

TEXAS EDUCATION AGENCY
Docket No. 016-LH-11-2022

Clint Independent School District,
Petitioner

v.

Jessica Gomez,
Respondent.

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BEFORE

INDEPENDENT HEARING EXAMINER

DIEGO JESÚS PEÑA

**INDEPENDENT HEARING EXAMINER’S
FINDINGS OF FACT & CONCLUSIONS OF LAW
AND**

RECOMMENDATION TO THE DISTRICT BOARD OF TRUSTEES

The Petitioner, the Clint Independent School District (“District” or “CISD”) proposes terminating the term contract of Respondent, Jessica Gomez (“Respondent” or “Gomez”), a teacher at Horizon Middle School (“HMS”). On September 27, 2022, the District placed the Respondent on administrative leave for violating District policy and the Family Education Rights and Privacy Act (“FERPA”) when she disclosed confidential information concerning 692 HMS students to a person who had no legitimate educational interest. On October 21, 2022, the District notified the Respondent that it was proposing terminating her term contract. The Respondent requested the appointment of an Independent Hearing Examiner (“IHE”). On November 9, 2022, the Texas Education Agency (“TEA”) appointed Diego Jesús Peña to serve as the IHE.

CISD is represented by Mr. Juan J. Cruz and Mr. Ricardo Benavides, J. Cruz & Associates, LLC. Gomez is represented by Jessica Mendez, Mendez Law.

The parties conducted an evidentiary hearing on January 26 and 27, 2023, at the CISD District offices, 14521 Horizon Blvd., El Paso, Texas. Both parties appeared and were represented by counsel.

A certified court reporter transcribed the evidentiary hearing.¹ The following persons testified:

For the District:

- Juan Ignacio Martinez – District Superintendent
- Hannah Pope – High School Special Education Coordinator
- Michael Tapia – Executive Director of Technology
- Jaime Martinez – Former Instructional Coach for the Department of Student Achievement and Accountability (called as an adverse witness)
- Juan Carlos Vasquez – Assistant Principal, Horizon Middle School
- Roxanne Ruiz – Principal, Horizon Middle School
- Jessica Gomez – Respondent, History Teacher, Horizon Middle School (called as an adverse witness)
- Rene Chavez – District Chief Human Resources Officer
- Roberto J. Santos – Expert Witness

For the Respondent:

- Daniel Gonzalez – Former Special Education Teacher
- Erica Castaneda – ELAR (English Language Arts) Teacher at Horizon Middle School

Upon completion of the court reporter’s transcript, the parties submitted proposed findings of fact and conclusions of law. The IHE reviewed, studied and considered these submissions.

In making these Findings of Fact and Conclusions of Law, the IHE considered all the evidence admitted at the hearing and the legal arguments proposed by the parties at the evidentiary hearing and in their post-hearing submissions. Any proposed factual findings requested by the parties not addressed in the IHE’s Findings of Fact were not deemed material or relevant. All proposed conclusions of law, legal claims, defenses or other arguments presented or argued by the parties not addressed in the IHE’s Conclusions of Law are denied.

FINDINGS OF FACT

After considering all the evidence properly admitted into the record and evaluating the credibility of the witnesses, the following Findings of Fact are established by a preponderance of the evidence.

¹ Ms. Iris Leos Bencomo, a certified court reporter in the State of Texas transcribed the testimony. References to the record will be identified as 1 Tr. ____ (Hearing transcript from January 26, 2023) or 2 Tr. ____ (Hearing transcript from January 27, 2023). Exhibits offered by the Petitioner (the school district) will be identified as PX-____. Exhibits offered by the Respondent (the teacher Gomez) will be identified as RX-____.

Introductory Findings

1. The CISD is located 25 miles east of El Paso, Texas. The district has an estimated student population of 11,800.² Dr. Juan Martinez serves as the District Superintendent.³

2. Respondent, Jessica Gomez, taught U.S. History at HMS. At the start of the 2022-23 school year, she had a term contract with the District.⁴ She began her teaching career at HMS in 2017. As her career progressed, she established a reputation as a responsible and committed educator. Gomez was head of the social studies department at HMS. She was also a member of the West Texas Alliance, a labor organization that supported and assisted teachers.

3. Jaime Martinez worked as a special education instructional coach for English language arts.⁵ Mr. Martinez supported and coached special education English language arts teachers at East Montana Middle School and HMS.⁶ His job duties did not require him to work with students in the classroom.⁷ Mr. Martinez's supervisor was Ms. Hannah Pope.

4. While investigating an allegation against Mr. Martinez in September 2022, the District's technology department found an email Gomez sent him on May 23, 2022.⁸ The Respondent attached 34 testing room rosters to this email that contained the names and other personally identifying information of 692 HMS students.⁹ Mr. Martinez had no legitimate educational interest in the attached testing room rosters or student information. Immediately upon receiving the email message, he forwarded it along with the attached confidential student information to an outside third-party, the West Texas Alliance.

5. District policy mandates that employees take precautions to maintain and protect the confidentiality of all student records.¹⁰ By sending the email along with the attachments, Gomez violated various District policies regarding the protection of confidential student information. She also violated FERPA. Violations of FERPA can result in the federal

² PX-26, at p. 8.

³ To avoid confusion with another witness, the District Superintendent will be referred to as "Dr. Martinez."

⁴ PX-35.

⁵ 1 Tr. 210. To avoid confusion with the District Superintendent, Jaime Martinez will be referred to as "Mr. Martinez."

⁶ RX-62.

⁷ 1 Tr. 227-30, 237.

⁸ PX-1.

⁹ *Id.*

¹⁰ PX-26 at p. 83.

government denying the District grants and other financial assistance. Concerned about possible violations of District policy and FERPA, on September 27, 2022, the District placed Gomez on administrative leave with pay pending the investigation.¹¹

6. After concluding its investigation, on October 20, 2022, the District Superintendent recommended to the CISD Board of Trustees that the Respondent's contract be terminated for good cause.¹² The summarized reasons for his recommendation are:

(a) Gomez conducted personal business during work hours using District equipment, technology and internet access to send personal emails during assigned class or work time.

(b) Gomez was incompetent and inefficient in the performance of her duties. The District believes Respondent did not perform her job duties effectively because she was conducting personal business during work time/assigned school hours. They also believed she was incompetent because she violated District policy and FERPA.

(c) Gomez violated FERPA and other District policies by sending confidential student information to a third party who had no legitimate educational interest or need for the information.¹³

The District claims Gomez violated multiple District policies, specifically DH (Local), DH (Exhibit) Educator Code of Ethics Standards 1.7 and 3.1, CQ (Local), FL (Legal), LF (Local), FL (Regulations), and DGA (Local) and FERPA. The District claims that her actions constitute good cause for terminating her contract and her employment.

Gomez's Term Contract & District Policies

7. On May 13, 2022, Gomez signed a term contract with the District for the 2022-23 school year. Section 4.4 of the term contract states that the employee agrees to comply with all Board and District directives, policies and regulations as they exist and may be amended and that she will comply with all state and federal laws.¹⁴ By signing this term contract, the Respondent knew and understood that she was required to comply with all District policies and regulations

¹¹ PX-2 and PX-3.

¹² PX-19.

¹³ *Id.*

¹⁴ PX-35.

and she was required to comply with all state and federal laws.¹⁵ She also knew and understood the importance of protecting the confidentiality of student information.¹⁶

8. Gomez acknowledged receipt of the District's Employee Handbook.¹⁷ The Handbook requires all District employees to comply with applicable state and federal laws, policies, administrative regulations, and the Educator's Code of Ethics, including compliance with FERPA.¹⁸

9. District Policy FL (LEGAL) and FERPA define "Education Record" to mean those records, files, documents, and other materials that contain information directly related to a student and are maintained by the District.¹⁹ Under District Policy FL (LEGAL) and FERPA, "personally identifiable information" includes the student's name and the student's identification number ("student number").²⁰ Personally identifiable information is confidential and must be safeguarded and protected.

10. District Policy FL (LEGAL) and FL (LOCAL) prohibit District employees from releasing personally identifiable information without the written consent of the student's parents. Personally identifiable information may be released to school officials who have a legitimate educational interest.²¹ Under District Policy FL (LOCAL), a school official has a "legitimate educational interest" in a student's records if he/she is (1) working with the student; (2) considering disciplinary or academic actions, the student's case or an individualized education program for a student with disabilities; (3) compiling statistical data; (4) reviewing an educational record to fulfill the officials' professional responsibility; or (5) investing or evaluating programs.²²

February 2022 Testing at Horizon Middle School

11. STAAR assessment testing occurred at HMS in February 2022. Vice Principal Juan Carlos Vasquez was the designated testing coordinator at HMS.²³ Using a software

¹⁵ 2 Tr. 94-97, 271.

¹⁶ 2 Tr. 127.

¹⁷ PX-25 and PX-26.

¹⁸ PX-26, 2 Tr. 102-05.

¹⁹ PX-27 at p. 2, 1 Tr. 61-62, 2 Tr. 128.

²⁰ *Id.*

²¹ PX-27 at p. 7, 1 Tr. 63.

²² PX-27 at p. 7, 1 Tr. 66.

²³ 1 Tr. 243-44.

program known as “TestHound,” he created rosters that assigned students and teachers to specific classrooms for testing. The rosters Vice Principal Vasquez created contained student first and last names, middle initials, identification number, grade level and gender for 692 HMS students.²⁴ On February 24, 2022, he sent the testing rosters to the entire HMS staff via email using the school distribution list.²⁵ Generally, for assessment testing, school administrators notify the entire school staff about testing assignments because District leadership wants all school employees to be knowledgeable about the testing process.²⁶

May 2022 Interaction between Mr. Martinez and Gomez

12. Although he was only to support special education English language arts teachers at HMS, at some point during the 2021-22 school year, Mr. Martinez began spending time in the Respondent’s classroom.²⁷ According to his supervisor, Ms. Pope, Mr. Martinez should not have been supporting Gomez because she was a social studies/history teacher.²⁸ Sometime in May 2022, Mr. Martinez asked Gomez to send him the HMS testing rosters for the February 2022 testing period. He wanted to see the testing rosters and teacher assignments because he believed school administrators may have been violating state laws regarding planning and prep time.²⁹

13. Using her district computer and email account, on May 23, 2022 Gomez sent Mr. Martinez the February 24 email from Vice Principal Vasquez along with the testing room assignments containing confidential student information.³⁰ Because he was not assigned to HMS by the District and was not on the school’s distribution list, Mr. Martinez was not authorized to receive this email and the testing rosters.³¹ Mr. Martinez had no legitimate educational interest in the testing room assignments or the student rosters attached to Vice Principal Vasquez’s February 24 email.³² There was evidence that Mr. Martinez had provided minor assistance at HMS prior to 2022 with assessment testing. While his assistance in prior years is commendable,

²⁴ 2 Tr. 4-6.

²⁵ PX-36, 1 Tr. 250-51.

²⁶ 1 Tr. 41-42, 159-60.

²⁷ PX-38, at p. 3, 1 Tr. 215.

²⁸ 1 Tr. 217-18.

²⁹ 1 Tr. 294-98.

³⁰ PX-1.

³¹ Mr. Martinez was assigned to the District Central Office. 1 Tr. 252-53, 2 Tr. 12.

³² 1 Tr. 213-15, 237-38 and 2 Tr. 14-16.

it did not give him a legitimate educational interest in Mr. Vasquez's February 24 email or the attached testing assignments or student information. After receiving the email and attached rosters from Gomez, Mr. Martinez forwarded the email along with the attached rosters to the West Texas Alliance.³³ There was no evidence that West Texas Alliance had any educational affiliation with the District.

District's Investigation

14. On September 26, 2022, the District's Human Resources Department investigated an allegation that Mr. Martinez had engaged in electioneering while on duty. The District's technology department conducted a forensic review of Mr. Martinez's District owned laptop computer and his District email account.³⁴ That forensic review found the May 23 2022 email Gomez sent Mr. Martinez along with the attached rosters and confidential student information. The following day, on September 27, 2022, Mr. Rene Chavez, the District's Chief Human Resources Officer, notified the Respondent that she was being placed on administrative leave with pay pending investigation.³⁵ He told her that sending the May 23 2022 email may have violated District policy and federal law. He asked Gomez to answer eight written questions. Those questions and Gomez's written responses were:

1. **Were you responsible for the transfer of student data via email on May 23, 2022?**

I believe that under the duress of testing and the numerous, yearly violations by our district of Texas Education Code 21.404 Planning and Prep time, I did not realize that testing rosters were attached when I forwarded the email containing the teacher testing schedule on May 23, 2022. I was merely seeking clarification on the teacher testing schedule from a colleague, who is also a building representative for our union. I did not intentionally, knowingly, or recklessly disclose or reveal confidential information.

2. **If so, what was the purpose of transferring this data?**

I was seeking clarification on the teaching testing schedule because of the constant district violation of Texas Education Code 21.404 Planning and Prep Time and the recent involvement of our union to correct this injustice to teachers. My union representative, Rosie Perez, informed me that Mr. Chavez confirmed to her that this was the timeframe that she was working with him on this issue.

3. **Did you get parent permission to transfer the data?**

I was not aware of this parental requirement for transferring data since I was

³³ PX-1.

³⁴ 2 Tr. 274-75, 280.

³⁵ PX-2.

unaware that I was transferring data.

4. **Did the end user request this data?**

Again, I did not intentionally, knowingly, or recklessly disclose or reveal confidential information. We had been receiving numerous questions and concerns from teacher members about the testing schedule and their conference time. So, between the end user and I, we were concerned about the teacher testing schedule and clarification if our district was again violating TEC 21.404 Planning and Prep Time.

5. **What did the end user do with the data?**

Based on the information provided to me during this investigation, the end user sent the teacher testing schedule to our union.

6. **Are you aware this type of student data transfer is a violation of FERPA?**

I did not know what FERPA was until this allegation was presented to me on September 28, 2022. I cannot recall any district or campus training regarding FERPA.

7. **Have you ever transferred student data to third parties in the past?**

No, I am not aware that I have ever transferred any student data to third parties.

8. **Are you aware that the district risks losing federal funding for a FERPA violation?**

Again, I did not know what FERPA was until this allegation was presented to me on September 28, 2022, so I did not know that the district risks losing federal funding for FERPA violations.³⁶

Gomez admitted that she did not obtain parental approval to disclose the confidential student information contained in the rosters she sent Mr. Martinez. During the investigation, it was discovered that 62 parents of the students whose information Gomez disclosed had signed FERPA notices indicating that they did not consent to the District disclosing their students' information.³⁷ Gomez's release of the testing rosters with the student information violated these parents' declared intention and placed the District in an awkward position.

15. As Mr. Chavez's investigation of Gomez continued, he examined her District email account. After reviewing the Respondent's emails, he came to believe the Respondent was conducting personal business during work hours and was using District equipment and technology to send personal emails.³⁸

³⁶ PX-4.

³⁷ PX-28.

³⁸ PX-5.

16. Mr. Chavez confirmed that on October 4, 2021 Gomez sent personal financial information to Saratoga Homes in connection with a home loan application.³⁹ Mr. Chavez also discovered that Gomez had scanned information using District equipment that she later sent to the West Texas Alliance on August 30, 2022.⁴⁰ He also discovered she sent other non-work related emails during instructional time on December 16, 2021, February 4, 2022, and February 11, 2022. In the December 16 2021 non-work related email, Gomez forwarded a teacher clearance form to the West Texas Alliance during assigned class time.⁴¹ The February 4 2022 non-work related email concerned questions directed to West Texas Alliance regarding inclement weather days.⁴² The February 11 2022 non-work related email to the West Texas Alliance concerned questions regarding snow days.⁴³

17. Mr. Chavez confirmed that the Respondent had been trained and covered on Board Policy DH (EXHIBIT), The Educator's Code of Conduct, which prohibits employees from disclosing confidential student information unless the disclosure serves a lawful purpose or is required by law.⁴⁴ He also confirmed that Gomez received the District's Human Resources Annual Training that instructed educators they could not disclose confidential information.

18. Mr. Chavez confirmed that Gomez had been covered on Policy CQ (LOCAL). This is the District's Accepted Use Policy regarding the use of District technology resources and using those resources to access the internet. The policy states:

Limited personal use of the District's technology resources shall be permitted if the use:

1. Imposes no tangible cost on the District;
2. Does not unduly burden the District's technology resources; and
3. Has no adverse effect on an employee's job performance or on a student's academic performance.⁴⁵

³⁹ PX-7.

⁴⁰ PX-10.

⁴¹ PX-6.

⁴² PX-8.

⁴³ PX-9.

⁴⁴ PX-30 at p. 0043, 1 Tr. 79-82, 2 Tr. 127.

⁴⁵ PX-31.

Anyone abusing the privilege of using District resources to conduct personal business could be subject to disciplinary action.⁴⁶

19. Section 4.4 of the Respondent's term contract provides that the employee shall comply with all Board and District directives, policies, regulations and all local, state and federal laws.⁴⁷ Gomez knew and understood this requirement in her term contract.⁴⁸ She acknowledged receipt of the District's Employee Handbook and the requirement that she is required to "maintain confidentiality in all matters relating to students and coworkers."⁴⁹

20. After reviewing all the information disclosed by the investigation, the District concluded that Gomez was incompetent and inefficient. They based this conclusion after learning she had improperly disclosed confidential student information, had used district resources for personal use and conducted personal business on school/work time.

21. On October 12, 2022, Mr. Chavez completed his investigation. His conclusions were as follows:

The investigation substantiates that Ms. Gomez violated FERPA when she forwarded personally identifiable information of students at Horizon Middle School to Mr. Martinez, who then shared the information with an unauthorized third-party.

The investigation also substantiates that Ms. Gomez used District resources and emails for personal purposes during work hours.

After careful consideration and review of the investigation findings, the following District Policies and Laws were violated:

DH (local)
DGA (local)
FL (legal)
FL (local)
FL (regulation)
FERPA⁵⁰

⁴⁶ PX-33, 1 Tr. 249.

⁴⁷ PX-35, 1 Tr. 92-93.

⁴⁸ 2 Tr. 92-94 and 96-97.

⁴⁹ PX-25 and PX-26, 1 Tr. 84-85.

⁵⁰ PX-5.

22. On October 13, 2022, District Superintendent Dr. Martinez notified the Department of Education of the Respondent's improper and unauthorized disclosure of confidential student information.⁵¹ He notified the DOE because he was concerned this unauthorized disclosure could jeopardize the District's ability to receive future financial assistance and grants from the federal government.⁵² Federal funding accounted for 18% of the District's total funding during the 2021-22 school year and 15% of the District's total funding during the 2022-23 school year.⁵³ During the 2021-22 school year, the District received \$27,696,105 in federal funds. For the 2022-23 school year, the District anticipated receiving \$25,763,055 in federal funds.⁵⁴

23. On October 20, 2022, District Superintendent Dr. Martinez recommended to the CISD Board of Trustees that the Respondent's contract be terminated for good cause.⁵⁵

Hearing Examiner's Findings Regarding District's Investigative Conclusion that Gomez Conducted Personal Business using School Resources During Work Time

24. The District's investigation concluded that the Respondent had improperly conducted personal business using District resources.⁵⁶ Based on this conclusion, the Superintendent recommended that the District Board of Trustees terminate the Respondent's term contract.⁵⁷

25. The District's Accepted Use Policy allows employees limited use of the District's technological assets if the use (a) imposes no tangible cost on the District, (b) does not unduly burden the District's technology resources, and (c) has no adverse effect on the employee's job performance or on a student's academic performance.⁵⁸

26. Mr. Chavez's investigation determined that the Respondent sent five non-school related emails using District resources between December 16, 2021 and September 27, 2022. There was insufficient evidence demonstrating how the Respondent's non-work related emails

⁵¹ PX-15.

⁵² 1 Tr. 78-79.

⁵³ PX-17.

⁵⁴ *Id.*

⁵⁵ PX-19.

⁵⁶ PX-5.

⁵⁷ PX-19.

⁵⁸ PX-31.

posed a tangible cost or unduly burdened the District’s technology resources. District servers have the capacity to store 100 terabytes.⁵⁹ There was no evidence regarding the size of the non-work related emails Gomez sent, and how or if these specific emails unduly burdened the District’s technology resources. Supporting this finding is the evidence that the District was not aware that the Respondent had sent these non-work related emails until the District conducted a non-related investigation against Mr. Martinez—more than 3 months *after* Gomez sent Mr. Martinez the May 23 2022 email.⁶⁰ Additionally, there was no evidence that the District had ever investigated or disciplined any other employees for violating the Accepted Use Policy.⁶¹ Generally, the District would rely on local school administrators to determine if an employee was in violation of the policy.⁶² District officials would allow the local school administrators to impose whatever discipline they deemed appropriate.⁶³ There was no evidence that any of the Respondent’s local school administrators had expressed any concern about her personal use of District equipment or technology.

27. There was also insufficient evidence that these five emails had an adverse effect on the Respondent’s job performance. Gomez sent the October 4 2021 email after work hours.⁶⁴ She testified that she spent no more than 3 minutes of actual class time sending the December 16 2021 email and the February 4 2022 email.⁶⁵ She sent the February 11 2022 email during her conference period, which Superintendent Martinez conceded did not violate District policy.⁶⁶ She took a minute sending the May 23 2022 email to Mr. Martinez.⁶⁷ There is no evidence that any District administrators or parents complained about Gomez for any reason prior to the District’s investigation in September 2022.⁶⁸ Her most recent performance evaluations rated her as “accomplished” and “distinguished.”⁶⁹ Her HMS principal and vice principal respected

⁵⁹ 1 Tr. 280.

⁶⁰ 2 Tr. 281-84.

⁶¹ 2 Tr. 52.

⁶² 2 Tr. 83-85, 302-03.

⁶³ *Id.*

⁶⁴ PX-7.

⁶⁵ 2 Tr. 181-82.

⁶⁶ 1 Tr. 125-27.

⁶⁷ 2 Tr. 184.

⁶⁸ 2 Tr. 32-33.

⁶⁹ 2 Tr. 28-31.

her and saw her as a campus leader.⁷⁰ In January 2021, she was named Horizon Middle School Teacher of the Month.⁷¹ In 2022, Gomez applied for and received a Teacher Incentive Allotment (“TIA”) grant.⁷² The TIA allotment is a highly competitive grant-funded award for exceptional teachers.⁷³

Hearing Examiner’s Findings Regarding District’s Investigative Conclusion that Gomez was Incompetent and Inefficient in the Performance of Her Duties.

28. There is insufficient evidence supporting the District’s conclusion that Gomez was incompetent or inefficient. There was no evidence that any administrators, fellow teachers or parents raised any complaints about her competency or efficiency. Her HMS principal and vice principal believed Gomez to be an effective and well respected classroom teacher and campus leader. Neither Dr. Martinez nor Mr. Chavez reviewed, compared or analyzed the STAAR testing results or grades of her students to evaluate her efficiency or competency as a classroom teacher.⁷⁴

Hearing Examiner’s Findings Regarding District’s Investigative Conclusion that Gomez Violated District Policy and FERPA

29. The evidence supports the District’s conclusion that Gomez violated District policy and FERPA when she sent the May 23 email to Mr. Martinez.

30. FERPA and District policies notwithstanding, it is generally understood and accepted in the teaching profession that educators are required and obligated to keep student information confidential.⁷⁵ Prudent education professionals consider this obligation to be common sense. And rightfully so. This obligation is consistent with the notion that educators have a duty to protect students. By disclosing confidential student information, Gomez created a safety concern for the 692 students identified on the rosters she improperly disclosed.⁷⁶ As a

⁷⁰ 2 Tr. 71, 76, 228 and RX-63.

⁷¹ RX-57.

⁷² RX-51 and RX-56.

⁷³ 1 Tr. 122, 2 Tr. 51.

⁷⁴ 1 Tr. 110-11.

⁷⁵ See 2 Tr. 267-68. (Keeping student information confidential is a matter of common sense all teachers know, according to Mr. Daniel Gonzalez, a long time special education teacher at HMS.) and Tr. 310-11 (Mr. Roberto Santos, a former superintendent, testified that a prudent teacher knows and appreciates the importance of protecting confidential student information.).

⁷⁶ 2 Tr. 327-28.

well-trained and experienced educator who had the respect and admiration of her administrators and colleagues, Gomez knew and understood the importance of exercising special care and diligence in protecting student information. She knew student information was confidential, and that it was her duty not to disclose it.⁷⁷ District records confirmed that Gomez had been covered on all the relevant District policies concerning the protection of student information.⁷⁸ While she may not have recalled being covered on these policies or FERPA, she knew and understood the importance of protecting student information.⁷⁹

31. Respondent claims that she did not know the testing rosters were attached to the May 23 2022 email she sent Mr. Martinez. The IHE finds this claim lacks evidentiary support. The evidence established that she should have known better, given her training and background. District records indicate that she satisfactorily completed a two-hour training course entitled “Texas Cybersecurity Awareness for Employees Program.”⁸⁰ This training stressed the importance of detecting, classifying and securing confidential information and how to avoid careless or unintended disclosures. Additionally, it is clear from the Respondent’s demeanor as a witness that she possessed considerable experience and expertise regarding computer systems and the use of email. Her resume attached to her initial job application for employment at the District confirms her proficiency with computers, operating systems and programs.⁸¹ The Respondent demonstrated the necessary proficiency when she attached documents and other personal records to the non-work related emails she sent. The Respondent admitted that it took her one minute to send the May 23 2022 email to Mr. Martinez.⁸² She should have taken more time to examine the email before sending it to Mr. Martinez.⁸³

⁷⁷ 2 Tr. 111, 165-66. Gomez admitted that forwarding testing rosters containing student information to a person who has no legitimate educational interest in the rosters violates federal law. 2 Tr. 128.

⁷⁸ See 1 Tr. 79-82 (Gomez covered on Board Policy DH (EXHIBIT)) and “Ethical Conduct Towards Students.”; 2 Tr. 165-66 (Gomez knew that student information was required to be kept confidential); 2 Tr. 111 (Gomez admits understanding she had duty not to disclose student information.); 2 Tr. 128 (Gomez admits understanding that forwarding testing rosters to someone who does not have a legitimate educational interest in this protected information violates federal law.).

⁷⁹ *Id.*

⁸⁰ PX-32.

⁸¹ PX-21 at p. 13.

⁸² 2 Tr. 184.

⁸³ See 2 Tr. 326. Educators need to exercise caution sending and receiving email. They especially need to be careful when sending emails outside the District’s system. Once an email is sent, “it’s out there.”

CONCLUSIONS OF LAW

After due consideration of the evidence properly admitted at the hearing, the arguments of counsel, and the Findings of Fact, the undersigned IHE makes the following Conclusions of Law:

32. Jurisdiction to hear this matter is proper under Section 21.251 of the Texas Education Code.

33. Gomez is a “teacher” as defined by Section 21.201 of the Texas Education Code. She is employed by the District under a term contract dated May 13, 2022 for the 2022-23 school year.

34. The District may terminate a teacher’s term contract for good cause as determined by the Board.⁸⁴ The term “good cause” is not defined by statute, but the generally accepted definition found in case law states:

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.⁸⁵

The burden of proof is on the District to prove by a preponderance of evidence that the Respondent’s actions constitute good cause to terminate her contract.⁸⁶

35. The IHE is the sole judge of the witnesses’ credibility and the weight to be given to their testimony.⁸⁷

36. In his recommendation to the Board of Trustees to terminate the Respondent’s term contract, District Superintendent Dr. Martinez identified three reasons justifying good cause to terminate Gomez’s term contract: (a) that she violated the District’s Accepted Use policy; (b) that she was incompetent and inefficient in the performance of her duties; and (c) that she violated District policy and FERPA by releasing student records to a third-party who had no

⁸⁴ TEX.EDUC.CODE §§ 21.211(a)(1).

⁸⁵ *Tave v. Alanis*, 109 S.W.3d 890 (Tex.App.—Dallas 2003, no pet.) citing *Lee-Wright, Inc. v. Hall*, 840 S.W.2d 572 (Tex.App.—Houston [1st Dist.] 1992, no writ); see also *Ann Weatherwax v. Fort Worth ISD*, Tex.Educ.Comm’r Decision No.080-R2-1298 (1999).

⁸⁶ TEX.EDUC.CODE §§ 21.211(a)(1), 21.256(h).

⁸⁷ *Roselia Cruz v. Austin ISD*, Tex.Educ.Comm’r Decision No.036-R2-0319 (2010).

legitimate educational interest to the information.

37. The District failed to prove by a preponderance of the evidence that Gomez violated the District's Accepted Use policy. While the evidence established that she conducted personal business using District computers and technology, there was insufficient evidence that her use of district equipment or systems imposed a tangible cost on the District or that it unduly burdened the District's technology resources. There was no evidence that her personal use of the District's equipment and technology adversely affected her job performance or any student's academic performance. For this reason, the District's recommendation to terminate Gomez for conducting personal business and violating the District's Accepted Use policy lacks good cause.

38. The District also failed to prove by a preponderance of the evidence that Gomez was incompetent or inefficient in the performance of her duties. The evidence established that the Respondent was not incompetent, and there was no evidence that she was inefficient. For this reason, the District's recommendation to terminate Gomez for being incompetent or inefficient lacks good cause.

39. The District has good cause to terminate the Respondent's term contract for violating FERPA and other District policies concerning the protection of student information.⁸⁸ The evidence established that the Respondent carelessly and negligently disclosed confidential information concerning 692 students without authorization to a person who had no legitimate educational interest. The recipient, Mr. Martinez, then forwarded that information to an outside organization that also had no legitimate educational interest in the information. By sending the May 23 2022 email with the 34 attachments containing the confidential information of 692 students to Mr. Martinez, Gomez violated FERPA and the following district policies and directives:

- The District Employee Handbook: the provision that states employees are required to maintain confidentiality in all matters relating to students.⁸⁹

⁸⁸ *Everton v. Round Rock ISD v. Moses*, Docket No. 070-R-1091 (Comm'r Educ. 1996)(Non-compliance with FERPA can place a district in jeopardy of losing federal revenue and be at risk for severe civil and criminal sanctions.).

⁸⁹ PX-25 and PX-26, 1 Tr. 84-85.

- District Policies FL (LEGAL), FL (REGULATION) and FL (LOCAL): prohibit the release of “personally identifiable information” contained in educational records without the written consent of the student’s parents.⁹⁰
- Board Policies DH (LOCAL), DH (EXHIBIT) Educator’s Code of Ethics Standards 1.7 and 3.1 when she released the student information contained on the testing room rosters released to Mr. Martinez without prior written consent in violation of FERPA.⁹¹
- FERPA: prohibits the release of confidential student information to anyone who does not have a legitimate educational interest.⁹²

She also breached Section 4.4 of her employment contract, which required her to comply with all Board and District policies requiring her to protect the confidentiality of student information.⁹³ Her contract also required her to comply with state and federal law. Her improper disclosure of confidential student information has compromised the District’s ability to continue receiving federal funding.⁹⁴ Good cause has been held to exist to terminate an educator who improperly releases confidential student information to third parties lacking a legitimate educational interest.⁹⁵

40. In her post-hearing submission, Respondent argues that her inadvertent release of student information was not egregious and caused no harm. She maintains that not all FERPA violations constitute good cause to terminate a term contract. For this proposition, she cites *Boyer v. Blooming Grove ISD*, Docket No. 022-R2-1011 (Comm’r Educ.2011). The IHE finds that *Boyer* is distinguishable. In *Boyer*, the district sought to terminate a teacher accused of violating FERPA for disclosing student information to other students verbally in a classroom. The Commissioner held that while oral disclosures may violate FERPA, the ultimate source of the disclosed information must be an educational record. There was no factual finding by the IHE in *Boyer* that the source of the oral disclosure came from an educational record. For this reason, the Commissioner held there was no FERPA violation. That is not the situation here. In this case,

⁹⁰ PX-27, 1 Tr. 63.

⁹¹ PX-27 and PX-29.

⁹² PX-16.

⁹³ PX-35, 2 Tr. 92-94, 96, 100, 271.

⁹⁴ See *Victoria ISD v. Moses*, Docket No. 032-LH-396 (Comm’r Educ. 1996)(Non-compliance with FERPA can place a district in jeopardy of losing federal revenue and be at risk for severe civil and criminal sanctions.).

⁹⁵ *Tave v Dallas ISD*, Docket No. 067-R2-501 (Comm’r Educ. 2001).

Gomez disclosed 34 testing rosters containing the confidential and personally identifiable information of 692 HMS students. These rosters--and the student information in those rosters--are educational records. The IHE concludes that Gomez's disclosure of these educational records to a person lacking legitimate educational interest and without parental authorization was careless and negligent. Gomez maintains that her release of these confidential educational records was "inadvertent," caused no harm and was not egregious. The IHE respectfully disagrees. The IHE also concludes that Gomez's improper disclosure of the testing rosters and confidential information of 692 HMS students was egregious.

41. Although the evidence established that the Respondent is a good teacher—arguably exceptional—this fact does not mitigate against her failure to protect the confidential information of 692 HMS students.⁹⁶ Unfortunately, her actions jeopardized the safety of those students and compromised the District's ability to receive federal funding.

RECOMMENDATION TO THE BOARD OF TRUSTEES

After full and due consideration of the evidence, matters officially noticed, and the above Findings of Fact and Conclusions of Law, and in my capacity as the Independent Hearing Examiner, I recommend that the Board of Trustees for the Clint Independent School District adopt these Findings of Fact and Conclusions of Law.

SIGNED AND ISSUED this 13th day of March, 2023.

A handwritten signature in black ink, appearing to read 'DJP', followed by a horizontal line.

Diego Jesús Peña
Independent Hearing Examiner

cc: Parties
TEA Legal
Clint ISD Board President
(with copy of the local record)

⁹⁶ See 2 Tr. 326. Testimony of Mr. Roberto J. Santos, former superintendent of the United ISD. Mr. Santos testified that United ISD terminated an exceptional classroom teacher for violating FERPA.