants pled guilty to various federal charges for actions taken while serving the district, including bribery, money laundering, extortion, and wire fraud.

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 Petitioner's trustees and three of its administrators engaged in various criminal acts. The question, from Petitioner's view, is whether the board is culpable for what Petitioner characterizes as rogue individuals' bad acts.

In the hearing Petitioner requested before SOAH, TEA presented testimony by four witnesses, three of whom work in TEA's Special Investigations Unit. TEA also called as a witness Petitioner's current trustee and board president, Alex Cantu, who TEA alleged failed to file required disclosures as stated in Allegation Two. Petitioner called TEA's director of special investigations. Based on the hearing testimony and evidence, the ALJs issued a thirty-five-page Findings of Fact and Conclusions of Law with a summary of the facts and law at issue in this case. The ALJs found that TEA met its burden on all but one charge, which concerned Trustee Salinas's admitted extortion of a district vendor, L&G Engineering, and his retaliatory vote to terminate an insurance contract in which L&G's chief executive officer had an indirect personal interest. The ALJs found no evidence that the board's vote to terminate the insurance contract was based on any other trustee's knowledge of Salinas's extortion scheme.

In its October 25, 2023 oral argument to the Commissioner, Petitioner acknowledged the five indicted individuals' criminal acts but restated its position that the board was not culpable for their wrongdoing. Petitioner argued that its board has since taken remedial action, including adopting new procurement procedures, reviewing previous contracts, and taking other safeguards to prevent recurrence of the criminal activities that plagued the district for two years. Petitioner requests appointment of a conservator in lieu of a board of managers, which it argues would enable it to continue improving its local practices and policies while retaining its elected trustees.

The Commissioner considered Petitioner's requested alternative remedy. However, after reviewing the record and SOAH's findings and conclusions, he finds that, because the board showed considerable, chronic laxity in overseeing the district by failing to effectively oversee its business transactions, to adopt or follow policies that safeguarded its students and the public, or to

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 covert acts that occurred under its relaxed watch. Therefore, he finds that appointment of a board of managers is warranted.

#### FINDINGS OF FACT

After due consideration of the record and the parties' arguments, in my capacity as the Texas Commissioner of Education, I accept in full and without amendment the following Findings of Fact issued on October 5, 2023 by the State Office of Administrative Hearings:<sup>3</sup>

1. La Joya Independent School District (LJISD) is subject to the oversight of the Texas Education Agency (TEA).
2. LJISD receives over \$10,000 in federal funds each year, subjecting it to federal laws and regulations.
3. On March 21, 2022, the Commissioner of Education authorized a Special Investigation.
4. TEA's Commissioner of Education delegated authority to conduct the Special Investigation to TEA's Associate Commissioner of Education, Ashley Jernigan.
5. TEA adopted written procedures for conducting special investigations, made them available on its website, and trained relevant individuals on them.
6. TEA followed its procedures when conducting the Special Investigation.
7. After initiating a special investigation, TEA issued a preliminary report to LJISD on February 28, 2023. The preliminary report included: a written report of TEA's preliminary findings of the investigation; any evidence relied on by TEA in making the preliminary findings; the identity of any witness whose statements TEA relied on in making the preliminary findings; and an opportunity for a response from LJISD to the preliminary findings.
8. LJISD provided a written response to the preliminary report on March 30, 2023.

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<sup>3</sup> See Tex. Educ. Code § 39.006(c), (e), (f).

9. TEA considered LJISD's response when formulating its Final Report, which was issued on May 9, 2023, and included recommendations for sanctions and interventions.

10. The Final Report advised the parties of the legal authority and jurisdiction under which the hearing was to be held; referenced the particular sections of the statutes and rules involved; and provided a plain statement of the factual matters asserted. The Final Report also advised the parties that, if LJISD requested a hearing before the State Office of Administrative Hearings (SOAH), then SOAH would separately notify them of the date, time, and location of the hearing.

11. LJISD timely requested a contested case hearing, and the matter was referred to SOAH Administrative Law Judges (ALJs) Vasu Behara and Pratibha J. Shenoy.

12. The parties agreed to a request for a continuance, which was granted on July 20, 2023, in Order No. 3, and the deadline for the ALJs to submit Findings of Fact and Conclusions of Law to TEA was extended to October 9, 2023.

13. The ALJs convened a hearing on the merits via Zoom videoconference on August 28, 2023. Attorneys Matthew Tiffie and Melissa Tico Evans represented TEA. Attorneys John B. Scott and J. Andrew Scott represented LJISD.

#### **ALLEGATION ONE**

14. In May 2017, and then again in June 2019, LJISD's Board of Trustees (Board) entered into energy savings contracts with Performance Services Incorporated (PSI). The PSI contracts were procured through TEA Education Service Center Region VIII and the Interlocal Purchasing System under the region's Energy Savings Performance Contracts category. The agreements with LJISD included PSI overseeing two phases of energy savings projects and assisting LJISD with securing municipal bonds to fund the various energy savings projects.

15. Before the Board chose PSI for the energy savings projects, Alda T. Benavides (former LJISD superintendent and current Board trustee) cautioned the Board against making such a big investment when there was no evidence that the arrangement would actually save LJISD

money. Dr. Benavides also voiced concerns to the Board about a partnership between trustees and PSI because certain trustees and administrators had a close relationship with PSI.

16. LJISD's procurement manual requires that procurement transactions be conducted by providing for a full and open competition where no proposer or bidder has a competitive advantage over another vendor. Despite this requirement, LJISD did not consider vendors other than PSI for the energy savings contract.

17. Phase One projects included installing LED lights at 56 district sites (mostly campuses) at a cost of approximately \$13 million. In June 2019, LJISD approved Phase Two of the energy savings project at a cost of approximately \$24.25 million. The work included various projects such as: heating and air conditioning replacements, roof repairs and/or replacements, installation of solar photovoltaic field arrays, installation of power conditioning panels, installation of artificial turf football fields, and various night school improvements.

18. PSI hired subcontractors to perform the various energy savings projects, based on LJISD's recommendations of its "preferred vendors." Contract awards were then granted to the identified companies based on the job order contract procurement method, which is defined in Texas Government Code section 2269.403. Through this method of procurement, PSI awarded subcontracts without seeking bids and based its decisions primarily on LJISD's recommendations.

19. Jose Luis Morin, Assistant Superintendent of Student Services, and Alex Guajardo, LJISD Executive Director for Student Services, made recommendations to the Board regarding the preferred vendors to perform PSI projects, and Trustee Armin Garza used the Board as a vehicle to approve those recommendations.

20. The preferred vendors inflated prices for the projects, which were paid by LJISD. The preferred vendors then paid kickbacks to Mr. Morin, Mr. Guajardo, and Trustee Garza.

21. Trustee Garza received bribes and kickbacks of approximately \$234,000 for his votes and recommendations for preferred vendors made as an LJISD trustee. On January 6, 2022, Trustee Garza pleaded guilty to federal criminal charges of conspiracy, theft and bribery, wire fraud, and extortion in violation of 18 U.S.C. sections 666(a)(i), 1343, 1346, 1951, and 1952.

22. Mr. Guajardo received bribes and kickbacks of approximately \$275,000 for his recommendations of preferred vendors. On January 21, 2022, Mr. Guajardo pleaded guilty to federal criminal charges of conspiracy, bribery, money laundering, and wire fraud in violation of 18 U.S.C. sections 1952(a)(3) and 1956, and Texas Penal Code section 36.02.

23. Mr. Morin received bribes and kickbacks of approximately \$28,000 for his recommendations of preferred vendors. On February 7, 2022, Mr. Morin pleaded guilty to federal criminal charges of bribery and wire fraud in violation of 18 U.S.C. sections 1952(a)(3) and 1956.

24. Rodrigo Lopez, LJISD's Asset Management Department Administrator, was the registered agent for Xizaka LLC from April 2018 through August 2018.

25. Between April and August 2018, Xizaka sold sporting goods to LJISD at inflated prices and paid the extra money to Mr. Guajardo, who approved the inflated sporting equipment purchases. On August 11, 2022, Mr. Lopez pleaded guilty to federal criminal charges of theft and bribery in violation of 18 U.S.C. section 666(a)(i) and 2.

26. Beginning February 2019, Trustee Oscar Salinas had a consulting agreement with an LJISD vendor, L&G Engineering. Trustee Salinas demanded additional funds from L&G and when L&G's CEO refused, Trustee Salinas threatened to have the Board terminate an LJISD insurance contract. The insurance contract was administered by the spouse of a political rival to Trustee Salinas, and the rival was supported by L&G's CEO. After L&G's CEO terminated the consulting agreement with Trustee Salinas, the Board voted to terminate the insurance contract LJISD had with the spouse of Trustee Salinas's rival. Trustee Salinas voted in favor of the termination of the insurance contract.

27. On March 3, 2022, Trustee Salinas pleaded guilty to a federal criminal charge of extortion in violation of 18 U.S.C. section 195.

## **ALLEGATION TWO**

28. Mr. Guajardo was the registered agent for RGV Read and Feed (RGV), a domestic nonprofit organization formed in March 2017.



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, but failed to disclose the names of any interested parties for RGV on the form, leaving that section blank. Mr. Guajardo failed to complete a Conflict of Interest Questionnaire (Form CIQ) vendor disclosure regarding his status as the registered agent for RGV.

32. In 2018, Trustee Cantu received a consulting fee of \$136,550 from RGV. In 2019, Trustee Cantu received a consulting fee of \$134,975 from RGV.

33. Until June 2019, Trustee Cantu did not file a Local Government Officer Conflicts Disclosure Statement (Form CIS) disclosing his spouse was a director for RGV.

Trustee Cantu failed to disclose information on a Form CIS that RGV paid him as an employee in 2018 and 2019.

34. Trustee Cantu did not file an affidavit with LJISD disclosing his substantial interest in RGV.

35. In November 2019, LJISD voted to terminate the MOU with RGV. During the November 11, 2019 LJISD Board Meeting, Trustee Cantu participated in deliberations regarding the possible termination of the RGV MOU, which had a special economic impact on RGV.

36. Xizaka became a LJISD vendor for athletic supplies in February 2018. Mr. Lopez failed to disclose the names of interested parties for Xizaka on Form 1295 prior to business transactions with LJISD. Mr. Lopez did not file a Form CIS. Until November 2019, he failed to complete a Form CIQ disclosing his ownership of Xizaka.

## DISCUSSION

### **A. Allegation One**

Performance Services Incorporated. Allegation One largely concerned Petitioner's contract with Performance Services Incorporated (PSI), a company with which the board

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 permissible, the circumstances here required more scrutiny. In selecting PSI, Petitioner considered no other potential vendors, despite the project’s enormous scope, the district’s own procurement manual promoting full and open competitive bidding without competitive advantage, and then-superintendent Alda Benavides’s two admonishments to the board. Dr. Benavides specifically cautioned the board against investing in such a large project without first ensuring its efficacy through a smaller pilot. She also cautioned the board about the close relationships between PSI and trustees. Despite these warnings, the board unanimously voted to approve PSI for both phases, without considering alternative vendors. Trustee Garza went on to collect the bribes and kickbacks for which he later pled guilty.

TEA asserts that in carrying out its contracts, PSI hired as subcontractors “preferred vendors” recommended by Assistant Superintendent of Student Services Jose Morin and Executive Director for Student Services Alex Guajardo, then ushered through the board by Trustee Garza. Using a “job order” procurement method to secure subcontractors, which avoided competitive bidding, the conspirators were able to promote their preferred vendors. *See* Tex. Gov’t Code § 2269.403. The preferred subcontractors then overcharged the school district, and Garza, Morin, and Guajardo received kickbacks from the overcharges in a scheme they dubbed “Cartel City” in their social media chats.<sup>5</sup> All three later pled guilty to federal charges for their actions.

Xizaka, LLC. Allegation One also concerned Xizaka, LLC. Rodrigo Lopez, Petitioner’s Asset Management Department administrator, was the owner and registered agent of Xizaka, LLC, a sports equipment company. Xizaka became a district vendor in February 2018 and, from April

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<sup>4</sup> PSI also assisted Petitioner in securing municipal bonds for the energy savings project.

<sup>5</sup> Garza received approximately \$234,000 in bribes and kickbacks, Guajardo received approximately \$275,000, and Morin received approximately \$28,000.

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 superintendent's duty to oversee contract execution is unavailing, given the board's superseding oversight of the superintendent. *See* Tex. Educ. Code §§ 11.051, 11.1511(b)(9). Indeed, this "downstream" accountability undermines the board's ongoing judgment in governance. Likewise, its efforts to insulate itself by pointing out PSI's inclusion on Region VIII's "buy board" reflects a continuing inability to recognize the prudence of considering other vendors—which would follow its own procurement manual—particularly for a novel and costly energy savings project, and the *necessity* of doing so after the superintendent's admonitions.

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 trustees, a burden that would disincentivize trustees from committing to unpaid public service. There is no doubt that trustees across Texas provide a valuable and vital service to Texas schools. Their contribution to Texas public education is necessary and commendable. Texas places significant trust in its school boards' discretion in overseeing our public schools and our youth. Trustees' responsibilities are statutory and do not impose the liability that Petitioner raises; trustees have no personal civil liability to taxpayers. But neither that fact nor trustees' unpaid service excuse such a severe lack of oversight by those at the helm. Trustees may not serve the public if, as here, their lax oversight enables self-dealing. This case illustrates why trustees must proactively adopt and follow policies that create safeguards for district business and must exercise reasonable diligence to ensure fiscal transparency and responsibility. The board's inattention and the alacrity with which it twice approved two PSI contract phases, unanimously and without due diligence despite apposite warnings, created opportunities not for Texas students but for criminals.

The Commissioner finds that TEA met its burden of proof on Allegation One on all charges but the charge regarding Trustee Salinas's extortion of L&G Engineering. The Commissioner agrees with the ALJs that the evidence does not support a conclusion that any trustee other than Salinas voted to terminate the insurance contract based on his extortion scheme. TEA established all other charges in Allegation One. The board, acting as a body corporate, failed to effectively oversee the district or to make effective use of community resources and serve its students and the public. *See* Tex. Educ. Code §§ 11.051, 11.1511.

**B. Allegation Two**

TEA charged Petitioner with failing to effectively oversee the district to ensure compliance by trustees, administrators, and vendors with state laws requiring certain disclosure forms. These forms are designed to promote transparency and to avoid the opportunistic self-dealings that occurred here. The relevant forms are as follows:

- Substantial interest affidavits. Texas Local Government Code Chapter 171 requires local public officials, including trustees, to file affidavits with school districts describing any “substantial interest” they have in business entities that have or may have business with the districts. Tex. Loc. Gov’t Code § 171.004(a). The statute defines a “substantial interest” in a business entity through a trustee’s ownership or income percentage. *See id.* § 171.002(a).<sup>6</sup> The affidavit requirement also applies to officials whose relatives within the first degree of consanguinity or affinity meet the substantial interest criteria. *Id.* § 171.002(c). A trustee commits a Class A misdemeanor by knowingly failing to file a required affidavit with the school district disclosing the nature and extent of the trustee’s or applicable relative’s interest and fails to abstain from further participation in a matter. *Id.* § 171.003(a). The trustee also commits a violation if the trustee with a substantial interest in a business fails to abstain from voting and further participation in a matter that will have a special economic effect on the business entity beyond the matter’s general effect on the public. *Id.* § 171.004(a)(1).
- Trustee and vendor disclosures: Forms CIS and CIQ. Texas Local Government Code Chapter 176 requires local government officers, including trustees, and vendors contracting with school districts to each file certain disclosures. *See* Tex. Loc. Gov’t Code §§ 176.002(a), .003(a), .006(a). Trustee disclosures are required when a school district enters or is considering entering a contract with a vendor that has an employment or other business relationship with the trustee or the trustee’s family member that results in income exceeding \$2,500 in a twelve-month period, or the vendor has a family relationship with the trustee. *Id.* § 176.003(a)(1), (2)(A), (C). A “business relationship” is a connection between two or more parties based on a

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<sup>6</sup> A substantial interest exists where a trustee owns (1) 10 percent or more of the business entity’s voting stock or shares; (2) either 10 percent or more or \$15,000 or more of the entity’s fair market value; or (3) the trustee’s funds received from the entity exceed 10 percent of the trustee’s gross income the preceding year. Tex. Loc. Gov’t Code § 171.002(a)(1)–(2).

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).

- 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

TEA alleged that Xizaka, LLC’s owner, Asset Management Department administrator Rodrigo Lopez, failed to file a required Form CIS and a Form 1295 and initially filed no Form

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<sup>7</sup> See <https://www.ethics.state.tx.us/forms/conflict/> (last visited Jan. 30, 2024).

<sup>8</sup> See Tex. Gov’t Code § 2252.908(b)(1) (applying to governmental entities requiring action or vote before signing contracts, which includes school districts).

CIQ to disclose his interest in Xizaka, filing that disclosure form only in November 2019.<sup>9</sup> Petitioner did not contest Lopez's failure to file these required forms.

*Rio Grande Valley (RGV) Read and Feed.*

TEA asserts that in 2017, Petitioner's Director of Student Services, Alex Guajardo, formed a nonprofit organization, RGV Read and Feed, to provide free meals for at-risk children. RGV received pass-through funding for its services from the U.S. and Texas Departments of Agriculture, but it needed a location to serve children. Accordingly, RGV executed a memorandum of understanding (MOU) with Petitioner to administer its program using Petitioner's facilities; this in turn served Petitioner's after-school, at-risk students by feeding them. The MOU ran from June 2017 through November 2019, when the board voted to terminate it.

Between 2017 and 2019, Guajardo served as RGV's CEO and director, earning more than \$350,000 in that capacity. Trustee Cantu served as a consultant for RGV, earning \$136,550 and \$134,975, respectively, in 2018 and 2019. In those same years, Cantu's wife, Victoria Cantu, served on RGV's board, earning \$61,550 and \$149,975, respectively.

TEA alleged that, despite Guajardo's employment with and interest in RGV, he failed to file a Form CIQ disclosing his status as RGV's registered agent until November 2019. Although he filed a Form 1295 for RGV, he failed to disclose any interested parties on the form, instead leaving that section blank. Guajardo never filed a Form CIS.

Also regarding RGV, TEA alleged that Trustee Cantu failed to disclose his own consultancy and his spouse's membership on its board, although they far surpassed the income threshold requiring him to disclose their substantial interest in RGV. Trustee Cantu also failed to file a Form CIS disclosing his own employment with RGV as a business interest, as well as a timely Form CIS disclosing his spouse's membership on RGV's board. In November 2019, Cantu also participated in board deliberations about terminating the MOU without disclosing his interest, which discussions had an economic effect on RGV beyond that of the general public. In November

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<sup>9</sup> Lopez then overcharged Petitioner, while another administrator approved purchases and took kickbacks.

2019, Cantu finally filed a Form CIS disclosing his spouse's membership on RGV's board. He never filed any other disclosure form.

Petitioner argues that Trustee Cantu's failures were good-faith mistakes, asserting that in 2017, he states he inquired about filing a Chapter 171 disclosure, and both a school district attorney and then-superintendent Benavides advised him that he did not need to file disclosure forms. On allegedly receiving the opposite advice in 2019, Cantu filed a Form CIS within seven days, which Petitioner asserts falls within the penalty-free range to correct errors after discovering them.

Significantly, the ALJs, who observed Trustee Cantu when he testified at the SOAH hearing, found his testimony evasive and not credible. In Cantu's videotaped testimony before the ALJs, he testified that, despite serving two years as an RGV consultant for which he earned \$270,000, he could recall no details of any action he had taken as RGV's consultant. He also denied recollection of any details about his spouse's service on RGV's board. However, he expediently recalled being advised not to file a disclosure form in 2017 before then being advised to file it within a week of his doing so in 2019. The Commissioner agrees with the ALJs' conclusion that Trustee Cantu's improbable memory lapses for the work for which he and his spouse earned over \$576,000 in two years undermines his credibility. His inability to recall all but potentially exonerating details appears deceptive. Deceptive testimony is evidence of intentional failure to file required disclosures. The record thus supports a reasonable inference that Cantu intentionally failed to file a Form CIS disclosing his substantial interest in CVS and, until June 2019, a Form CIS disclosing his spouse's involvement with RGV.

Was the memorandum of understanding between Petitioner and RGV a contract, requiring disclosure forms?

Petitioner also argues that the memorandum of understanding (MOU) between Petitioner and RGV was not a contract, asserting it does not satisfy the essential terms of a contract so did not require a Form 1295. The ALJs disagreed with this assertion and concluded that the MOU was, in fact, a contract. The Commissioner agrees with the ALJs' finding that the MOU was a contact and, consequently, required disclosures and a Form 1295.



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. According to Petitioner, the MOU does not sufficiently describe such terms as what services RGV would provide; how often it would provide them; what and how many meals it would provide; and payment terms. At the same time, Petitioner concedes that RGV was directing a pass-through food service program providing at-risk children with subsidized meals paid through funding by the Federal and State Departments of Agriculture. RGV needed a venue to perform its services, as well as access to children needing those services. Petitioner had facilities where RGV could conduct its services, as well as after-school students in those facilities who could benefit from RGV’s services.

While there was no monetary consideration between Petitioner and RGV, that is not required to form a contract; parties can contract with non-monetary consideration, such as an exchange of goods or services. Petitioner partially conceded at oral argument before the Commissioner that RGV’s funding increased with an increased volume of meal recipients. Petitioner also had an interest in feeding at-risk children in its care, ensuring their welfare. The MOU also reduced Petitioner’s after-hours administrative burden by delegating meal services to a third party. Although the Department of Agriculture, not Petitioner, actually funded the meals, the parties bargained for the benefits addressed above and voluntarily entered the MOU. Petitioner could have contracted with another meal service provider or, conversely, RGV could have

contracted with another facility provider.<sup>10</sup> However, Petitioner and RGV mutually agreed to sufficiently defined terms, memorialized in the MOU, whereby for two years, each rendered non-monetary performance.<sup>11</sup> Despite Petitioner's contention that the MOU lacked essential terms, the parties performed under it from June 2017 until the board voted to terminate it in November 2019, thus defining any missing or incomplete terms by their course of dealing.

The Commissioner finds that the MOU was a contract. The agreement included the essential contract elements of offer, acceptance, meeting of the minds, consent, and execution and delivery with intent to be mutual and binding. *Lopez*, 93 S.W.3d at 555. It required board approval and established sufficient essential terms to serve district students for more than two years. Because the MOU was a contract, it required a Form 1295. None was filed.

The Commissioner concurs with the ALJs that TEA met its burden of proving Allegation Two. The board's lax oversight resulted in several instances of board members, administrators, and vendors failing to file required disclosure forms, facilitating self-dealing and criminal acts.

#### Sanctions and interventions

TEA investigators sought appointment of a board of managers. Petitioner requested that the Commissioner consider, in lieu of appointment of a board of managers, appointment of a conservator, with other potential conditions. The Commissioner considered all parties' arguments, including Petitioner's proposal, but finds that appointment of a board of managers is warranted.

Here, Petitioner's oversight failures were widespread, significant, and chronic. While the board is commended for taking subsequent remedial actions, including adopting procurement procedures and other safeguards, those should have already been in place and followed.

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<sup>10</sup> As Petitioner argued to the Commissioner, RGV could have provided its services at a different location, such as a church. Petitioner likely offered a higher volume of students already on site, who did not require transportation to be fed, as may have been the case with a church. In any event, the parties elected to enter an agreement whereby each party tendered non-monetary consideration to the other.

<sup>11</sup> For the same reason, the Commissioner rejects Petitioner's argument that the parties lacked a "business relationship" based on an exception for transactions subject to fees or rates regulated by federal, state, or local government entities. Tex. Loc. Gov't Code § 176.001(1-a). Though the government provided subsidies for RGV to provide free meals to at-risk children, that is not "subject to a rate or fee regulation" as contemplated by this exception, such as those that would apply to utility providers with set rates, for which consumers have no options. Here, the parties freely bargained for the MOU.

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 occurring under its relaxed watch. This begs the question of what other errors could slip by for which the board would likewise deny responsibility, having not sanctioned crime by majority vote. With statutory oversight duties comes a duty to affirmatively monitor school district finances and contracts. That did not occur here, and the board’s continuing disavowal of its contribution to the criminal schemes that occurred in its district underscores why this board cannot continue to serve.

#### CONCLUSIONS OF LAW

After due consideration of the record, the parties’ arguments, and the foregoing Findings of Fact, in my capacity as Commissioner of Education, I accept and incorporate the following Conclusions of Law by the State Office of Administrative Hearings, except where amended, with a written explanation of the legal basis and reason for the amendment:<sup>12</sup>

1. TEA has jurisdiction over this matter pursuant to Texas Education Code section 39.003 and 19 Texas Administrative Code sections 157.1131–.1135. The Commissioner has jurisdiction to hear and decide this matter, pursuant to Texas Education Code section 39.006 and 19 Texas Administrative Code section 157.1134.<sup>13</sup>

2. SOAH has jurisdiction over the hearing of this matter. Tex. Educ. Code § 39.005; Tex. Gov’t Code ch. 2003; 19 Tex. Admin. Code § 157.1133(1).

3. TEA’s Commissioner of Education is authorized to institute a special investigation in response to complaints submitted to the agency with respect to alleged violations of civil rights or other requirements imposed on the state by federal law or court order; in response to an allegation involving a conflict between members of the board of trustees or between the board and the district administration if it appears that the conflict involves a violation of a role or duty of the

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<sup>12</sup> See Tex. Educ. Code § 39.006(d), (f).

<sup>13</sup> The Commissioner amends this conclusion of law to add the legal basis for his jurisdiction. See Tex. Educ. Code § 39.006(d), (f).

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 the statutorily prescribed proceedings before the Commissioner after the SOAH hearing. See Tex. Educ. Code § 39.006(d), (f).

students in the community,” and “monitor district finances to ensure that the superintendent is properly maintaining the district’s financial procedures and records.” Tex. Educ. Code § 11.1511(a), (b)(1), (9).

9. Mr. Morin, Mr. Guajardo, and Trustee Garza were all operating in their respective professional capacities with LJISD and acted within their apparent authority when selecting preferred vendors for PSI.<sup>15</sup> See Restatement (Third) of Agency § 7.08.<sup>16</sup> Mr. Lopez was operating in his professional capacity with LJISD when selling LJISD sporting equipment from Xizaka LLC.

10. The Board, acting as a body corporate, lacked oversight and management for the PSI contract, which facilitated a criminal scheme in violation of Texas Education Code § 11.051.

11. The Board, acting as a body corporate, failed to make effective use of community resources to serve the needs of the public and students of the community, as evidenced by their involvement in and ineffective oversight to prevent the PSI and Xizaka schemes in violation of Texas Education Code section 11.1511.

## **ALLEGATION TWO**

12. A trustee is considered to have a “substantial interest” in a business entity when (1) the trustee owns 10 percent or more of the voting stock or shares of the business entity; (2) the trustee owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or (3) funds received by the person from the business entity exceed 10 percent of the person’s gross income for the previous year. Tex. Loc. Gov’t Code § 171.002(a)(1)–(2).

13. A public official is considered to have a substantial interest in a business entity if the official’s relative within the first degree of consanguinity or affinity has a substantial interest in the business entity. Tex. Loc. Gov’t Code § 171.002(c).

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<sup>15</sup> The Commissioner amends the ALJs’ conclusion of law to correct the inclusion of “Mr. Lopez” preceding, “Mr. Morin, Mr. Guajardo, and Trustee Garza.” The record and findings of fact reflect that Mr. Lopez was involved with Xizaka LLC, not with PSI. See Tex. Educ. Code § 39.006(d), (f).

<sup>16</sup> The Commissioner amends the ALJs’ conclusion of law to correct the citation to the Restatement (Second) of Agency § 219. See Tex. Educ. Code § 39.006(d), (f).

14. If a trustee has a substantial interest in a business entity that may have business with a school district, the trustee is required by law to file an affidavit with the school district describing the nature and extent of the interest. Tex. Loc. Gov't Code § 171.004(a).

15. The trustee shall also abstain from voting and further participation in the matter if the substantial interest will have a special economic effect on the business entity that is distinguishable from the effect on the public. Tex. Loc. Gov't Code § 171.004(a).

16. An official violates Texas Local Government Code chapter 171 if the official knowingly fails to file the affidavit stating the nature and extent of interest and fails to abstain from further participation in the matter. *See* Tex. Loc. Gov't Code §§ 171.003(1), .004(a).

17. A trustee is required to disclose when the school district enters into or considers entering into a contract with the vendor; and (1) the vendor has an employment or other business relationship with the trustee or a family member of the trustee that results in the trustee or family member receiving income exceeding \$2,500 over a 12-month period, or (2) the vendor has a family relationship with the trustee. Tex. Loc. Gov't Code § 176.003(a)(1), (2)(A), (C).

18. The required form for the trustee's disclosure is the Form CIS, published by the Texas Ethics Commission. Vendors must complete a Form CIQ, also published by the Texas Ethics Commission. *See* <https://www.ethics.state.tx.us/forms/conflict/> (last visited Jan. 30, 2024).

19. A "business relationship" is defined as a connection between two or more parties on a commercial activity of one of the parties. Tex. Loc. Gov't Code § 176.001(1-a).

20. A school district may not enter into a contract with a business entity unless the business entity submits a Certificate of Interested Parties form, known as a Form 1295, to the school district at the time the business entity submits the signed contract to the governmental entity. Tex. Gov't Code § 2252.908(d).

21. The RGV MOU satisfies the elements of a contract. *Wal-Mart Stores, Inc. v. Lopez*, 93 S.W.3d 548, 555 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

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 Petitioner La Joya Independent School District's appeal of the Texas Education Agency's final special investigation report and recommendations be, and is hereby, DENIED.

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', written over a horizontal line.

MIKE MORATH  
COMMISSIONER OF EDUCATION