

DOCKET NO. 018-R2-11-2019

WENDY BURK	§	BEFORE THE
	§	
V.	§	COMMISSIONER OF EDUCATION
	§	
TRENTON INDEPENDENT SCHOOL	§	
DISTRICT	§	THE STATE OF TEXAS

**DECISION OF THE COMMISSIONER**

**STATEMENT OF THE CASE**

Petitioner, Wendy Burk, complains of the decision of Respondent, Trenton Independent School District, to nonrenew her term contract. Christopher Maska is the Administrative Law Judge appointed by the Commissioner of Education to hear this cause. Petitioner is represented by Jeff J. Burley and Clyde M. Siebman, Attorneys at Law, Sherman, Texas. Respondent is represented by Lucas Henry, Attorney at Law, Sherman, Texas.

The fundamental issues in this case are whether the Respondent's Decision is supported by substantial evidence and whether it is arbitrary and capricious. While a different finder of fact could have made different findings, the Findings of Fact drafted by the Independent Hearing Examiner and adopted by the Board of Trustees are supported by substantial evidence. The Decision is not arbitrary and capricious. Petitioner was not treated differently than similarly situated individuals. Even if there were a flawed investigation by the administration, and this is not found, a flawed investigation is not an independent reason to overturn the termination of a contract.

**FINDINGS OF FACT**

After due consideration of the record and matters officially noticed, it is concluded that the following Findings of Fact are established by the file in this case and are not in dispute.<sup>1</sup>

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<sup>1</sup> This case is decided on the issue of jurisdiction, which is determined from the pleadings.

1. The Findings of Fact drafted by the Independent Hearing Examiner and adopted by the Board of Trustees are adopted as if set out in full.

### DISCUSSION

Petitioner contends that the decision to terminate her term contract is not supported by substantial evidence, is arbitrary and capricious and an abuse of discretion because Petitioner was not treated as similarly situated employees, and the investigation of Petitioner was flawed.

#### Substantial Evidence

The substantial evidence standard of review is well established. In *City of Alvin v. Public Utility Comm'n of Texas*, 876 S.W.2d 346, 355 (Tex. App.-Austin 1993, judgment set aside in accordance with settlement agreement, 893 S.W.2d 450), the court held:

*In City of League City v. Texas Water Commission*, 777 S.W.2d 802 (Tex. App.-Austin 1989, no writ), we summarized the substantial evidence test: (1) the findings, inferences, conclusions, and decisions of an agency are presumed to be supported by substantial evidence, and the burden is on the party contesting the order to prove otherwise; (2) in applying the test, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence of questions committed to agency discretion; (3) substantial evidence is more than a scintilla, but the evidence in the record may preponderate against the decision of the agency and nonetheless amount to substantial evidence; (4) the true test is not whether the agency reached the correct conclusion, but whether some reasonable basis exists in the record for the action taken by the agency; and (5) the agency's action will be sustained if the evidence is such that reasonable minds could have reached the conclusion that the agency must have reached in order to justify its action. *Id.* at 805 (citing *Texas Health Facilities Comm'n v. Charter Medical-Dallas Inc.*, 665 S.W.2d 446, 452-53 (Tex.1984)).

The Commissioner's review is in a chapter 21, subchapter G case specified in statute:

If a board of trustees terminates a teacher's contract, the Commissioner may not substitute the Commissioner's judgment for that of the board unless the board's decision is arbitrary, capricious, or unlawful, or the

hearing examiner's original findings of fact are not supported by substantial evidence.

Tex. Educ. Code § 21.303(b). What is reviewed under the substantial evidence standard is the Independent Hearing Examiner's Findings of Fact.

In reviewing the board's findings of fact, the Commissioner must: accept the board's decision unless it was arbitrary, capricious, or unlawful *or the examiner's original fact findings* were not supported by substantial evidence. *See id.* § 21.303(b)(2); 19 Tex.Admin.Code § 157.1071(g). That is, although the Commissioner reviews the board's decision, he measures the evidence against the *examiner's* fact findings, not the board's, to see if substantial evidence supports them and thus to determine if the board erred in determining otherwise. [Emphasis added].

*Miller v. Houston Indep. Sch. Dist.*, 51 S.W.3d 676, 681 (Tex. App. -- Houston [1st Dist.] 2001 pet. denied). The Supreme Court of Texas in *Montgomery Independent School District v. Davis*, 34 S.W.3d 559, 567 (Tex. 2000) held, "The hearing examiner is the sole judge of the witnesses credibility and the weight to be given their testimony, and is free to resolve any inconsistencies."

### Testing Violations

When students complained in the middle of STAAR testing that their answers had been changed, Respondent began an investigation. Neither party contends that the students' answers were not changed. The dispute is over who made the changes. There were two individuals who were identified as suspects, as they both potentially had opportunities to change the student's answers: Petitioner and Respondent's testing coordinator. One key piece of evidence is that only the answer sheets from the room where Petitioner was monitoring the test were changed. While the evidence presented does not conclusively prove that Petitioner changed the students' answers, a reasonable finder of fact could determine that Petitioner made the changes. The Independent

Hearing Examiner's determination that Petitioner changed the students' answers is supported by substantial evidence.

Petitioner is correct that there was an error in the timeline regarding the chain of custody of the testing documents presented by Respondent. Respondent's testing coordinator was in a room with the testing documents for a period of time that is not reflected in the timeline. However, there is evidence that nothing improper happened during this time because there were motion sensitive cameras that would have revealed an attempt to alter answer sheets.

#### Student Funds

Petitioner was the faculty sponsor of the Jr. Beta Club. This club had great success and also had considerable expenses that were paid through fund raising. Respondent requires that records be kept of financial transactions. Petitioner's record keeping was very poor. Petitioner did not keep records of how much money was raised and did not keep all receipts to show how the money was spent. Petitioner did not properly use the purchase order system to pay bills. Petitioner failed to properly account for student funds. The Independent Hearing Examiner's determination that Petitioner failed to properly handle student funds is supported by substantial evidence.

Petitioner contends that there is evidence that district policies other than the ones she was found to violate are not consistently enforced. While this is in part correct and is certainly not condoned, this does not excuse Petitioner's failure to follow school policy. The policies Petitioner contends were not enforced were not the policies Petitioner did not follow. While Petitioner is also correct that it would have been wise to provide her and other new faculty sponsors with training about handling funds, this also does not excuse Petitioner. Petitioner should have known that that she would have to account for funds raised and expended.

### Investigation

Petitioner contends that Respondent did not do a good job in investigating the accusations against her. Even if Petitioner had proved this, it would not avail Petitioner.

The Commissioner has held:

Petitioner contends that the investigation that led to the proposed termination of his contract was biased. Texas Education Code section 21.304(b) allows the Commissioner to overturn a school board's decision to terminate a term contract if that decision is arbitrary, capricious, unlawful, or not supported by substantial evidence. It does not say the Commissioner can overturn a board's decision to terminate a term contract because the initial investigation was biased. It should be noted that a biased investigation at most could have caused a school board to propose termination because the investigation might be the only evidence the board had when it proposed termination. A biased investigation would not be able to so influence an independent hearing examiner who is appointed by the Commissioner and who makes a decision only after hearing all the evidence presented by both sides under a statute that provides for full due process protections. *Rodriguez v. Ysleta Indep. Sch. Dist.*, 217 Fed. Appx. 294 (5<sup>th</sup> Cir. 2007). A school board can only change an independent hearing examiner's findings of fact if they are not supported by substantial evidence. TEX. EDUC. CODE § 21.259(c).

*Alexander v. Troup Independent School District*, Docket No. 023-R2-02-2016 (Comm'r Educ. 2016). A flawed investigation will not of itself invalidate the termination of a contract.

### Conclusion

Respondent's decision to terminate Petitioner's contract should be affirmed.

### CONCLUSIONS OF LAW

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact, in my capacity as Commissioner of Education, I make the following Conclusions of Law:

1. The Commissioner has jurisdiction over this case under Texas Education Code section 21.301.

2. The Conclusions of Law drafted by the Independent Hearing Examiner and adopted by the Board of Trustees are adopted as if set out in full.

3. The hearing examiner is the sole judge of the witnesses' credibility and the weight to be given their testimony and is free to resolve any inconsistencies.

4. Respondent's Decision, which adopted the Findings of Fact of the Independent Hearing Examiner, is supported by substantial evidence.

5. A flawed investigation by the administration is not an independent ground to overturn a decision to terminate a contract.

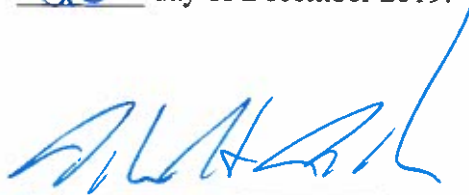
6. Respondent's Decision is not arbitrary capricious or unlawful.

7. The Petition for Review should be denied.

#### ORDER

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact and Conclusions of Law, in my capacity as Commissioner of Education, it is hereby ORDERED that the Petitioner's appeal, be, and is hereby DENIED.

SIGNED AND ISSUED this 20<sup>th</sup> day of December 2019.



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MIKE MORATH  
COMMISSIONER OF EDUCATION

## Hearing Examiner's Recommendations

DOCKET NO. 138-LH-07-2019

TRENTON INDEPENDENT  
SCHOOL DISTRICT

v.

WENDY BURK

§  
§  
§  
§  
§

BEFORE ROBERT C. HWANG

CERTIFIED HEARING EXAMINER

TEXAS EDUCATION AGENCY

### RECOMMENDATION OF HEARING EXAMINER

#### STATEMENT OF CASE

Respondent, Wendy Burk, appeals the decision of the Petitioner, Trenton Independent School District ("Trenton ISD," "TISD," the "District," or "Petitioner"), to terminate her contract of employment as a teacher. Notice of the proposed termination was given to Respondent by a letter dated June 28, 2019. Respondent requested a hearing pursuant to Chapter 21, Subpart F of the Texas Education Code and requested the assignment of an independent hearing examiner by the Texas Education Agency ("TEA"). The TEA appointed Robert C. Hwang as the hearing examiner. The hearing in this matter was held before the hearing examiner in Trenton, Texas on September 4, 5, and 6, 2019. Petitioner was represented by Lucas Henry of Abernathy, Roeder, Boyd, Hullett, P.C. Respondent was represented by Jeffrey J. Burley of Siebman Forrest Burg & Smith, LLP.

#### FINDINGS OF FACT

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

1. Respondent Wendy Burk ("Respondent" or "Ms. Burk") was employed by Trenton ISD ("Petitioner" or "Trenton ISD" or the "District" or "TISD") pursuant to a one-year educator term contract with the District for the 2018-2019 school year. *P. Ex. 3; Tr 175-176, 246.*

2. The Trenton ISD Board of Trustees (the "Board") took no action with respect to Respondent's contract at the end of the 2018-2019 school year, and Respondent therefore received a one-year term contract for the 2019-2020 school year by operation of law. Neither the District nor Respondent signed the contract for the 2019-2020 school year. *Tr. 177-178.*

3. Respondent holds certifications from the State of Texas in Mathematics (Grades 4-8); Generalist (Grades 4-8); Generalist (EC-4); and English as a Second Language Supplemental (Grades EC-8). *Tr. 175.*

4. Respondent acknowledged receipt of all District policies and agreed to abide by all District policies. *P. Ex. 61; Tr. 185.*

5. On or about April 15, 2019, Respondent was placed on administrative leave with pay pending an investigation into allegations of potential misconduct. *P. Ex. 6; Tr. 179.*

6. On June 18, 2019, Trenton ISD provided notice to Respondent that the District's Superintendent would recommend to the Board at the Board meeting on June 24, 2019, that the Board approve sending Respondent official notice of proposed termination of her contract. *P. Ex. 72; Tr. 189.*

7. On June 24, 2019, the Board voted to approve sending Notice of Proposed Termination to Respondent. This Board meeting was properly posted in accordance with the Texas Open Meetings Act, and the Board's action was voted on in open session during this meeting. Respondent attended this Board meeting. Several community members attended the Board meeting and spoke about Respondent during public comment. *P. Ex. 161, 186; Tr. 189, 276-279.*

8. On June 28, 2019, Trenton ISD mailed to Respondent and emailed to Respondent's attorney the Notice of Proposal to Terminate Respondent's Contract; on August 28, 2019, Respondent was issued an amended copy of this notice (the "Notice"). *P. Ex. 20, 21, 184.*



9. The Notice set forth the following reasons for the proposed termination of Respondent's contract:

- (1) Deficiencies pointed out in observation reports, appraisals or evaluations, supplemental memoranda, or other communications;
- (2) Failure to fulfill duties or responsibilities;
- (3) Incompetency or inefficiency in the performance of duties;
- (4) Insubordination or failure to comply with official directives;
- (5) Failure to comply with Board policies or administrative regulations (the Notice cited to and quoted these policies);
- (6) Failure to meet the District's standards of professional conduct;
- (7) Any activity, school-connected or otherwise, that, because of publicity given it, or knowledge of it among students, faculty, or the community, impairs or diminishes the employee's effectiveness in the District;
- (8) Any breach by the employee of an employment contract or any reason specified in the employee's employment contract;
- (9) Falsification of records or other documents related to the District's activities;
- (10) Misrepresentation of facts to a supervisor or other District official in the conduct of District business; and
- (11) Any reason constituting good cause for terminating the contract during its term, including:
  - a. Misconduct in the administration of the STAAR Test; and
  - b. Misconduct in the administration of student activity account funds.

*P. Ex. 21, 20, 184.*

10. The Notice informed Respondent of her right to request a hearing before an independent hearing examiner under the Texas Education Code. Respondent requested a hearing.

*P. Ex. 21, 20, 184.*

11. On or about April 9, 2019, the 8<sup>th</sup> Grade Math State of Texas Assessment of Academic Readiness (the "STAAR Math Test") was administered in the Trenton Middle School campus. On or about April 10, 2019, the STAAR Reading Test was administered. *Tr. 156.*

12. Respondent was trained on how to administer the STAAR Test, and signed an Oath of Test Security and Confidentiality. *P. Ex. 62; Tr. 194.*

13. On Wednesday, April 10, 2019, as the STAAR Reading Test was about to begin, a Trenton ISD student, Student Number 7, informed her test administrator, Ms. Tonya Lambright ("Ms. Lambright"), that Student Number 7 believed that, based on erasures on her answer document, some answers on the math portion of her answer document appeared to have been changed without her consent. *Tr. 32.* Ms. Lambright promptly informed Mr. Trent Hamilton ("Mr. Hamilton"), the Campus Principal and Testing Coordinator. *Tr. 32.* Mr. Hamilton promptly contacted the District Testing Coordinator, Mr. Kevin Cannon ("Mr. Cannon"). *Tr. 436.* Another student in Mrs. Lambright's classroom, Student Number 35, told Mrs. Lambright that she, also, felt her answer document was altered without her consent. *P. Ex. 165; Tr. 48-49.*

14. Mr. Cannon and Mr. Hamilton promptly contacted the Texas Education Agency ("TEA") and Eric Moore ("Mr. Moore")—an investigator in TEA's student assessment division—gave them "extensive guidance" regarding the process for investigating the irregularities with the STAAR tests. *Tr. 109-111.*

15. Mr. Moore testified that Trenton ISD's administrators followed his guidance with regard to their investigation into testing irregularities. *Tr. 113-114.*

16. Petitioner reviewed each and all 8<sup>th</sup> grade and 5<sup>th</sup> grade math STAAR answer documents and test booklets for possible tampering. *Tr. 272-273.* Petitioner determined that 14 students' tests showed signs of tampering. *P. Ex. 73; Tr. 272.* Page TEA016 of Petitioner's Exhibit

73 is a list of these students. Each and every of these 14 students finished their test in Respondent's testing room. *Tr. 272-273.* There were no irregularities found with tests of students who finished their tests in a room other than Respondent's testing room. *P. Ex. 73; Tr. 119, 195-197, 272.*

17. Student Number 46's parent complained to Trenton ISD that Respondent did not teach enough math in her class. Student Number 46 did not pass the STAAR Math Test that was administered in 2019 the first time she took it. Student Number 46's test was one of the tests that was altered. *Tr. 576-578.*

18. At hearing, six of the 14 students whose tests had irregularities testified. All six students testified that there were apparent changes to their STAAR Math Tests that they did not make. *Tr. 25-100.*

19. At least one student saw Respondent writing on an answer document at her podium. *Tr. 46.* Respondent testified that she marked on answer documents at her desk or podium. *Tr. 198.*

20. Petitioner's investigation concluded that Respondent tampered with the STAAR Math Test. *Tr. 274.*

21. TEA has conducted a portion of its investigation into testing irregularities at TISD, but this investigation is not yet complete because of the criteria by which TEA prioritizes cases based on age of the case and other factors. *Tr. 160.*

22. Mr. Moore is the Test Security Manager for the Student Assessment Division of TEA. *Tr. 106.* He has been employed by TEA for close to 18 years and has been the Test Security Manager for 14 years. *Tr. 106.* Mr. Moore was personally involved in the investigation into testing irregularities at Trenton Middle School. *Tr. 109.*

23. Mr. Moore testified that, in most test tampering cases investigated by TEA, the district testing coordinator, who is Mr. Cannon for Trenton ISD, always participates in the investigation into potential STAAR testing irregularities. *Tr. 114.*

24. Mr. Moore has personally reviewed the test booklets and answer documents of students who took the eighth grade STAAR Math Test at Trenton Middle School *Tr. 115.* These test materials are in the custody and control of TEA. *P. Ex. 177; Tr. 116.*

25. Mr. Moore also reviewed statements written by Trenton ISD students and transcripts of interviews with Trenton ISD students. *Tr. 116-117.*

26. Mr. Moore reviewed the tests of fifth grade Trenton ISD students and did not notice any irregularities. *P. Ex. 176, Tr. 119.*

27. Mr. Moore affirmed that the 14 students identified by Petitioner as having irregularities with their testing materials indeed had characteristics of what TEA considers possible tampering. *Tr. 120.*

28. TEA created an analysis of TISD students' testing materials. *P. Ex. 73.* This analysis showed that the majority of unauthorized changes to student tests had the incorrect answer choice erased on the answer document, and the correct answer marked. *P. Ex. 173; Tr. 136.* However, there were instances in which the answer was changed from right to wrong. *Id.* These instances were the result of "field test items" which are test items that are different in each student's test booklet, meaning the answer choice that is correct may differ from test-to-test, whereas the non-field test items would not differ from test-to-test. *P. Ex. 73; Tr. 135-136.* Mr. Moore testified that this is indicative of a context in which the teacher cheating on the test is not accessing the test booklet [which has the questions in it] and the teacher is not aware that those items differ from student-to-student. *Tr. 136-137.*

29. Mr. Moore testified that the responses that were changed were isolated to Students who took their tests in Ms. Burk's testing session. He observed no corresponding changes to any other grade eight documents nor grade five documents to which the other individual, Mr. Cannon, had the most time alone with the documents. *Tr. 139.* Mr. Moore testified this is indicative that tampering occurred during the testing session proctored by Wendy Burk. *Tr. 139.*

30. Mr. Moore testified that he was "highly confident" that students did not tamper with the tests. *Tr. 138.*

31. Mr. Moore testified that the evidence points to Ms. Burk as the person who tampered with the STAAR Math Test at Trenton Middle School. *Tr. 140.*

32. Respondent was the sponsor for the Trenton ISD Junior Beta Club (Beta). *Tr. 241.*

33. Respondent agreed at the hearing that she was "responsible for purchasing things for the [Beta] club" and "responsible for ensuring that there was enough money in the Beta Club account to pay for the things that [she was] buying for the club." *Tr. 206.*

34. Respondent was responsible for running the concession stand at various Trenton ISD events, and was responsible for purchasing the items to be sold at the concession stand, which were typically purchased at Sam's. *Tr. 208.*

35. Respondent made purchases for Beta on her personal debit or credit card and then reimbursed herself out of student activity fund cash that was totally unaccounted for by the District—this was done without approval from any administrator, without any accounting, and without the knowledge of any administrator. *Tr. 216-217.* Respondent testified that there was no way for Mr. Hamilton or Mr. Foreman, or Secretary Ms. Green to know this was occurring but she "assumed" they knew. *Tr. 217.*

36. Respondent did not maintain receipts for all transactions with Beta Funds, and she did not give receipts to the school for all transactions with Beta Funds. *Tr. 239*. Instead, she kept receipts scattered about different locations in her classroom, if she kept them at all. *Tr. 221*. Even by the time of the hearing, Respondent did not produce receipts to account for all Beta-related purchases. *Tr. 212*. As such, Respondent failed to maintain, and failed to turn in, District financial records for an account for which she was responsible.

37. Prior to Respondent being proposed for termination, Respondent had a meeting with Mr. Foreman to discuss the finances of the Beta club. However, she did not give him any Beta receipts at that meeting. *Tr. 219*.

38. Respondent testified that, at least half of the time she failed to turn in Beta funds that were earned at the concession stand to the school accountant. *Tr. 211*.

39. Respondent kept several hundred dollars-worth of Beta money in her unlocked desk drawer or on her person without turning it into the school. *Tr. 211*.

40. Respondent did not keep a ledger recording how much Beta money had been received in cash and how much money had been spent. *Tr. 213*.

41. Respondent received invoices totaling over \$6,000.00 for purchases she authorized from the National Beta Club (the "Invoices") by fax and mail. *Tr. 223*. Respondent admitted it was her responsibility to fill out purchase orders to see that invoices were paid, and that invoices would not be paid until she did so. *Tr. 207-208*.

42. Petitioner asserts that Respondent did not give Mr. Hamilton or Ms. Green a purchase order to see that the Invoices were paid. Respondent admitted that she put incorrect purchase order numbers on the Invoices. *Tr. 225-227*. These purchase order numbers correspond to actual purchases for the Beta club—for salsa and hotels—that are unrelated to the Invoices. *Id.*

Respondent admitted that this fact supports Petitioner's assertion that Respondent did not actually fill out a purchase order for the Invoices. *Tr. 226.*

43. The Invoices went unpaid for a whole year; they were finally paid through the District's general fund because the Beta account had a negative balance. *Tr. 248-250.*

44. At her meeting with Mr. Foreman, Respondent never told Mr. Foreman that she had filled out a purchase order to pay the Invoices—the hearing was the first time he heard this explanation. *Tr. 289.*

45. Respondent received the Invoices via email, which she opened, read, opened the attachment, and deleted without forwarding on to anyone else. *P. Ex. 183; Tr. 251-252.*

46. Respondent received the fax and mailing of the Invoices, which were found in her desk drawer. *Tr. 252.*

47. Before Respondent took over the responsibility for depositing funds into the Beta account, deposits were regularly made—however, deposits decreased significantly in amount and frequency after she assumed this responsibility. *Tr. 254-261; P. Ex. 68.*

48. Any finding of fact deemed to be a conclusion of law is hereby adopted as such.

### DISCUSSION

The STAAR test on or about April 9 2019 showed the following:

- Students No. 7 and No. 35 reported erasures and changes that they did not make on their STAAR Math Test answer documents. *Tr. 31-32, 50-53.*
- Several of the students' test booklet answers did not match the answers marked on their answer document. Six students testified at the hearing that they did not make these changes. *Tr. 33-35 (Student No. 7); Tr. 50-53 (Student No. 35); Tr. 65-67 (Student No. 15); Tr. 75-78 (Student No. 46); Tr. 85-88 (Student No. 14); Tr. 96-99 (Student No. 30).*
- TEA investigated and found fourteen students' tests had changes to their answer documents that the students did not make. *P. Ex. 73; Tr. 120.*

- At least one student saw Respondent writing on an answer document at her podium. *Tr. 46.* Respondent testified that she marked on answer documents at her desk or podium. *Tr. 198.*

Additionally, evidence showed:

- All students with testing irregularities tested in Respondent's testing room under Respondent's supervision. *Tr. 39.*
- There were no irregularities identified on tests of eighth grade students who did not finish their test in Respondent's classroom. *Tr. 195-197.*
- There were no irregularities identified on tests of fifth grade students (who did not test under Respondent's supervision). *Tr. 119.*
- Student Number 46's parent complained to Trenton ISD that Respondent did not teach enough math in her class. Student Number 46 did not pass the STAAR Math Test that was administered in 2019. Student Number 46's test was altered. *Tr. 576-578.*
- Eric Moore—TEA's test security manager with over 14 years of experience investigating testing irregularities—testified that, in his expert opinion, tampering occurred “in the test session” and that the evidence in this case points to Respondent as the person who made unauthorized changes to Trenton ISD students' tests. *Tr. 106, 139-140.*

The weight of credible evidence therefore implicates Respondent as the person who made changes to students' tests.

Furthermore, Respondent failed to follow District policies with regard to the management of student activity funds for the Junior Beta Club (“Beta”), for which Respondent was the sponsor.

Trenton ISD Board Policy CAA (LOCAL), among other things:

- Respondent testified that she made purchases for Beta using her personal credit or debit card and then reimbursed herself out of student activity fund cash that was totally unaccounted for by the District—this was done without approval from any administrator, without any accounting, and without the knowledge of any administrator. *Tr. 216-217.*
- Respondent testified that there was no way for Principal Trent Hamilton (“Mr. Hamilton”) or Superintendent Rick Foreman (“Mr. Foreman”) or Secretary Phyllis Green (“Ms. Green”) to know this was occurring but she “assumed” they knew. *Tr. 217.*
- Respondent testified that she did not maintain receipts for all transactions with Beta Funds, and that she did not give receipts to the school for all transactions with Beta Funds. *Tr. 239.* Instead, she kept receipts scattered about different locations in her classroom, if she



kept them at all. *Tr. 221.* Even by the time of the hearing, Respondent did not produce receipts to account for all Beta-related purchases. *Tr. 212.*

- Respondent testified that she had a meeting with Superintendent Rick Foreman to go over the finances of the Beta club but did not give him any Beta receipts. *Tr. 219.*
- Respondent testified that, at least half of the time, she failed to turn in Beta funds that were earned at the concession stand to the school accountant. *Tr. 211.*
- Respondent testified that she kept several hundred dollars-worth of Beta money in her unlocked desk drawer or on her person without turning into the school. *Tr. 211.*
- Respondent testified that she did not keep a ledger about how much Beta money had been received in cash and how much money had been spent. *Tr. 213.*
- Respondent testified that she received invoices from the National Beta Club (the "Invoices") by fax and mail totaling over \$6,000.00 *Tr. 223.* Respondent admitted it was her responsibility to fill out purchase orders to see that invoices were paid, and that invoices would not be paid until she did so. *Tr. 207-208.*
- Respondent admitted that she put incorrect purchase order numbers on the Invoices. *Tr. 225-227.* These purchase order numbers correspond to actual purchases—one for salsa and one for hotels—for the Beta club that are unrelated to the Invoices. *Id.*
- The Invoices went unpaid for a whole year; they were finally paid through the District's general fund because the Beta account had a negative balance. *Tr. 248-250.* Respondent thus indebted the school to a purchase without approval or sufficient funds to pay.
- At her meeting with Superintendent Rick Foreman ("Mr. Foreman"), Respondent never told Mr. Foreman that she filled out a purchase order to pay the Invoices—the hearing was the first time he heard this explanation. *Tr. 289.*
- Respondent received the Invoices via email, which she opened, read, opened the attachment, and deleted. *P. Ex. 183; Tr. 251-252.*
- Respondent received the fax and mailing of the invoices, which were found in her desk drawer. *Tr. 252.*
- Before Respondent took over the responsibility for depositing funds into the Beta account, deposits were regularly made—however, deposits decreased significantly in number and frequency after she assumed this responsibility. *Tr. 254-261; P. Ex. 68.*

Respondent thus failed to properly report District financial transactions; failed to diligently maintain and provide financial records; failed to be responsible for the proper administration of

activity funds; failed to diligently deposit funds into school accounts; failed to properly safe-keep District funds; and prevented TISD administration from knowing if all funds were used for a school-related purpose.

### CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this matter pursuant to Chapter 21, Subchapter F, § 21.251 of the Texas Education Code.
2. The District Board of Trustees may terminate a term contract and discharge a teacher at any time for good cause, as determined by the Board. TEXAS EDUCATION CODE §21.211(a)(1).
3. "Good cause" is defined as, "the employee's failure to perform the duties in the scope of employment that a person of ordinary prudence would have done under the same or similar circumstances. An employee's act constitutes good cause for discharge if it is inconsistent with the continued existence of the employer-employee relationship." *Lee-Wright, Inc. v. Hall*, 840 S.W.2d 572, 580 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1992, no writ).
4. Tampering with the state test is good cause for termination of a teacher's term contract. *Constance Whalon v. Dallas Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 047-R2-0511 (June 22, 2011) (upholding Independent Hearing Officer findings and recommendation at *Dallas Indep. Sch. Dist. v. Constance Whalon*, TEA Docket No. 047-24-0210 (April 4, 2011)).
5. Failing to properly account for student activity funds is good cause for termination of an educator's term contract. *Larry Tankersley v. Cisco Indep. Sch. Dist.*, Docket No. 077-R1-402 (Comm'r Educ. 2002).
6. Petitioner has established, by a preponderance of the evidence, good cause for the termination of Respondent's contract.

7. Any conclusion of law deemed to be a finding of fact is hereby adopted as such.

**Recommendation**

After due consideration of the evidence and matters officially noticed, and the foregoing Findings of Fact and Conclusions of Law, in my capacity as the Hearing Examiner, I respectfully RECOMMEND that the Board of Trustees of Trenton Independent School District adopt the foregoing Findings of Fact and Conclusions of Law and FURTHER RECOMMEND that Respondent's term contract with Trenton ISD be terminated.

SIGNED AND ISSUED this 14th day of October, 2019.



ROBERT C. HWANG