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ADMINISTRATIVE HEARINGS
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State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

October 25, 2021

Laura Moriatty
Director of Legal Services
Texas Education Agency
1700 Congress Ave.
Austin, TX 78701

VIA EFILE TEXAS

**RE: SOAH Docket No. 701-21-1915.EC; Texas Education Agency
Education Certification and Standards Division v. Gabriel Ginithan**

Dear Ms. Moriatty:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507(b), a SOAH rule which may be found at www.soah.texas.gov.

Sincerely,

Steven M. Rivas
Administrative Law Judge

SR/eh
Enclosure

xc: SBEC Legal Assistant, TEA, Educator Certification & Standards, Travis Building, 2nd Floor, 1701 N. Congress, Austin, TX 78701(with 1 CD) – **VIA EFILE TEXAS and INTERAGENCY MAIL**
Jonathan Crabtree, Attorney, Texas Education Agency, 1701 N. Congress Ave., 2nd Floor, Austin, TX 78701 – **VIA EFILE TEXAS**
John S. Gilmore, Goldstein & Orr, 310 S. St. Mary's Street, San Antonio, TX, 78205- **VIA EFILE TEXAS**

SOAH DOCKET NO. 701-21-1915.EC

TEXAS EDUCATION AGENCY,
EDUCATOR LEADERSHIP AND
QUALITY DIVISION,
Petitioner

v.

GABRIEL GINITHAN,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Education Agency (TEA), Educator Leadership and Quality Division, on behalf of the State Board for Educator Certification (SBEC),¹ seeks to permanently revoke the educator certificate of Gabriel Ginithan (Respondent). Staff contends that Respondent engaged in sexual conduct or solicited an inappropriate romantic relationship with a minor or student (Student 1) and engaged in inappropriate communications with Student 1. According to Staff, Respondent violated several standards of the Educators' Code of Ethics² and demonstrated himself to be unworthy to instruct or to supervise the youth of this state. The Administrative Law Judge (ALJ) finds that Staff met its burden of proof and recommends that SBEC permanently revoke Respondent's teaching certificate.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not contested, and those matters are addressed in the Findings of Fact and Conclusions of Law sections. ALJ Steven M. Rivas of the State Office of Administrative Hearings (SOAH) convened the hearing on the merits via Zoom videoconferencing on August 10, 2021. Attorney Jonathan Crabtree represented Staff. Respondent appeared and was represented by attorneys John Gilmore and Aaron Diaz. The hearing adjourned on that date and the record closed on August 25, 2021, when the ALJ received a copy of the hearing transcript.

¹ SBEC regulates and oversees all aspects of the certification, continuing education, and standards of conduct of public school educators. TEA provides SBEC's administrative functions and services. Tex. Educ. Code §§ 21.031(a), .035.

² 19 Tex. Admin. Code § 247.2. The substantive rules cited are those in effect at the time of the alleged conduct.

II. APPLICABLE LAW

SBEC regulates and oversees all aspects of the certification, continuing education, and standards of conduct of public school educators.³ SBEC may adopt rules that regulate educators and provide for disciplinary proceedings,⁴ and it may take disciplinary action based on satisfactory evidence that “the person is unworthy to instruct or to supervise the youth of this state”⁵ or “has violated a provision of the Educators’ Code of Ethics.”⁶ Under SBEC’s rules, “[u]nworthy to instruct or to supervise the youth of this state” means:

Absence of those moral, mental, and psychological qualities that are required to enable an educator to render the service essential to the accomplishment of the goals and mission of the State Board for Educator Certification policy and Chapter 247 of this title (relating to Educators’ Code of Ethics). . . .⁷

SBEC’s rules define “good moral character” as the virtues of a person as evidenced by patterns of personal, academic, and occupational behaviors that indicate . . . honesty, accountability, trustworthiness, reliability, and integrity.⁸ SBEC’s rules also define solicitation of a romantic relationship as “[d]eliberate or repeated acts that can be reasonably interpreted as the solicitation by an educator of a relationship with a student that is romantic in nature.”⁹

With regard to the Educators’ Code of Ethics, Staff contends Respondent violated the following standards:

Standard 1.7. The educator shall comply with state regulations, written local school board policies, and other state and federal laws.¹⁰

³ Tex. Educ. Code § 21.031(a).

⁴ Tex. Educ. Code § 21.041(a), (b)(1), (7), (8).

⁵ 19 Tex. Admin. Code § 249.15(b)(2).

⁶ 19 Tex. Admin. Code § 249.15(b)(3).

⁷ 19 Tex. Admin. Code § 249.3(59).

⁸ 19 Tex. Admin. Code § 249.3(23).

⁹ 19 Tex. Admin. Code § 249.3(50).

¹⁰ 19 Tex. Admin. Code § 247.2(1)(G).

Standard 1.10. The educator shall be of good moral character and be worthy to instruct or supervise the youth of this state.¹¹

Standard 3.2. The educator shall not intentionally, knowingly, or recklessly treat a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student or minor.¹²

Standard 3.5. The educator shall not intentionally, knowingly, or recklessly engage in physical mistreatment, neglect, or abuse of a student or minor.¹³

Standard 3.6. The educator shall not solicit or engage in sexual conduct or a romantic relationship with a student or minor.¹⁴

Standard 3.8. The educator shall maintain appropriate professional educator-student relationships and boundaries based on a reasonably prudent educator standard.¹⁵

Standard 3.9. The educator shall refrain from inappropriate communication with a student or minor, including, but not limited to, electronic communication such as cell phone, text messaging, email, instant messaging, blogging, or other social network communication. Factors that may be considered in assessing whether the communication is inappropriate include, but are not limited to:

- (i) the nature, purpose, timing, and amount of the communication;
- (ii) the subject matter of the communication;
- (iii) whether the communication was made openly or the educator attempted to conceal the communication;
- (iv) whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship;
- (v) whether the communication was sexually explicit; and
- (vi) whether the communication involved discussion(s) of the physical or sexual attractiveness or the sexual history,

¹¹ 19 Tex. Admin. Code § 247.2(1)(J).

¹² 19 Tex. Admin. Code § 247.2(3)(B).

¹³ 19 Tex. Admin. Code § 247.2(3)(E).

¹⁴ 19 Tex. Admin. Code § 247.2(3)(F).

¹⁵ 19 Tex. Admin. Code § 247.2(3)(H).

activities, preferences, or fantasies of either the educator or the student.¹⁶

SBEC is also authorized to sanction an educator for committing an act that would constitute a criminal offense (without regard to whether there has been a criminal conviction) that is considered directly related to the duties and responsibilities of the education profession, including offenses involving moral turpitude or offenses involving any form of sexual abuse or neglect of a student or minor.¹⁷

SBEC's range of sanctions against an educator include restrictions or reprimands; suspension, revocation or cancellation of an educator certificate; and the imposition of an administrative penalty.¹⁸ There are various factors to be considered in evaluating the form of discipline to be imposed against an educator.¹⁹ Nonetheless, the Board's sanctioning discretion is removed if, after a contested case hearing, it is determined that the educator solicited or engaged in any sexual contact or romantic relationship with a student or minor; in that case, the Board must permanently revoke the teaching certificate of the educator.²⁰

Staff has the burden of proof by a preponderance of the evidence.²¹ SOAH conducts the hearing in this proceeding and has the authority to issue a proposal for decision with proposed findings of fact and conclusions of law.²²

¹⁶ 19 Tex. Admin. Code § 247.2(3)(I).

¹⁷ 19 Tex. Admin. Code § 249.15(b)(10)(A), (B).

¹⁸ 19 Tex. Admin. Code § 249.15(a)(1)-(5).

¹⁹ 19 Tex. Admin. Code § 249.17(c).

²⁰ 19 Tex. Admin. Code § 249.17(i)(1)-(2).

²¹ 1 Tex. Admin. Code § 155.427; *see also Granek v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.) (proper standard of proof in agency factual determinations is preponderance of the evidence).

²² Tex. Gov't Code ch. 2003.

III. EVIDENCE AND DISCUSSION

Staff offered eight exhibits, which were admitted into evidence. Staff also called seven witnesses to testify. Although Respondent cross-examined Staff's witnesses, Respondent did not testify on his own behalf, nor did he call any witnesses or offer any exhibits into evidence.

A. Background and Staff's Allegations

Respondent holds an educator's certificate in Special Education for Grades EC-12 and was hired to work as a Special Education co-teacher at Lopez Middle School (LMS) in the Northeast Independent School District (NEISD) for the 2016-2017 school year. During that same school year, Student 1 was in eighth grade at LMS.

On February 20, 2018, Student 1's mother alleged that, while Student 1 was in eighth grade at LMS, Respondent engaged in sexual conduct with Student 1.²³ Respondent was immediately placed on administrative leave pending an investigation into the allegation.²⁴ On March 27, 2018, following an investigation into the allegation, NEISD's Board of Trustees proposed to non-renew Respondent's contract with the district.²⁵ On May 21, 2018, NEISD notified Respondent in writing that it would not renew his contract with the district.²⁶

Staff alleges that Respondent violated the Educator's Code of Ethics by engaging in sexual conduct with Student 1 while Student 1 was an eighth-grade minor student at LMS. Staff further alleges that Respondent engaged in inappropriate communication with Student 1 while Student 1 was a high school student.

²³ Student 1 had already transferred away from LMS to Regan High School in NEISD when the allegation was made.

²⁴ Staff Ex. 4.

²⁵ Staff Ex. 5.

²⁶ Staff Ex. 6.

B. Staff's Evidence**1. Student 1's Mother**

Student 1's mother testified that on February 19, 2018, she confronted Student 1 about emails she discovered that were between Student 1 and Respondent. Student 1's mother testified she was suspicious about the emails because it appeared that the emails were sent from Respondent's personal email account and not from a NEISD email address. Student 1's mother further testified she was concerned about the emails because she knew Respondent was Student 1's former teacher at LMS and was not teaching at the high school Student 1 was attending at the time.

Student 1's mother recalled that upon being confronted with the emails, Student 1 excused herself to the bathroom and proceeded to cut herself with a pair of scissors several times on her arms and neck. Student 1's mother testified that she immediately sought medical treatment for Student 1 and notified NEISD about the emails between Respondent and Student 1. Student 1's mother further testified that she provided her home computers to NEISD as part of their investigation into Respondent, as well as a box of journals that Student 1 had written while she was in eighth grade at LMS.

2. Student 1's Testimony, Journal Entries and Emails

Student 1 testified that she cut herself when her mother discovered the emails because she was scared "they were going to find out the truth of what's been going on."²⁷ Student 1 testified that when she was in eighth grade at LMS, Respondent would touch and pinch her breasts and her buttocks both over and under her clothes.²⁸ On one occasion, Student 1 testified, Respondent unzipped her pants and "slipped his hand in" and touched her "private parts."²⁹ Furthermore, Student 1 testified, that she and Respondent had conversations about her life and her background. On some occasions, Student 1 testified, the conversations between her and Respondent were about

²⁷ Tr. at 15:16-18.

²⁸ Tr. at 16:8-15.

²⁹ Tr. at 17:8-11.

sex and sexual positions.³⁰ Student 1 further testified that during one of their conversations, Respondent told her that he would like to have sex with her.³¹

Student 1 also testified that she kept journals when she was in eighth grade at LMS.³² The following is a sample of Student 1's journal entries:

- So anyway, I can get very attached and how I feel about him is I like him and I don't want to lose him. It's just me but I also feel that he won't care when I leave for high school. There [have] been days while I am talking to him and he'll pinch me or pull my hair gently and I like it and I will smile.³³
- So, I opened the door, and he looked my way and saw me, and I smiled at him and he looked at me and then looked away and smiled while he was doing something on his computer. I am not lying, he literally looked at me when I smiled at him then looked away then smiled again, feels like I hit the jackpot.³⁴
- I had a question so I went to him to look for help on the word mutualism. He said an example like if I were to fuck you, it would be good for both sides, it would be benefitting both of us in a positive way.³⁵
- I was wearing a belt. It was kind of tight for him. But he undid some of the buttons and unzipped my jeans and put his hand through there and oh yeah touched it all right. Then he said you look like you want to be fucked right now. And I said what time is it, and he said 4:24 and we just stared at each other. When I zipped my jeans, I could see he trying to be polite and not look but I wouldn't mind. You already have seen my breasts and touched my [vagina] it can't get any worse.³⁶
- Then one of the conversations came back from the day before about cutting and I think I brought that up like my cuts are healing fast. Then he said estimate how many times do you feel like cutting yourself. And I said three, only when I feel stress. Then he said if I fucked you 3 times a day, would that reduce your stress. And I nodded and he said is that a yes or no and I said yes.³⁷

³⁰ Tr. at 18:6-8.

³¹ *Id.*

³² Staff Ex. 1, part 1. This exhibit consisted of 33 pages of handwritten and typed journal entries that were file-stamped TEA 144-74 and 343-45.

³³ *Id.* at TEA 146.

³⁴ *Id.* at TEA 147.

³⁵ *Id.* at TEA 162.

³⁶ Staff Ex. 1, part 1 at TEA 165.

³⁷ *Id.* at TEA 166.

- Today was a good day. Yes, he touched my boobs and we joked around, and he put a spider in my hair and named it Charlotte and he thought it was real funny.³⁸
- So then again, I said what's on the menu and he said come here bug and I went to his desk. I was wearing skinny jeans with a fluffy tank top and a leather jacket zipped halfway and he moved his hand inside my jacket and touched them. I remember him switching over to the left and to the right and pinched them. Then he stopped and I was going to go back to class. We hugged at the door and he asked if I can get seconds and I nodded and said yes and I went back to him and he squeezed them and touched them.³⁹

Student 1 also testified that she and Respondent continued to communicate with one another through email after she left LMS and was in high school.⁴⁰ The following are samples of emails exchanged between Respondent and Student 1 after Student 1 no longer attended LMS:

- January 24, 2018, from Student 1 to Respondent: "Trust me I can't just forget about you with everything last year. I smile at times when I think about you."⁴¹
- January 25, 2018, from Respondent to Student 1: "R U kidding me [an unidentified student] contacted you a boatload of times in the fall and you just stopped responding. I even got his phone and messaged you several times because there was a super long laps [sic] in hearing from you so he and I were a little concerned. Yet still no response. I thought u might try to sneak up here at Lopez when u guys released early for finals. What email address R U sending from? I don't think I've seen this one before."⁴²
- January 25, 2018, from Student 1 to Respondent: "Things are complicated this year just the same as they were last year. I've been trying to see you, I truly have. Every time I ask it's I am busy and no one can take you or pick you up. She told me I would have to wait till I can drive. It's just complicated. I really do want to see you. It's just if I see you I don't want it to be a 5 minute thing then saying I have to go. I actually would like to be able to sit down and talk to you more than 5 minutes. I don't mind over text and email. It's just I am trying to figure out when I can see you in person and talk. It's harder than I thought it would be. It feels like I'll be 18 before I can see you. Hope to see you before then."⁴³

³⁸ *Id.* at TEA 169.

³⁹ *Id.* at TEA 171-172.

⁴⁰ Staff Ex. 2. This exhibit consisted of 8 pages of emails that were file-stamped TEA 136-143.

⁴¹ *Id.* at TEA 136.

⁴² Staff Ex. 2 at TEA 136.

⁴³ *Id.* at TEA 137.

- January 25, 2018, from Respondent to Student 1: “Sorry to know things are still so complicated in your world. Don’t worry about meeting up. I was just making mention of times I thought u would show your face or appear randomly.”⁴⁴
- January 27, 2018, from Student 1 to Respondent: “How is golf going for you? Are you practicing with the Lopez kids yet? Can you give me some advice for golfing?”⁴⁵
- January 28, 2018, from Respondent to Student 1 : “Hey ur advice was for going was being offered and solicited last year...u didn’t make it out! We won first place should have joined then, there was a lot of advice being offered back then.”⁴⁶
- January 28, 2018, from Student 1 to Respondent: “By the way, my mom took away all the yeabooks. I don’t know why and I can’t find where she put them.”⁴⁷
- January 29, 2018, from Respondent to Student 1: “Why the heck would she take away your yearbook?”⁴⁸
- January 30, 2018, from Student 1 to Respondent: “Well I am sorry I missed the advice last year. I was busy dealing with someone last year who kept messing with my mind. Maybe you need some panther pride and reconsider and teach me all over again :). I don’t know why she took the yearbooks.”⁴⁹

3. NEISD’s Investigation

NEISD investigator Christina Gonzalez testified that on February 20, 2018, NEISD reported a possible inappropriate relationship between Respondent and Student 1 based on the emails that Student 1’s mother provided to NEISD. On that same date, Ms. Gonzalez testified that, she interviewed Respondent, asked him to explain the emails, to which he replied “It’s not like that. It’s not what you think.”⁵⁰ Ms. Gonzalez testified that although there was nothing sexual contained in the emails, she believed the emails were “excessively

⁴⁴ *Id.*

⁴⁵ *Id.* at 139. Respondent was also a golf coach at LMS.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 140.

⁴⁹ Staff ex. 2 at TEA 140.

⁵⁰ Tr. at 75:1-2.

friendly in nature and had nothing to do with school-work.”⁵¹ Respondent also provided the following written statement to Ms. Gonzalez’s upon request:⁵²

A parent of a former student [Student 1] sent me an email requesting that I no longer communicate to her daughter without including her in the email. She provided me her own email address and furnished me with her personal phone number if I need to contact her. I responded that I would contact her as soon as I had ample time to engage in a lengthy conversation with her, but that I welcomed her concern and would like to speak with her. [Student 1] had ben contacting me on NEISD email system and some time ago used both methods of contact (NEISD and personal). Personal nor NEISD emails were furnished for student. Conversations were generally of status of school, progress, and coping matters.⁵³

In addition, Ms. Gonzalez testified, she reviewed Student 1’s journal entries, as well as a recorded video interview of Student 1 taken by the Child Protective Services’ (CPS) Child Advocacy Center. She further conferred with NEISD Detective Gabriel Dominguez about the investigation. Ms. Gonzalez testified that based on her review of all the evidence obtained in the investigation, she determined that Student 1’s journal entries were truthful and that Respondent engaged in an inappropriate relationship with Student 1 while Student 1 attended LMS.

4. NEISD’s Witness Testimony

Although none of the other NEISD employees called by Staff actively participated in the investigation, their testimony is summarized below:

- Christina Escobedo has been employed by NEISD ’s Human Resources (HR) Department as its director for staffing and recruiting for the past 16 years.⁵⁴ She testified that she was present when NEISD’s investigator Christina Gonzalez interviewed Respondent. She also confirmed that Respondent was immediately placed on administrative leave pending the investigation, and that the Board of Trustees voted to non-renew Respondent’s contract with NEISD. She further testified that based on the allegations and results of the investigation, Respondent

⁵¹ Tr. at 85:1-4.

⁵² Staff ex. 3.

⁵³ *Id.*

⁵⁴ *See* Tr. 102-16 for Ms. Escobedo’s entire testimony.

would not be eligible for rehire with NEISD. On cross-examination, Ms. Escobedo testified that she was not aware of Respondent's employment background prior to this incident, and that she was not aware of the outcome of any criminal proceeding against Respondent.

- Eric Wernli, the current Principal at Madison High School within NEISD, was the principal at LMS when the allegations against Respondent were made.⁵⁵ Mr. Wernli testified that on February 18, 2020, he informed NEISD's HR Department and CPS about the allegations. He further confirmed that NEISD immediately placed Respondent on administrative leave while the investigation into the allegations took place. He further testified that he read Student 1's journal entries and that he believed they were true. Mr. Wernli asserted that he would not recommend Respondent for rehire at NEISD. On cross-examination, Mr. Wernli testified that he was not aware of the outcome of any criminal proceeding against Respondent.
- Kristen Latronico is a counselor at Ed White Middle School within NEISD but was employed as a counselor at LMS when Student 1 attended.⁵⁶ She recalled that Student 1 visited her office at least once a week while she attended LMS. She further testified that Student 1 had the same challenges as most teenaged students, including self-harm. On cross-examination, Ms. Latronico testified that she was not aware of the outcome of any criminal proceeding against Respondent.
- Carol Elliot is the assistant principal at LMS and was Respondent's supervisor while he was employed at LMS and was also the assistant principal when Student 1 attended LMS.⁵⁷ Ms. Elliot testified that she reprimanded Respondent over work-related issues like failing to attend a training session,⁵⁸ and failing to upload documents to Google classroom.⁵⁹ She testified that the emails caught her attention because they were exchanged from personal accounts. As for the journal entries, Ms. Elliot testified "...that's just hard to say. I mean, I knew this child. She would come to me asking where [Respondent] was a lot. You know, I just don't know."⁶⁰ On cross-examination, Ms. Elliot testified that she was not aware of the outcome of any criminal proceeding against Respondent.

⁵⁵ See Tr. 133-50 for Mr. Wernli's entire testimony.

⁵⁶ See Tr. 117-32 for Ms. Latronico's entire testimony.

⁵⁷ See Tr. 152-172 for Ms. Elliot's entire testimony.

⁵⁸ Staff Ex. 7.

⁵⁹ Staff Ex. 8.

⁶⁰ See Tr. 165:9-12.

IV. ANALYSIS

Staff met its burden of proof to establish that Respondent engaged in a sexual or romantic relationship with a minor or student. There are various factors to be considered in evaluating the form of discipline to be imposed against an educator.⁶¹ However, the Board's sanctioning discretion is removed if it is determined that the educator solicited or engaged in any sexual contact or romantic relationship with a student or minor.⁶² In that case, the Board shall permanently revoke the teaching certificate of the educator.⁶³

The testimony of Student 1 that Respondent touched her breasts and private parts was credible, supported by contemporaneous journal entries, and uncontroverted. Respondent did not dispute the veracity of Student 1's journal entries nor did he offer an explanation as to why Student 1 might have misinterpreted or exaggerated Respondent's words or actions. Student 1's reaction to her mother finding the emails between Student 1 and Respondent is very striking. Student 1's cutting of her neck and wrists displayed a severe level of fear that the sexual conduct between her and Respondent had been revealed. This further supports that Student 1's testimony and journal entries were true depictions of what occurred between her and Respondent because such a reaction would be unusual if her accounts were untrue.

As for the emails themselves, the preponderant evidence demonstrates they were inappropriate communications in violation of the Educator's Code of Ethics Standard 3.9.⁶⁴ Although the communications do not contain any sexual content, the timing of the emails was inappropriate in that they were made when Student 1 was no longer at LMS.⁶⁵ As such, the subject matter of the emails was not school-related.⁶⁶ In addition, Respondent's use of his personal email

⁶¹ 19 Tex. Admin. Code § 249.17(c).

⁶² 19 Tex. Admin. Code § 249.17(i)(1)-(2).

⁶³ *Id.*

⁶⁴ 19 Tex. Admin. Code § 247.2(3)(I).

⁶⁵ 19 Tex. Admin. Code § 247.2(3)(I)(i).

⁶⁶ 19 Tex. Admin. Code § 247.2(3)(I)(ii).

account to communicate with Student 1 indicates Respondent's attempt to conceal the communication.⁶⁷

Rather than deny any of Staff's allegations, Respondent's effort to display no wrongdoing on his part consisted of asking Staff's witnesses if they were familiar with Respondent's prior work history and criminal background. Staff did not present any evidence of Respondent's prior disciplinary history, other than the minor issues Ms. Elliot mentioned in her testimony. Although not outcome determinative, Respondent failed to offer any evidence that the criminal proceeding against him was dismissed. Therefore, Staff met its burden of proof to demonstrate Respondent violated Educators' Code of Ethics Standards 1.7, 1.10, 3.2, 3.5, 3.6, and 3.8.⁶⁸

Respondent's actions reflect the lack of those moral, mental, and psychological qualities required of an educator and demonstrate that he would not be a proper role model for students. Based on the evidence presented, SBEC is authorized to revoke his educator certificate.⁶⁹ For the reasons outlined herein, the ALJ recommends SBEC permanently revoke Respondent's educator certificate. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

V. FINDINGS OF FACT

1. Gabriel Ginithan (Respondent) holds an educator's certificate in Special Education for Grades EC-12 issued by the Texas Education Agency (TEA) and was hired to work as a Special Education co-teacher at Lopez Middle School (LMS) in the Northeast Independent School District (NEISD) for the 2016-2017 school year.
2. During the 2016-2017, Student 1, a minor, was in eighth grade at LMS.
3. On February 19, 2018, Student 1's mother confronted Student 1 about emails she discovered that were between Student 1 and Respondent.
4. When Student 1 was confronted with the emails, she excused herself to the bathroom and proceeded to cut herself with a pair of scissors several times on her arms and neck.

⁶⁷ 19 Tex. Admin. Code § 247.2(3)(I)(iii).

⁶⁸ 19 Tex. Admin. Code § 247.2(1)(G), (1)(J), (3)(B), (E), (H), (I).

⁶⁹ 19 Tex. Admin. Code § 249.15(a)(4).

5. Student 1 cut herself when her mother discovered the emails because she was scared the emails would expose the sexual conduct between herself and Respondent.
6. On February 20, 2018, Student 1's mother alleged that, while Student 1 was in eighth grade at LMS, Respondent engaged in sexual conduct with Student 1.
7. Respondent was immediately placed on administrative leave pending an investigation into the allegation.
8. Student 1's mother provided her home computers to NEISD as part of their investigation into Respondent, as well as a box of journals that Student 1 had written while she was in eighth grade at LMS.
9. When Student 1 was in eighth grade at LMS, Respondent would touch and pinch her breasts and her buttocks both over and under her clothes.
10. On one occasion, when Student 1 was in eighth grade at LMS, Respondent unzipped her pants, and slipped his hand inside to touch her vagina.
11. When Student 1 was in eighth grade at LMS, Respondent and Student 1 had conversations about her life, her background, sex, and sexual positions.
12. During one conversation, Respondent told Student 1 that he would like to have sex with her.
13. Student 1 kept journals when she was in eighth grade at LMS.
14. Student 1's journals contained several entries stating that Respondent touched Student 1's breasts, private parts, and suggested they have sex.
15. Respondent continued to communicate with Student 1 through email after Student 1 left LMS and was in high school.
16. The subject matter of the emails was not school-related.
17. Respondent attempted to conceal the communications by using a personal email address.
18. On March 27, 2018, following an investigation, NEISD's Board of Trustees proposed to non-renew Respondent's contract with the district.
19. On May 21, 2018, NEISD notified Respondent in writing that it would not renew his contract with the district.
20. On April 7, 2021, the staff (Staff) of TEA, Educator Leadership and Quality Division, on behalf of the State Board for Educator Certification (SBEC), issued a notice of hearing to Respondent containing a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference

to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition.

21. Administrative Law Judge (ALJ) Steven M. Rivas of the State Office of Administrative Hearings (SOAH) convened the hearing on the merits on August 10, 2021, via Zoom videoconference. Staff was represented by Attorney Jonathan Crabtree. Respondent appeared and was represented by attorneys John Gilmore and Aaron Diaz. The hearing adjourned and the record closed on August 25, 2021, when the ALJ received the hearing transcript.
22. The evidence was sufficient to prove that Respondent engaged in sexual conduct with Student 1.
23. The evidence was sufficient to prove that Respondent engaged in inappropriate communications with Student 1.
24. Respondent lacks the honesty, trustworthiness, and integrity needed to meet the good moral character required of a certified educator, which renders him a person who is unworthy to instruct or supervise the youth of this state.

VI. CONCLUSIONS OF LAW

1. SBEC has jurisdiction over this matter. Tex. Educ. Code ch. 21.
2. SOAH has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Respondent received proper and timely notice of hearing. Tex. Gov't Code §§ 2001.051-.052.
4. SBEC regulates and oversees all aspects of the certification and standards of conduct of public school educators. Tex. Educ. Code § 21.031(a).
5. Staff had the burden to prove its allegations by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427.
6. SBEC may take disciplinary action based on satisfactory evidence that “the person is unworthy to instruct or to supervise the youth of this state” or “has violated a provision of the Educators’ Code of Ethics.” 19 Tex. Admin. Code § 249.15(b)(2)-(3).
7. Worthy to instruct or supervise the youth of this state is defined as the presence of those moral, mental, and psychological qualities that are required to enable an educator to render the service essential to the accomplishment of the goals and mission of the Board policy and this chapter. 19 Tex. Admin. Code § 247.1(e)(21).

8. Standard 1.10 of the Educators' Code of Ethics states that an educator shall be of good moral character and be worthy to instruct or supervise the youth of this state. 19 Tex. Admin. Code § 247.2(1)(J).
9. Good moral character means the virtues of a person as evidenced by patterns of personal, academic, and occupational behaviors that, in the judgment of the Board, indicate honesty, accountability, trustworthiness, reliability, and integrity. 19 Tex. Admin. Code § 249.3(23).
10. By engaging in a romantic or sexual relationship with Student 1 who was a minor at the time, Respondent violated Educators' Code of Ethics Standards 1.7, 1.10, 3.2, 3.5, 3.6, and 3.8. 19 Tex. Admin. Code § 247.2(1)(G), (1)(J), (3)(B), (3)(E), (3)(H), and (3)(I).
11. By engaging in inappropriate communications with Student 1, Respondent violated Standard 3.9 of the Educators' Code of Ethics. 19 Tex. Admin. Code § 247.2(3)(I).
12. Respondent is currently unworthy to instruct or supervise the youth of this state. 19 Tex. Admin. Code §§ 247.2(1)(J), 249.15(b)(2).
13. Because the ALJ determined that Respondent engaged in a sexual and a romantic relationship with Student 1, the Board's sanctioning discretion is removed, and Respondent's educator certificate shall be permanently revoked. Tex. Admin. Code § 249.17(i)(1)-(2).

VII. RECOMMENDATION

The ALJ recommends that SBEC permanently revoke Gabriel Ginithan's Texas Educator Certificate.

SIGNED October 25, 2021.



STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS