

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

HOUSTON INDEPENDENT SCHOOL
DISTRICT
Plaintiff

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v.

CIVIL CASE NO: 1:19-CV-00684-LY

THE TEXAS EDUCATION AGENCY and
MIKE MORATH, COMMISSIONER OF
EDUCATION, in his official and individual
capacities
Defendants

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

Exhibit 1



Commissioner Mike Morath

1701 North Congress Avenue • Austin, Texas 78701-1494 • 512 463-9734 • 512 463-9838 FAX • tea.texas.gov

August 5, 2019

Diana Davila, Board President
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

Holly Maria Flynn Vilaseca, 1st Vice President
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

Sergio Lira, Board Secretary
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

Jolanda Jones, Board Member
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

Wanda Adams, Board Member
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

Grenita Lathan, Interim Superintendent
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

Preliminary Report

Informal Review Request Due:

August 15, 2019

Elizabeth Santos, 2nd Vice President
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

Sue Deigaard, Assistant Secretary
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

Rhonda Skillern-Jones, Board Member
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

Anne Sung, Board Member
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

Dear President Davila and Interim Superintendent Lathan:

The enclosed report presents the findings resulting from a Special Accreditation Investigation (SAI) conducted by the Texas Education Agency's (TEA) Special Investigations Unit (SIU). This investigation relates to allegations of a systemic breakdown of the Houston Independent School District (HISD) Board of Education's (Board of Trustees) ability to govern, operate within the scope of their authority, and ensure adherence to contracting laws and district policies.

Executive Summary

Trustee Diana Davila made a motion during the October 11, 2018 board meeting to replace the current interim superintendent without any prior notice or public deliberation. This action set in

motion a chain of events resulting in complaints being filed with the TEA alleging dysfunction within the HISD Board of Trustees.

On October 15, 2018, the TEA received multiple complaints alleging that the HISD is not in compliance with the laws relating to governance of an Independent School District, Tex. Educ. Code §§11.051, and 44.031; and Tex. Gov't Code Chapter 551 Open Meetings. On January 22, 2019, TEA issued a notice of Special Accreditation Investigation (SAI) to HISD and conducted an on-site investigation at the Hattie Mae White Education Support Center, Houston Independent School District, 4400 West 18th Street, Houston, Texas 77092. Due to the concerns reported by HISD staff, TEA issued an amended notice of SAI to HISD to include the alleged violations of contract procurement, Tex. Educ. §44.031. On March 24, 2019, SIU conducted a second investigation at the Educational Service Center IV, 7200 Northwest Drive, Houston, Texas 77092.

TEA finds that HISD Board of Trustees violated the requirements of the Texas Open Meetings Act by coordinating an unposted meeting of a quorum of the board of trustees to conduct important district business in secret. Five out of the nine board members met in a "walking quorum" on October 8, 2018 at a local restaurant in Houston, Texas. SIU determined that members of the HISD Board of Trustees engaged in conversation and dialogue to relieve Dr. Grenita Lathan as Interim Superintendent and hire Dr. Abelardo (Abe) Saavedra as her replacement. This conduct not only violated the Texas Open Meetings Act, but also violated Tex. Educ. Code § 11.051 because the trustees acted on behalf of the board without the authorization by a majority vote of the members of the Board of Trustees present at a meeting held in compliance with the Open Meetings Act.

TEA finds that HISD Board of Trustees acted individually on behalf of the board numerous other times, exceeding the scope of their authority in violation of Texas Education Code §11.051. SIU discovered numerous instances via email correspondence where the HISD Board of Trustees acted individually, on behalf of the board, without the prior authorization by a majority vote of the members of the Board of Trustees present at a meeting held in compliance with the Open Meetings Act. The HISD Board of Trustees also violated the board policies adopted to govern the interactions between the board members and the district's administration.

Lastly, TEA finds HISD Board of Trustees violated contract procurement rules while the district was selecting a vendor/contractor as well as attempting to tamper with contracts that had been awarded in violation of Tex. Educ. Code §§44.031 and 44.031 (a)(1). HISD failed to monitor contractual obligations, resulting in the manipulation and abuse Job Order Contracts. The HISD Board of Trustees attempted to award contracts indirectly by contacting vendors during the Request For Proposal (RFP) process, advocating for specific contractors and HISD Board of Trustees manipulated contracts to circumvent contract procurement rules.

Based on the findings, the SIU will recommend to the Commissioner of Education that the accreditation status of the district be lowered, a conservator be appointed, and a Board of Managers be installed in accordance with Tex. Educ. Code §39.057(d) to replace the existing Board of Trustees due to the HISD Board of Trustees' demonstrated inability to appropriately govern, inability to operate within the scope of their authority, circumventing the authority of the Superintendent, and inability to ensure proper contract procurement laws are followed.

Conclusion

This preliminary report addresses only those allegations described herein and investigated by the SIU to date. These findings do not address all the allegations raised before or after the investigation. Additional investigative work may be conducted in the future to address any remaining allegations. Furthermore, additional TEA divisions may be in the process of investigating HISD or issuing other investigative reports regarding the district.

The preliminary report is for your review and response related to the findings identified in the report. The attachments to the preliminary report contain FERPA-protected information. FERPA-protected information may not be released to anyone unless they are authorized to receive that information pursuant to FERPA. The school district or any person identified in this report as having violated a law, rule, or policy may request, in writing an informal review of the preliminary report, as authorized by the Tex. Educ. Code §39.058 and 19 Tex. Admin. Code §157.1123. A request for an informal review must be received, along with any information or documentation the requestor would like the agency to consider during the informal review, on or before **August 15, 2019**, and addressed to the following postal mail or email address:

Mailing address: Jason Hewitt
Special Investigations Unit
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701

Email address: Jason.hewitt@tea.texas.gov

If no informal review is requested by the deadline, this report will become final, in accordance with 19 Tex. Admin. Code §157.1123.

Please contact me at (512) 936-5962, should you have any questions.

Sincerely,



Jason Hewitt
Special Investigations Unit, TEA

TEA Special Accreditation Investigation
Preliminary Investigative Report
Houston Independent School District

Introduction

On October 15, 2018, the Texas Education Agency, hereinafter referred to as “TEA” received multiple complaints alleging that the Houston Independent School District, hereinafter referred to as “HISD” or “district”, is not in compliance with the laws relating to Governance of Independent School District, Tex. Educ. Code §§11.051, and 44.031; and Tex. Gov’t Code Chapter 551, Open Meetings. On January 22, 2019, TEA issued a notice of Special Accreditation Investigation, hereinafter referred to as “SAI” to HISD.

In January of 2019, TEA’s Special Investigations Unit, hereinafter referred to as “SIU” met with HISD’s Interim Superintendent, Dr. Grenita Lathan, to discuss the nature of the complaint and the purpose of the investigation. Dr. Lathan was also provided a copy of the SAI procedures. HISD provided TEA with documents pertaining to board services, electronic communication records, conservator reports, and employment contracts. SIU conducted this on-site investigation at the Hattie Mae White Educational Support Center-HISD, Houston Independent School District 4400 West 18th Street, Houston, Texas 77092, to interview board members and district staff. Additionally, SIU obtained information from Dr. Abelardo Saavedra, current and former Central Office leadership staff, and former HISD Superintendents.

Moreover, information provided during on-site interviews identified additional areas of concern regarding contract procurement. On March 24, 2019, TEA issued an amended notice of SAI to HISD to include the alleged violations of contract procurement, Tex. Educ. Code §44.031. SIU conducted a second investigation at the Educational Service Center IV, 7200 Northwest Drive, Houston, Texas 77092. The SIU findings described in this report are the result of the investigation extensive document analysis, interviews of HISD Board of Trustees, as well as current and former HISD employees.

Background Information

The resignation of HISD Superintendent Terry Grier changed the organizational structure of the HISD, requiring the Board of Trustees to name a new superintendent to oversee the leadership, management, and daily operations of the district. Dr. Grier’s departure prompted HISD to engage in a superintendent search. After a lengthy superintendent search, Dr. Richard Carranza was named Superintendent of HISD by unanimous vote in August of 2016. Not long after, the leadership of HISD changed yet again when Dr. Carranza abruptly ended his contract in March of 2018.

On March 22, 2018 the HISD Board of Trustees convened in a 7-hour special emergency meeting to deliberate the successor to Dr. Richard Carranza, and appointed Dr. Grenita Lathan as Interim

Superintendent by unanimous vote. Moving forward, Dr. Lathan assumed the role and duties as Interim Superintendent while the board conducted its search for a permanent superintendent.

Filling the position of a permanent superintendent was not the only pressing issue HISD Board of Trustees faced. HISD's long struggle with "Improvement Required" schools is an issue that the Board of Trustees has failed to successfully address, requiring the Commissioner of Education to appoint a conservator to ensure district-level support for Kashmere High School. Additionally, tension on the board created discord within the community leading to scrutiny from legislators, constituents, and stakeholders at the local and state level. Community members such as Zeph Capo, President of the Houston Federation of Teachers, was quoted in the Houston Public Media saying, "The conduct of the HISD's board was nothing short of embarrassing and harmful. It demonstrated a dysfunction that does not serve our community, our school district and our students well." Trustees have also been criticized by Houston Mayor Sylvester Turner, calling the HISD board, "destabilizing and unacceptable."

Board attempts to address low performing campuses have resulted in disorderly and disorganized board meetings. During the April 24, 2018, board workshop, interactions amongst the Board of Trustees, and the public, escalated to unmanageable outbursts, constant disruptions, and disrespectful comments. Upon going over the allotted time, former President Rhonda Skillern-Jones asked law enforcement to remove the last public speaker from the podium sparking further outbursts from the audience. Former President Skillern-Jones then requested law enforcement assistance in clearing the boardroom. The audience reacted in outrage shouting expletives while Trustee Wanda Adams can be heard saying, "I'm sick of this shit, clear the room." Law enforcement had to remove audience members out of the board room and arrested two community members.

Additionally, HISD Board of Trustees have demonstrated unprofessional behaviors by means of inappropriate verbal arguments during multiple meetings. Trustees have historically interrupted each other during their allotted speaking time, complained about speaking time, and regularly failed adhering to Robert's Rules of Order. Board meetings lack control and order, as evident in the May 10, 2018 meeting when Trustee Jolanda Jones interrupted President Skillern-Jones and stated, "It's frustrating that they [administration] send us [trustees] stuff, and then we come to this table and ask questions we've already gotten the answers to... This is already a long meeting and there are people sitting here that still haven't gotten to speak yet, so I'm tired of meeting to death."

During a board meeting held on June 14, 2018 Trustee Jones stated, "...In reference to the Legislative Budget Board Audit... I think that's a crackhead move, that's my opinion." At the end of that meeting, Trustee Sue Deigaard said, "I think that tonight revealed for me, and the week that proceeded it, was some significant struggles that our board has and I'm really hoping our board can learn from this week, and learn from tonight and pull it together for kids and focus on student outcomes."

Moreover, TEA Conservator Dolores Delaney reported conflicts between trustees have created an environment that impedes the board from focusing on student outcomes. During the September 20, 2018, special board meeting trustees engaged in explosive disagreements when considering the approval to exercise warranty under February 2016, Hazard Young, Attea and Associates “HYA” services for a superintendent search.

Further on, events that occurred during the October 11, 2018 meeting revealed the chaotic dynamics of the HISD Board of Trustees. As Trustee Anne Sung calls a motion to execute the agreement with HYA, arguments erupted between trustees. Trustee Adams commented on the specifics of the contract. Legal counsel interjected during Trustee Adams’ commentary to keep her from disclosing closed session discussions, such as; specifics of the contract, and the lack of community engagement. Tension on the board intensified when Trustee Davila expressed that there had been an intentional delay to begin the superintendent search by other trustees.

Trustee Davila’s rhetoric prompted Trustee Adams to express her frustrations about a factional divide on the Board of Trustees and within the district’s administration. Trustee Adams stated, “Read the conservator’s reports, it is about racial lines, and we need to stop it as a board... when you say our community, Santos, that means Black, Brown, Hispanic, Asian, it means everybody. Not just one side, so you need to collaborate with all the principals that don’t look like you. We need to come together as one team and make sure we are all on one accord, because we are sending a message that should not be... We have to put what’s best for kids, and we are not... we are worried about if someone is Black, White, Hispanic, Asian, it shouldn’t be that way... it should be about one color and that’s our kids.”

Conflicts between trustees not only highlight a difference of opinion, they expose a factional divide that prevents the HISD governing body from moving forward as a district. As Trustee Jones pointed out, “We have people that are working here because Latinos on the board have threatened the superintendent that she better not fire them... there is a race war on this board. I know from both Sergio and Sue that they are concerned, and I do not believe my colleagues always vote for what’s best for student achievement but to not appear to side with one race over another.” The comments from board members clearly illustrate the dysfunction of the board.

During the October 8, 2018 meeting with Dr. Saavedra, the trustees present in that meeting stated their complaints about the interim superintendent and other trustees. Dr. Saavedra summarized the complaints of Trustees Lira, Sung, Santos, and Vilaseca as follows:

They shared with me how disenfranchised they felt on the board. They discussed at length how the interim superintendent ignored them and did not respect them. They described how a community member had been disrespectful and threatening toward one or more of them and another trustee turns around and places that threatening community member in one of the board committees. One or more of the trustees that was meeting with me said that they had asked Dr. Lathan for a district police officer to attend the meetings where the threatening community member would be at and she refused.

The inner turmoil of the divided HISD Board of Trustees reached a tipping point during the October 11, 2018 regular board meeting, when Trustee Davila motioned to terminate the current interim superintendent and hire a new interim superintendent with no prior notice that the position of interim superintendent was under consideration. This motion and subsequent vote caused a chain of events that prompted TEA intervention.

HISD has also experienced historical problems with contract awarding and contract procurement. The events leading to the arrest of a former Trustee for violating federal racketeering laws highlighted the corruption of the business affairs within the district. HISD internal auditors investigated and confirmed the abuse of Job Order Contracts in which contracts were split in order to avoid the \$500,000 threshold as required by state law. In conjunction to these findings, the district's former Chief Auditor, Richard Patton, filed a whistleblower lawsuit against HISD for terminating his contract after reporting unallowable contracting practices within the district.

In addition to egregious board dysfunction and contract procurement issues, the board members frequently overstep their authority. Examples of overreach and overstep of authority by the HISD Board of Trustees can be found dating back to 2009. During the investigation, SIU found that in August of 2009 the HISD board voted 8-1 to allocate \$121.5 million for additional facilities projects in each of the nine trustee's districts. The board members who participated in this vote were former 2009 Board of Trustees, and current Board President Diana Davila. This was called the Trustee Allocation Fund (TAF). (See Exhibit A)

On April 29, 2019, an HISD senior administrator was interviewed by SIU investigators. The administrator reported that the TAF was funded with residual bond money from the 2007 bonds. The amount of money in the fund totaling \$121.5 million, was to be split (nine) ways. At this time, the funds have been depleted. The HISD senior administrator explained, "The trustee identified how they wanted the funds spent, and a board item was drafted to allocate the fund request from un-allocated to allocated per the Board vote and approval."(See Exhibit B) The administrator stated that trustees managed TAF money. Trustees used the money for various projects of their choice for schools in their own district. For example, Trustee Skillern-Jones used some of the bond money allocated in her fund to purchase books for Burrus Elementary and "furniture for school reception area" for High School Ahead Academy Middle School. (See Exhibit C) The amount in the fund rolled over to whichever trustee was elected to that seat, until the money was exhausted. This further exemplifies the overreach of the HISD Board of Trustees. The action to approve trustee spending is not only an overreach of the board, but is in direct conflict with the superintendent's contract that states, "the management of the district falls under their (superintendent's) purview." Again, HISD Board of Trustees exceeded their authority by passing this measure and directing HISD employees.

The three specific allegations, SIU's findings of fact, and analysis have resulted in TEA's final decision as stated below:

Allegation One

Did the HISD Board of Trustees exercise decision making powers without deliberating in a public quorum of trustees or posting a public meeting notice as required by Tex. Gov't Code Chapter 551 Open Meetings?

Applicable Statute

Texas Governmental Code §551.002. states every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter.

Allegation Two

Did the members of the HISD Board of Trustees act individually on behalf of the board, exceeding the scope of their authority in violation of Tex. Educ. Code §11.051 Governance of Independent School District?

Applicable Statutes

Texas Education Code §11.051 states:

- (a) An independent school district is governed by a board of trustees who, as a body corporate, shall:
 - (1) oversee the management of the district; and
 - (2) ensure that the superintendent implements and monitors plans, procedures, programs, and systems to achieve appropriate, clearly defined, and desired results in the major areas of district operations.
- (a-1) Unless authorized by the board, a member of the board may not, individually, act on behalf of the board. The board of trustees may act only by majority vote of the members present at a meeting held in compliance with Chapter 551, Government Code, at which a quorum of the board is present and voting. The board shall provide the superintendent an opportunity to present at a meeting an oral or written recommendation to the board on any item that is voted on by the board at the meeting.
- (b) The board consists of the number of members that the district had on September 1, 1995.
- (c) A board of trustees that has three or five members may by resolution increase the membership to seven. A board of trustees that votes to increase its membership must consider whether the district would benefit from also adopting a single-member election system under Section 11.052. A resolution increasing the number of trustees takes effect with the second regular election of trustees that occurs after the adoption of the resolution. The resolution must provide for a transition in the number of trustees so that when the transition is complete, trustees are elected as provided by Section 11.059.

Allegation Three

Did the HISD Board of Trustees fail to follow contract procurement rules and procedures, and fail to ensure staff followed these rules and procedures when awarding contracts for goods and services in violation of Tex. Educ. Code §44.031?

Applicable Statutes

Texas Education Code, § 44.031 states:

(a) Except as provided by this subchapter, all school district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district:

- (1) competitive bidding for services other than construction services;
- (2) competitive sealed proposals for services other than construction services;
- (3) a request for proposals, for services other than construction services;
- (4) an interlocal contract;
- (5) a method provided by Chapter 2269, Government Code, for construction services;
- (6) the reverse auction procedure as defined by Section 2155.062(d), Government Code; or
- (7) the formation of a political subdivision corporation under Section 304.001, Local Government Code.

Findings of Fact for Allegation One

Did a quorum of the HISD Board of Trustees consider or discuss public business over which the trustees have supervision or control outside of a public meeting posted in compliance with Tex. Gov't Code Chapter 551 "Open Meetings"?

The following findings of fact are a result of interviews conducted and an examination of HISD internal documents.

Open Meetings

1. On March 5, 2018 at 11:17 PM, Trustee Holly Maria Flynn Vilaseca sent an email to Dr. Saavedra stating, "Holly here (HISD Trustee) As you may have heard, many changes are taking place here. Would love to hop on a call to check-in." (See Exhibit 1.1).
2. Trustee Davila told SIU, "I communicated with Dr. Saavedra when Richard Carranza announced that he was going to be leaving... we talked about a possible interim superintendent interest."
3. Text messages submitted by Trustee Vilaseca confirm that on October 5, 2018, Trustee Vilaseca asked Dr. Saavedra if they could meet on October 8, 2018 from 3PM -6PM. (See Exhibit 1.2)

4. During her interview with SIU, Trustee Flynn Vilaseca stated that on October 8, 2018, she met with Dr. Saavedra at a local restaurant along with Trustees: Santos, Lira, Sung and Davila.
5. Dr. Saavedra stated that he met with Trustees Lira, Sung, Santos, and Flynn Vilaseca on October 8, 2018. After Trustees Lira, Santos and Sung left, Dr. Saavedra met with Trustees Vilaseca and Davila.
6. In their interviews with SIU, Trustees Santos and Sung acknowledge they were in a meeting with Dr. Saavedra, Trustee Lira, and Trustee Flynn Vilaseca.
7. Dr. Saavedra told the SIU that Trustee Vilaseca told him that some of the HISD Board of Trustees did not know him and wanted to meet him.
8. According to Dr. Saavedra, the board members wanted to talk to him that day because they wanted to consider him as a replacement for Dr. Lathan.
9. Trustee Flynn Vilaseca told SIU investigators that during the meeting with Dr. Saavedra, Trustee Flynn Vilaseca provided Dr. Saavedra with a copy of former Superintendent Carranza's contract.
10. On October 11, 2018, three days after the meeting between trustees and Dr. Saavedra, Trustee Davila called a motion to replace Dr. Lathan as Superintendent with Dr. Saavedra. The motion passed on a 5-to-4 vote. The five trustees (Lira, Davila, Sung, Santos and Vilaseca) who secretly met with Dr. Saavedra all voted for the motion three days after meeting with Dr. Saavedra.
11. In the motion to hire Dr. Saavedra, the board offered the same salary and benefits as were present in Dr. Caranza's contract that was provided to Dr. Saavedra by Trustee Holly Vilaseca in the secret meeting three days prior.
12. During the deliberations regarding Trustee Davila's motion to replace Dr. Lathan with Dr. Saavedra, Trustee Davila explained that she had recently been at a conference where she was told that it was hard to get qualified candidates to apply for a superintendent job when the current interim superintendent is pursuing that position. Trustee Davila then stated that she had "spoken to Dr. Saavedra and he has no interest of staying or applying for the position."
13. SIU conducted separate interviews with Trustee Adams, Trustee Jones, Trustee Skillern-Jones and Trustee Deigaard. When asked if they knew about the meeting at a local restaurant, they all denied knowing about the meeting and stated that no one told them about it. Their statements are corroborated by Dr. Saavedra and the five board members who knew about the meeting.
14. Most recently at the August 1, 2019 Agenda review meeting, Trustee Santos stated, "I just find it quite funny that people keep throwing stones at certain trustees but were not the only ones in violation the Texas open meeting act, so I'm gonna go ahead and remind this board that last year when we voted for um [sic] the September vote when certain elected officials showed up here there were five other trustees that knew about a September 1st contract for the interim superintendent that somebody was going to make the motion on. There were five trustees that knew about it, we were not-didn't in any clue about it [sic], so the investigation, I welcomed the TEA to continue investigating not just the five educators that you keep pointing fingers at, Trustee Deigaard, because if I recall, you were the one that

was going to make that motion. Anyway I'm gonna go ahead and back up Trustee Sung, because I didn't get on this board to be elected, I didn't come up on here for talking points, I didn't come up here to halt-to stop [sic] the democratically elected process that you know what when we got up here 18 months ago, but five years ago, five years ago there were nine trustees up here that were not doing the work for children; now you have a board that is willing to do the work and you want to sit here and hide behind talking points? It's not just these five educators that need to be under investigation Trustee Deigaard." Trustee Skillern Jones admitted that there have consistently been problems with the HISD board for five years, describing the board as "contentious and conservative". Trustee Skillern-Jones also accused some of her fellow board members of receiving their talking points from community members who attend the board meetings through their phone.

Cooperation with TEA investigation

15. When SIU investigators asked Trustee Vilaseca why she provided Dr. Saavedra with a copy of former Superintendent Richard Carranza's contract, Trustee Vilaseca stated she did not recall.
16. When asked about her relationship with Dr. Saavedra, Trustee Davila stated, "I was on the board with him for five years and he was superintendent for five years. We have a professional relationship...Dr. Saavedra and I, every now and then will send texts like: Happy New year, Happy Birthday, Happy Father's Day... when I was still on the board even after I hired Dr. Grier it would be like, Do you remember what the budget looked like when you were here? or, do you remember the process we used when you were here?, things like that."
17. During her interview with SIU, Trustee Davila further stated that in 2018, she had communicated with Dr. Saavedra "five or six times."
18. Dr. Saavedra told the SIU that he had exchanged text messages with Trustee Davila on or about October 4, 2018 about whether he had heard from Trustee Vilaseca. When he responded that he had not, Trustee Davila told him that he would hear from her soon.
19. SIU submitted requests to HISD for text messages from HISD Board of Trustees (including Trustee Davila) to Dr. Saavedra. Trustee Davila failed to respond to the request and failed to produce any records. Board members are subject to the Public Information Act and the Local Records Retention Schedule. Text messages regarding the arrangement of a meeting with a person being considered for the interim superintendent position should have been retained and turned over to the SIU upon request.
20. In her interview with SIU, Trustee Davila stated that when she met with Dr. Saavedra there were no other trustees present; however, Trustee Vilaseca and Dr. Saavedra confirm that Trustee Vilaseca was present when Trustee Davila met with Dr. Saavedra.
21. In his interview with SIU, Trustee Lira admitted that he met with Dr. Saavedra before the October 11, 2018 regular board meeting. However, Trustee Lira told to the SIU investigators that he was alone when he met with Dr. Saavedra and no other trustees were present for the meeting. This declaration is contradicted by Dr. Saavedra's statement that he met with Trustees Lira, Santos, Vilaseca and Sung and later by Trustee Davila. Additionally, Trustees

Sung, Santos, and Vilaseca confirmed that Trustee Lira was present during the meeting with Dr. Saavedra.

Analysis of Allegation 1

OPEN MEETING VIOLATION

TEA finds that HISD Board of Trustees violated the requirements of the Texas Open Meetings Act by coordinating an unposted meeting of a quorum of the board of trustees to conduct important district business in secret. Five out of the nine board members met in a “walking quorum” on October 8, 2018 at a local restaurant in Houston, Texas. SIU determined that members of the HISD Board of Trustees engaged in conversation and dialogue to relieve Dr. Grenita Lathan as Interim Superintendent and hire Dr. Abelardo (Abe) Saavedra as her replacement. This conduct not only violated the Texas Open Meetings Act, but also violated Tex. Educ. Code § 11.051 because the trustees acted on behalf of the board without the authorization by a majority vote of the members of the Board of Trustees present at a meeting held in compliance with the Open Meetings Act.

According to the Texas Open Meetings 2018 Handbook, as provided by the Office of Attorney General, a walking quorum occurs when a governmental body attempts to avoid compliance with the Act by deliberating about district business without a quorum being physically present in one place at one time. Additionally, per Government Code §551.001(4), “meeting” means: a deliberation between a quorum of governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has a supervision or control is discussed or considered or during which the governmental body takes formal action.

On May 24, 2019, Attorney General, Ken Paxton provided an opinion on the Texas Open Meetings Act quorum rules and stated the following, “If a quorum of a governmental body deliberates about public business within the jurisdiction of the body outside of a meeting authorized by the Texas Open Meetings Act, through multiple communications each involving fewer than a quorum, the governmental body violates the Act. If the Texas Education Agency conducts an investigation as authorized by section 39.057 of the Education Code and concludes that members of a school district board of trustees violated their duty to comply with the Act, it could take appropriate civil action authorized by subsection 39.057(d) of the Education Code.” (See Exhibit 1.3)

Based on Findings of Fact 1-13, five individual members of the HISD Board of Trustees violated the Open Meetings Act by holding two successive meetings attended by a quorum of the HISD Board of Education. At this meeting the quorum of the board discussed and considered public business over which the board has supervision or control by engaging in conversation and dialogue for the purpose of replacing Dr. Lathan with Dr. Saavedra. The hiring of a superintendent for the district is public business over which the HISD Board of Education has supervision or control. See Tex. Educ. Code §11.201(b) (“The board of trustees for an independent school district may employ by contract a superintendent for a term not to exceed five years.”)

Based on Findings of Fact 1-6, Trustees Lira, Sung, Santos, Flynn Vilaseca, and Davila all secretly met with Dr. Saavedra on October 8, 2018, in a meeting that was not posted in accordance with the Open Meetings Act. Trustees Vilaseca and Davila had been talking with Dr. Saavedra about

the position of interim superintendent since Dr. Carranza's resignation. It is irreverent that there is no evidence that all five trustees were in the meeting with Dr. Saavedra at the same time, as the trustees violate the open meetings act when they deliberate public business outside of a properly posted public meeting through multiple communications each involving fewer than a quorum.

Based on Findings of Fact 7-12, the purpose of the meetings with Trustees Lira, Sung, Santos, Flynn Vilaseca, and Davila with Dr. Saavedra was to consider Dr. Saavedra for the position of interim superintendent. Dr. Saavedra was told by Trustee Vilaseca that some of the Board members did not know him and wanted to meet him. See Finding of Fact 7. It is reasonable to conclude that the board members would want to meet Dr. Saavedra before voting to name him as the new interim superintendent. Further, Dr. Saavedra himself concluded that the board members were interested in hiring him to be the new interim superintendent. See Finding of Fact 8.

In addition, Trustee Vilaseca admitted that she provided Dr. Saavedra a copy of former superintendent Dr. Caranza's contract. See Finding of Fact 9. There would be no reason to present a copy of the former superintendent's contract if the board members were not considering him for the position of the interim superintendent. The fact that three days later the five board members who secretly met with Dr. Saavedra then voted to name him as the new interim superintendent under the same terms as the contract they presented to him at the October 8, 2018 meeting corroborate the purpose of the meeting was to discuss making Dr. Saavedra the new interim superintendent. See Findings of Fact 10-11.

Finally, after Trustee Davila made the motion to name Dr. Saavedra as the new interim superintendent, Trustee Davila acknowledged that she had spoken to Dr. Saavedra about the position of interim superintendent and that he had told Trustee Davila that he would not be interested in taking the permanent position. See Finding of Fact 12. This corroborates other evidence that the purpose of the meeting was to discuss making Dr. Saavedra the new interim superintendent.

Based on Finding of Fact 13 Trustee Santos publicly admitted that she violated the Texas Open Meetings Act and then accused her fellow board members of the same.

As a tenured trustee, Diana Davila understood the concept of a walking quorum. During her interview with SIU, she defined a walking quorum as, "five trustees engaged in conversation with district business to discover if you have a consensus, additionally, a walking quorum does not have to be all at once. As in, we all don't have to be sitting together all at one time."

Cooperation with TEA Investigation

At the time of October 8, 2018 meeting with Dr. Saavedra, the position of interim superintendent was a highly contentious issue. Dr. Saavedra described the complaints of Trustees Lira, Sung, Santos, and Vilaseca. Dr. Saavedra summarized the issues as follows:

They shared with me how disenfranchised they felt on the board. They discussed at length how the interim superintendent ignored them and did not respect them. They described how a community member had been disrespectful and threatening toward one or more of them and another trustee turns around and places that threatening community member in

one of the board committees. One or more of the trustees that was meeting with me said that they had asked Dr. Lathan for a district police officer to attend the meetings where the threatening community member would be at and she refused.

However, when SIU interviewed the board members, there were many instances where the board members had little memory of this highly important meeting. Further, some of the board members made deceptive statements to the SIU, either by making inconsistent statements and through omission.

As detailed in Finding of Fact 9, Trustee Vilaseca acknowledged providing Dr. Saavedra with a copy of former superintendent Richard Carranza's contract. However, Trustee Vilaseca could not or would not explain why she presented Dr. Saavedra with a copy of that contract. See Finding of Fact 14. However, when the motion was made to make Dr. Saavedra the interim superintendent, the motion specifically identified the compensation and benefits in the contract to be given to Dr. Saavedra to be equal to the rate paid to Dr. Carranza. Trustee Vilaseca failed to cooperate with the investigation by failing to explain why she had a copy of Dr. Carranza's contract and why she presented it to Dr. Saavedra.

As detailed in Findings of Fact 15-18, Trustee Davila regularly communicated with Dr. Saavedra about HISD business, including an exchange of text messages arranging the secret meeting held in violation of the Open Meetings Act. These communications are public records and are required to be retained pursuant to the Texas Public Information Act and the Local Records Retention Schedule. Trustee Davila failed to cooperate with the investigation by failing to turn over text messages that were requested pursuant to this investigation.

As detailed in Finding of Fact 19, Trustee Davila failed to cooperate with the Agency's investigation by falsely claiming that there were no other trustees present when she met with Dr. Saavedra. Trustee Vilaseca and Dr. Saavedra confirm that Trustee Vilaseca was present when Trustee Davila met with Dr. Saavedra.

As detailed in Finding of Fact 20, Trustee Lira failed to cooperate with the Agency's investigation by falsely claiming that there were no other trustees present when he met with Dr. Saavedra. Trustees Santos, Sung, and Vilaseca and Dr. Saavedra all confirm that Trustee Lira was present at the meeting attended by Trustees Santos, Sung, and Vilaseca and Dr. Saavedra.

Overall Conclusion

Therefore, allegation one "Did the HISD Board of Trustees exercise decision making powers without deliberating in a public quorum of trustees or posting a public meeting notice as required by Tex. Gov't Code Chapter 551 Open Meetings?" has been substantiated. Five out of the nine board members met in a walking quorum on October 8, 2018 at a local restaurant in Houston, Texas. SIU determined that members of the HISD Board of Trustees engaged in conversation and dialogue to relieve Dr. Grenita Lathan as Interim Superintendent and hire Dr. Abelardo Saavedra as her replacement. This conduct not only violated the Texas Open Meetings Act, but also violated Tex. Educ. Code § 11.051 because the trustees acted on behalf of the board without the authorization by a majority vote of the members of the Board of Trustees present at a meeting held

in compliance with the Open Meetings Act.. The nature of these actions do not reflect HISD Policy BBE (LOCAL) which states, Official Board actions shall be taken only in meetings that comply with the Open Meetings Act, thus, the HISD Board of Trustees explicitly violated the Texas Open Meetings Act. (See Exhibit 1.4)

Findings of Fact for Allegation Two

Did the HISD Board of Trustees act individually on behalf of the Board, exceeding the scope of their authority in violation of Tex. Educ. Code §11.051 Governance of Independent School District?

The following findings of fact are a result of interviews and an examination of HISD internal documents.

1. On January 29, 2019, SIU investigators interviewed the Principal for the High School of Law and Justice. The Principal recalled an incident in 2018 with Trustee Davila during a site visit of the High School for Law and Justice campus. "I am in a brand-new campus. As it was being built, Diana Davila had a tour of the campus without my knowledge... I found out about it on Twitter when I saw her pictures with my construction manager, and them taking pictures of the new building. Then I got a phone call from my project manager, as Trustee Davila told the construction people to take a wall down out of my new campus out of the courtroom. I became a little upset. They took that wall down. I went to the HISD Senior Administrator and I told him, 'she can't do that', and he says that, 'I'm very aware that she cannot do that. If you want the wall back, we will put the wall back up.'"
2. On April 16, 2019, SIU investigators interviewed a HISD Administrator. This administrator corroborated the Principal's account that Trustee Davila gave a directive to modify construction of a classroom while on a site tour. The administrator stated, "One project we just finished was High School for Law... it was pretty much done with the construction or the particular areas was done and it was one of the feature areas which was the courtroom set up like a full courtroom, a mock courtroom because it was actually a classroom... So that was all done and at a board member's request all of that had to be changed just off a site tour." During a site visit, Trustee Davila directed that a completed mock courtroom be changed. Initially, the room was a mock courtroom, within a classroom. During her site visit, Trustee Davila complained that the courtroom was too small and directed the construction services administration, including the administrator to change it. The administrator provided the construction change order documents. (See Exhibit 2.1)
3. The change order states that the total cost of changes to the mock classroom amounted to \$20,000. When asked who ultimately approves a change like this, the administrator responded, "it was a trustee said it and it was done. I know what you're looking for, yes, it's out of protocol, that's the simple answer." When asked if this was overreach by a trustee, the administrator responded, "yeah, cause I mean, I have to manage that budget and you just made a request, that you don't care about... but I have to figure out how that money works, I have to call in that favor with that contractor."

4. According to the Principal, and the administrator's testimony, Trustee Davila conducted a campus visit without letting the campus principal know and instructed the construction team to make material modifications to an area that was already built.
5. An HISD senior administrator was directed to remove a contract for the construction of Austin High School in December 2016. The HISD senior administrator stated Trustee Davila asked him to remove the Pepper Lawson contract from the January board agenda after the procurement process had occurred. Moreover, Trustee Davila and her husband told the administrator that they wanted a firm out of Dallas, wanted him to make it happen, and threatened him with his job if he did not do it. Although the administrator refused to remove the contract from the agenda, a former board president took the liberty to remove the agenda item. Subsequently, the agenda item was placed on the February 2018 regular board meeting. (See Exhibit 2.2 and Exhibit 2.2.1)
6. On October 3, 2018, Trustee Elizabeth Santos hosted a campaign event on HISD property paid for by the district. The event, "Field Good Day", was not sponsored by HISD (See Exhibit 2.3). Although Trustee Santos indicated she would cover the cost of the event, she failed to submit payment. A HISD senior administrator confirmed Trustee Santos did not pay for the event.
7. Trustee Santos misused her role as a trustee when visiting the Hattie Mae White Educational Support Center. The administrator told SIU, "Santos was getting all this food and not paying for it. She tells people, 'I am a trustee and board services covers that.'" The administrator stated board services did not cover the cost of those meals because it was not in policy to do so.
8. During a workshop with Deputy Commissioner AJ Crabill and HISD administration regarding Improvement Required campuses, Trustee Davila expected principals to explain what they needed so trustees could provide resources to prevent another failing year. Principals refused to speak over the superintendent, prompting Trustee Davila to say, "Let me be clear, I won't hesitate to vote you out when your contract comes up if you don't tell me what you want right now, because your four schools are in the playoffs."
9. A Senior HISD administrator told SIU that Dr. Lathan set protocols in place to prevent trustees from interacting with staff and enforced the use of the board service referral system. Additionally, Dr. Lathan had to address the issue with the board several times in writing as well as during closed session during their retreat.
10. Dr. Doris Delaney has served as a conservator for Houston ISD from September 2016 to present. Dr. Delaney is responsible for attending Houston ISD school board meetings on a regular basis and noting important board decisions, board interactions, and areas of concern within her monthly conservator reports. During this time, Dr. Delaney attended roughly 104 board meetings and spent substantial time observing board interactions, some of which are depicted in the following excerpts from her monthly conservator reports to TEA:
 - a. In the March 2018 conservator report, TEA Conservator Doris Delaney reported, "Board members continue to make requests of staff that take away from the staff being able to spend time performing their assigned duties." In March 2018, the board members requested the following:

- i. How much money do we currently spend per student at each campus and what has the historical trend been for the past 10 years? Please disaggregate state/local funding from federal funding.
 - ii. For each campus (248), what is current funding under the PUA and what is the funding under an FTE? For each campus, I'm looking for the following data points (included 27 individual questions) (See Exhibit 2.4)
11. Dr. Delaney reported on the status of board member requests that were being handled by board services. (See Exhibit 2.5) Dr. Delaney reported numerous instances where individual board members contacted members of the administration directly. The members of the administration then sent the request to board services.
12. The SIU reviewed electronic communications from Trustees dating back to the beginning of 2016. During this period of time, the individual board members frequently contacted members of the HISD administration providing individual input and directing activity in the areas of personnel, operations, contracting, and campaign events.

Electronic Communications from 2016

- a. On January 27, 2016, a former trustee forwarded an email to the former Chief of Human Resources, in regard to an HISD employee applicant and the positions she applied for. The trustee stated, "Could I please ask you to check if these positions have been filled? Ms. Lorenzo has applied and has not received any reply." (See Exhibit 2.6)
- b. On April 12, 2016, a former trustee emailed the Interim Superintendent questions regarding the upcoming board agenda items. The interim superintendent directed the former Chief of Student Support Officer to answer the trustee's questions. The officer complied and answered all the former trustee's questions. The trustee then replied and asked about which vendor the administration was recommending for a project. The officer sent him the HISD policy on the Code of Silence with potential vendors. The former trustee replied, "I know the law." (See Exhibit 2.7)
- c. On August 1, 2016, a former trustee forwarded an email to former Chief of Human Resources, regarding a pay dispute with an employee who had resigned and was claiming to be owed a 3-month severance payment. The former trustee directed her to reply to the forwarded email. The former trustee stated, "Please see below and reply, thank you. Cc me on the response." (See Exhibit 2.8)
- d. On September 19, 2016, Trustee Skillern-Jones sent an email to the former Chief Communications Officer regarding a meeting being planned. Trustee Skillern-Jones directed the officer as to whom she wanted to plan her meeting, even though someone else was already assigned. In the email, Trustee Skillern-Jones also laid out numerous demands. Trustee Skillern-Jones stated, "I want [employee A] working this meeting and the decorations done appropriately... Please ensure landscaping is done, please ensure refreshments are provided, please ensure décor

is acceptable, please ensure agendas are done, and please ensure sufficient staff is in place.” (See Exhibit 2.9)

- e. On January 26, 2016, a former trustee emailed the former Superintendent of School Choice and requested that she send him a spreadsheet of the racial breakdown of each magnet’s school “magnet students.” (See Exhibit 2.10)
- f. On March 1, 2016, a former trustee directed the former Media Relations Manager to respond to a letter from a law firm. The former trustee stated, “Manager, I would like your lead to respond to this letter with back up from [employee B] as to why HISD is moving away from UIL at Carnaige.”
(See Exhibit 2.11)
- g. On March 28, 2016, a former trustee emailed the former Chief Superintendent of School Choice and requested information regarding student applications for a particular school. (See Exhibit 2.12)
- h. On May 16, 2016, Trustee Skillern-Jones emailed [employee C] and [employee D] requesting information for her to share at her community meeting hours before it was to commence. (See Exhibit 2.13)
- i. On May 24, 2016, a former trustee emailed a HISD senior administrator and other HSID staff members regarding a principal’s complaint of the lack of maintenance staff at her school. The former trustee stated, “Please fix this...It’s not acceptable for a principal working a turn-around campus to have to do this work herself.”
(See Exhibit 2.14)
- j. On June 26, 2016, a former trustee emailed a staff member to see if she could pick up her student’s old test grades and documents because she lost them and needs to turn them in so her child can go to school. (See Exhibit 2.15)

Electronic Communication from 2017

- a. On May 3, 2017, Trustee Adams forwarded an email she received from a friend of a coworker at her job to the former Superintendent, former Deputy Superintendent, and former Chief of Human Resources. The forwarded email contained a list of positions the friend applied for within HISD. Along with the forwarded email, Trustee Adams instructed the recipients of the email to view the resume and “consider for possible telephone conversation.” Trustee Adams also stated that she will forward the resume once received from the friend.
(See Exhibit 2.16)
- b. On May 24, 2017 Trustee Skillern-Jones forwarded an email to the former Chief of Human Resources regarding a former employee’s issue. The former employee was requesting to be eligible for rehire, despite being told that she was not eligible for rehire due to performance issues. Trustee Skillern-Jones directed the former chief to “please investigate.” (See Exhibit 2.17)
- c. On December 5, 2017, Trustee Adams and a former trustee were forwarded three reports of Code of Silence violations by a former Superintendent, former Chief of Human Resources, and former Officer of Human Talent. The email was sent by the former HISD Ethics and Compliance Officer. Trustee Adams responded to the

email giving the directive that all cabinet members be trained annually on ethics policies and further stated she wanted the email to be placed in the personnel file of all listed in the email.

(See Exhibit 2.18)

- d. On March 31, 2017, a former trustee forwarded an email to an Area Superintendent regarding a parent complaint at one of the schools. The former trustee directed the area superintendent to look into the situation. (See Exhibit 2.19)
- e. On May 1, 2017, Trustee Adams sent an email directly to an HISD senior administrator, former Chief of Staff, board services, HISD Senior Administrator, and former high school Principal. Trustee Adams requested all staff meet with [employee E] to address the needs of that high school, which is in her district. (See Exhibit 2.20)
- f. On June 1, 2017, Trustee Adams emailed an HISD Senior Administrator and requested he send her the budget cost “if we were to increase pay to 12.50 per hour.” (See Exhibit 2.21)
- g. On June 7, 2017, a former trustee emailed HISD administration and staff members and requested information. The trustee stated, “Could we please get the data on the positions mentioned? Including a comparison of central office positions over the last five years with budget increases.” (See Exhibit 2.22)
- h. On August 3, 2017, a former trustee emailed the Chief of Human Resources, and requested information regarding new principal positions. (See Exhibit 2.23)
- i. On October 22, 2017, Trustee Flynn Vilaseca sent the former Chief of Human Resources a list of seven (7) questions. (See Exhibit 2.24)
- j. On November 10, 2017, Trustee Flynn Vilaseca emailed an HISD Senior Administrator and directed him to resolve an issue. Trustee Flynn Vilaseca stated, “Looks like there are plumbing issues at Askew. I have sent [employee F] a referral but wanted to send directly to you as it would be great if we could get this checked out and fixed soon.” (See Exhibit 2.25)
- k. On December 6, 2017, Trustee Skillern-Jones directly emailed an HISD Senior Administrator and requested information. Trustee Skillern-Jones stated, “Please have real estate send me a list of all vacant properties.” (See Exhibit 2.26)

Electronic Communications from 2018

- a. On January 10, 2018, Trustee Adams directly emailed an HISD Senior Administrator and asked for an update on the construction of two schools. (See Exhibit 2.27)
- b. On February 22, 2018, the former Chief of Staff alerted Trustee Deigaard to an incident that occurred at a middle school. Trustee Deigaard then emailed that she wanted the doors at a different school locked, stating that, “the doors are only locked from the front and not from the back.” (See Exhibit 2.28)
- c. On February 22, 2018, a former Area Superintendent emailed Trustee Adams and attached the interview and staffing timeline for the hiring of a principal at a particular school. Also, in the email the area superintendent informed Trustee

Adams about how many internal and external applicants there were. Trustee Adams expressed her desire for three specific members to participate in the hiring committee. Trustee Adams had already communicated to one of these members that he would be part of the hiring committee before she informed HISD staff. (See Exhibit 2.29)

- d. On February 27, 2018, Trustee Deigaard asked the former Chief of Student Support Officer for information regarding, "How many current students are from each trustee district?" She also wanted to know, "How many students come from each middle school?" (See Exhibit 2.30)
- e. On April 18, 2018, Trustee Deigaard sent an HISD Senior Administrator a lengthy email in discussing how she witnessed a bus make an unsafe turn as she was driving her daughter to school. (See Exhibit 2.31)
- f. On August 24, 2018, Trustee Skillern Jones emailed an HISD Senior Administrator and asked for a closed HISD parking lot to be open for her event. (See Exhibit 2.32)
- g. On October 3, 2018, Trustee Deigaard forwarded an email to an HISD Senior Administrator regarding a parent who has bus transportation concerns. Trustee Deigaard stated, "I didn't include the new head of transportation on this because I couldn't remember their name...please let me know their name and address for future correspondence, I would appreciate it." (See Exhibit 2.33)
- h. On October 23, 2018, Trustee Deigaard emailed an HISD Senior Administrator and asked him, "Where might I find the quarterly investments reports online? I've looked several places but haven't found it yet." (See Exhibit 2.34)

Electronic Communications from 2019

- a. On March 18, 2019, an HISD Senior Administrator forwarded an email from the General Manager of the Benefits Department regarding a phone call between Trustee Skillern-Jones, a contractor, and a MWBE subcontractor. Allegedly, the phone call discussed HISD's medical plan and medical RFP. It was stated that Trustee Skillern-Jones wanted to set up a meeting with the benefits department. When Dr. Lathan emailed Trustee Skillern-Jones and asked her why she wanted a meeting, Trustee Skillern Jones replied, "I got a call from Nick because he heard I had concerns, the same concerns I voiced in the budget workshop. I did not ask Nick to speak for me or to set up a meeting for me....(AT NO TIME DID I DISCUSS AN RFP PERIOD. HE STATED HE THOUGHT MAYBE SOMEONE ELSE COULD SAVE US MONEY.)" Regardless of whether the contractor was the one to initiate the phone call, Trustee Skillern-Jones should have referred the call to the interim superintendent as it is not part of her statutory duties. (See Exhibit 2.35)
- b. On April 16, 2019, Trustee Santos forwarded a public information request (PIR) from a community member to Dr. Lathan. The PIR related to an evaluation. In the initial PIR email, the community member sent the request to HISD staff and carbon copied Dr. Lathan and Trustee Santos. In her email to Dr. Lathan, Trustee Santos

stated, "I know you've received this, and I believe the community has a requested a meeting with the Area Supe. I hope we can clear this up soon." (See Exhibit 2.36)

- c. In April of 2019, an email was sent to Trustee Sung from a parent discussing a grievance and thanking Trustee Sung for all her close help in trying to solve the matter. The parent emailed Trustee Sung, "[t]hank you for working so closely with our family to resolve the issues ... pertaining discriminatory and retaliatory practices... Hopefully the assistance and consistent communication that you have provided in support of our family will not jeopardize your voting power to negate any action pertaining to the future of [name of program redacted pursuant to FERPA]..." The parent also requested an update on Trustee Sung's "assistance in resolving the matter." In April of 2019, the parent emailed Trustee Sung again and stated, "[t]hank you for assisting in the effort to resolve the ongoing issues at [name of program redacted pursuant to FERPA], I read your attached email. The forms of resolution you brought up in your discussion with [name of administrator redacted pursuant to FERPA] were not implemented..." In the same email the parent asked Trustee Sung to ask certain questions to the parties involved in the grievance. The parent emailed Trustee Sung in April of 2019, and stated, "[y]ou have been the responsive and hands on board member and at times you made many of us feel as if you were our area superintendent because of your active participation." (See Exhibit 2.37)
 - d. On April 26, 2019, Board President Davila emailed Interim Superintendent Dr. Lathan requesting to be updated on the process of hiring a principal for an elementary and middle school. Board President Davila requested to know timelines, people serving on the committees, and their roles in the school community. (See Exhibit 2.38)
 - e. On May 1, 2019, Trustee Davila, emailed Interim Superintendent Dr. Lathan and copied Trustee Anne Sung, asking her about the principal search at a school. Trustee Davila stated, "[w]hat is happening with this process? Making sure the district is inclusive and transparent in the selection of a campus leader is policy. We don't need legislators making a new law because of this one HISD campus." (See Exhibit 2.39)
13. From 2016 to 2018, there were numerous direct and indirect communications by a board member to HISD staff. Direct communications are communications where a board member directly communicates to a staff member via email without copying the superintendent or interim superintendent. Indirect communications are communications where a board member directly communicates to a staff member and copies the superintendent or interim superintendent. (See Exhibit 2.40 and Exhibit 2.40.1).

Analysis of Allegation Two

TEA finds that HISD Board of Trustees acted individually on behalf of the board numerous times, exceeding the scope of their authority in violation of Tex. Educ. Code §11.051. While investigating allegations that trustees acted without authority given in an open meeting, SIU discovered other

instances of other trustees acting without authority. SIU discovered numerous instances via email correspondence where the HISD Board of Trustees acted individually, on behalf of the board, without the prior authorization by a majority vote of the members of the HISD Board of Trustees present at a meeting held in compliance with the Open Meetings Act. The HISD Board of Trustees also violated the board policies adopted to govern the interactions between the board members and the district's administration.

Tex. Educ. Code §11.051(a-1) clarifies that a member of the board may not individually act on behalf of the board and that the board of trustees may only act by a majority vote of the members present at a meeting held in compliance with the Open Meetings Act.

Tex. Educ. Code §11.1511(b) and (c) enumerate the powers of the Board of Trustees of an independent school district in relation to the superintendent.

(b) The board shall:

- (1) seek to establish working relationships with other public entities to make effective use of community resources and to serve the needs of public school students in the community;
- (2) adopt a vision statement and comprehensive goals for the district and the superintendent and monitor progress toward those goals;
- (3) establish performance goals for the district concerning:
 - (A) the academic and fiscal performance indicators under Subchapters C, D, and J, Chapter 39; and
 - (B) any performance indicators adopted by the district;
- (4) ensure that the superintendent:
 - (A) is accountable for achieving performance results;
 - (B) recognizes performance accomplishments; and
 - (C) takes action as necessary to meet performance goals;
- (5) adopt a policy to establish a district- and campus-level planning and decision-making process as required under Section 11.251;
- (6) publish an annual educational performance report as required under Section 39.306;
- (7) adopt an annual budget for the district as required under Section 44.004;
- (8) adopt a tax rate each fiscal year as required under Section 26.05, Tax Code;
- (9) monitor district finances to ensure that the superintendent is properly maintaining the district's financial procedures and records;
- (10) ensure that district fiscal accounts are audited annually as required under Section 44.008;
- (11) publish an end-of-year financial report for distribution to the community;
- (12) conduct elections as required by law;
- (13) by rule, adopt a process through which district personnel, students or the parents or guardians of students, and members of the public may obtain a hearing from the district administrators and the board regarding a complaint;

(14) make decisions relating to terminating the employment of district employees employed under a contract to which Chapter 21 applies, including terminating or not renewing an employment contract to which that chapter applies; and

(15) carry out other powers and duties as provided by this code or other law.

(c) The board may:

(1) issue bonds and levy, pledge, assess, and collect an annual ad valorem tax to pay the principal and interest on the bonds as authorized under Sections 45.001 and 45.003;

(2) levy, assess, and collect an annual ad valorem tax for maintenance and operation of the district as authorized under Sections 45.002 and 45.003;

(3) employ a person to assess or collect the district's taxes as authorized under Section 45.231; and

(4) enter into contracts as authorized under this code or other law and delegate contractual authority to the superintendent as appropriate.

Tex. Educ. Code §11.1512(a) defines the relationship between the board and the superintendent. It states that, "In relation to the superintendent of the school district, the board of trustees has the powers and duties specified by Sections 11.1511(b) and (c). The superintendent shall, on a day-to-day basis, ensure the implementation of the policies created by the board."

The superintendent is responsible for enforcing policy and procedures to operate district business effectively and efficiently acting as the chief executive officer. Section 11.201(d) of the Texas Education Code, (d) identifies the duties of the superintendent, which include:

1. Assuming administrative responsibility and leadership for the planning, organization, operation, supervision, and evaluation of the education programs, services, and facilities of the district and for the annual performance appraisal of the district's staff;
2. Except as provided by section 11.202, assuming administrative authority and responsibility for the assignment, supervision, and evaluation of all personnel of the district other than the superintendent;
3. Overseeing compliance with the standards for school facilities established by the commissioner under section 46.008;
4. Initiating the termination or suspension of an employee or the nonrenewal of an employee's term contract;
5. Managing the day-to-day operations of the district as its administrative manager, including implementing and monitoring plans, procedures, programs, and systems to achieve clearly defined and desired results in major areas of district operations,
6. Preparing and submitting to the board of trustees a proposed budget as provided by section 44.002 and rules adopted under that section, and administering the budget;
7. Preparing recommendations for policies to be adopted by the board of trustees and overseeing the implementation of adopted policies;
8. Developing or causing to be developed appropriate administrative regulations to implement policies established by the board of trustees,

9. Providing leadership for the attainment, and, if necessary, improvement of student performance in the district based on the indicators adopted under sections 39.053 and 39.301 and other indicators adopted by the commissioner or the district's board of trustees.
10. Organizing the district's central administration;
11. Consulting with the district-level committee as required under section 11.252;
12. Ensuring:
 - A. Adoption of a student code of conduct as required under section 37.001; and
 - B. Enforcement of that code of conduct; and adoption and enforcement of other student disciplinary rules and procedures as necessary;
13. Submitting reports as required by state or federal law, rule or regulation, and ensuring that a copy of any report required by law, rule, or regulation is also delivered to the agency;
14. Providing joint leadership with the board of trustees to ensure that the responsibilities of the board and superintendent team are carried out; and
15. Performing any other duties assigned by action of the board of trustees.

Houston ISD has adopted policies governing board member interactions with staff. Policy BBE(LOCAL) has been in effect since 2001 and states that, "Board members as individuals shall not exercise authority over the district, its property, or its employees." (See Exhibit 1.4). This policy also states, "An individual member may act on behalf of the board only with the official express authorization of the board. Without such authorization, no individual member may commit the board on any issue."

This policy also prohibits board members from directing or requiring district employees to "prepare reports derived from an analysis of information in existing district records or to create a new record compiled from information in existing district records. Directives to the superintendent regarding the preparation of reports shall be by (1) Board action; (2) Request of an individual board member made in a board meeting after discussion by the board as a whole; or (3) Written request of an individual board member. (See Exhibit 1.4)

This policy also requires individual board members to refer citizen concerns or complaints to the Superintendent who is then required to proceed per the appropriate complaint policy. The board retains authority to address concerns or complaints by considering placement on the board agenda in limited circumstances. The concern or complaint must directly pertain to the board's own actions or policy for which there is no administrative remedy. (See Exhibit 1.4)

Houston ISD adopted Policy BBE2 (REGULATION) on April 15, 2013. This policy establishes a procedure governing all referrals from trustees or the superintendent. The policy defines a referral as "any verbal or written communication received from a trustee ... that requires action, such as requesting information or resolution of an issue." The policy does not allow board members to make referrals to staff including the superintendent or interim superintendent without complying with this policy. Rather, the policy requires trustees to submit all requests to the board services team lead or designee. (See Exhibit 2.41)

As described in Allegation 1, all five members of the HISD Board of Trustees that met with Dr. Saavedra on October 8, 2018 violated Tex. Educ. Code §11.051(a-1) and Board Policy BBE

(LOCAL) by interviewing Dr. Saavedra for the position of interim superintendent without prior authorization of the board.

As described in Findings of Fact 1-4, Trustee Davila conducted a campus visit without notifying the campus principal and instructed the construction team to make material modifications to an area that was already built. This conduct violates Tex. Educ. Code §11.051(a-1) and Policy BBE (LOCAL) because it was an action taken by an individual board member without consideration by the board, and Policy BBE2 (REGULATION) because it was a board member referral to staff that did not go through the board referral system.

As detailed in Finding of Fact 5, Trustee Davila violated Tex. Educ. Code §11.051(a-1) and Policy BBE (LOCAL) by directing the HISD Administration to remove a vendor for the board's agenda after the procurement process has ended without the approval of the entire board. Trustee Davila further violated Policy BBE2 (REGULATION) by failing to make this referral through board services.

As detailed in Finding of Fact 6, Trustee Santos violated Tex. Educ. Code §11.051(a-1) and Policy BBE (LOCAL) by requiring the district to allow her to host a campaign event on HISD property without first obtaining approval of the entire board. Trustee Santos further violated Policy BBE2 (REGULATION) by failing to make this referral through board services.

As detailed in Finding of Fact 7, Trustee Santos violated Tex. Educ. Code §11.051(a-1) and Policy BBE (LOCAL) by requiring the district to allow her to eat for free when visiting the Hattie Mae White Education Support Center without first obtaining approval of the entire board. Trustee Santos further violated Policy BBE2 (REGULATION) by failing to make this referral through board services.

As detailed in Finding of Fact 8, Trustee Davila violated Tex. Educ. Code §11.051(a-1) and Policy BBE (LOCAL) by requiring district employees to answer her questions under the threat of an adverse personnel action without first receiving approval from the entire board. Trustee Davila further violated Policy BBE2 (REGULATION) by failing to make this referral through board services.

As detailed in Finding of Fact 9, the board overreach is a continuing problem that the interim superintendent has had to address with the board multiple times in writing, or as well during closed session and during board retreats.

As detailed in Finding of Fact 10, the district's conservator has documented in her reports that trustees continue to make requests of staff that take away from their duties, interfere in personnel issues, and direct staff to attend events (sometimes without notifying the interim superintendent).

As detailed in Findings of Fact 11, Trustees Jones, Adams, Lira, Davila, and Santos violated Policy BBE2 (REGULATION) by requesting information but failing to make this referral through board services.

As detailed in Finding of Fact 12, individual trustee overreach is common, and individual trustees have a long-standing practice of monitoring, directing, influencing or interfering with

administrative actions in the areas of operations (including campaign events), contracting, grievances, and personnel in violation of Tex. Educ. Code §11.051(a-1) and Policy BBE (LOCAL). Specifically, Trustees; Skillern-Jones, Adams, Flynn Vilaseca, Deigaard, Santos, Sung, and Davila engaged in this practice.

As detailed in Finding of Fact 13, SIU discovered numerous direct or indirect communications to staff at HISD, that violate Tex. Educ. Code §11.051(a-1), Policy BBE (LOCAL), and Policy BBE2 (REGULATION). Direct communications are when a trustee directly communicates to a staff member without copying the superintendent or interim superintendent. Indirect communications are when a trustee directly communicates to a staff member and copies the superintendent or interim superintendent. In each instance, the trustee made a referral to staff without going through the Board Referral System as required by Policy BBE2 (REGULATION).

Therefore, Allegation Two, “Did the HISD Board of Trustees act individually on behalf of the board, exceeding the scope of their authority in violation of Tex. Educ. Code §11.051 Governance of Independent School District?” is substantiated because HISD Board of Trustees have acted individually, on behalf of the board, without the prior authorization by a majority vote of the members of the board of trustees present at a meeting held in compliance with the open meetings act. The HISD Board of Trustees also violated the board policies adopted to govern the interactions between the board members and the district’s administration.

The amount of board overreach has impacted the operations of the district. Former superintendents indicated that the HISD Board of Trustees made it impossible for them to do their job as CEO of the district due to constant trustee involvement causing them to leave the district. Moreover, the former superintendent stated, “It seems like Trustee Davila wanted to be the superintendent of the district.”

Findings of Fact for Allegation Three

Did the HISD Board of Trustees fail to follow contract procurement rules and procedures, and fail to ensure staff followed these rules and procedures when awarding contracts for goods and services in violation of Tex. Educ. Code §44.031?

The following findings of fact are a result of interviews conducted via audio recordings and video recordings. In addition, SIU investigators examined HISD internal documents.

1. On October 12, 2015, the HISD Ethics and Compliance Officer, issued a compliance review of procurement RFP #15-07-05 (See Exhibit 3.1). On September 3, 2015, Trustee Adams provided non-public information to a vendor regarding the award for RFP #15-07-05 Two-Way Radio System for Transportation with Infrastructure Upgrade. The awardee, Vendor #1, had been made known to the Board of Trustees on September 2, 2015 and the public was notified on September 7, 2015. Records indicate that on September 4, 2015, Trustee Adams violated District Policy CAA Local Financial Management Goals and Objectives, Financial Ethics, regarding the Code of Silence (See Exhibit 3.2). Recommendations of this investigation included that the HISD Board of Trustees receive additional training from the Office of Ethics and Compliance regarding the Code of Silence. TEA requested trustee training transcripts; however, the district was only able to

provide TASB training. TEA could not verify if trustees received training from the Office of Ethics and Compliance. (See Exhibit 3.3)

2. In August of 2016, Trustee Davila met with a HISD senior administrator at Pappadeaux Seafood Kitchen along with her husband, Abel Davila, Art Lopez, and Leticia Ablaza. The administrator stated that the nature of the meeting was to strategize a way to get bond contracts cancelled and re-bid. Moreover, the administrator told SIU investigators Trustee Davila and her husband, along with Mr. Lopez and Ms. Ablaza, focused on the custodial contract with MetroClean. Trustee Davila, Art Lopez, and Leticia Ablaza demanded that HISD cancel its contract with MetroClean, and award it to Accel Building Maintenance (ABM Inc.). The administrator responded, "ABM Inc. did not have a good reputation with the district and therefore would not be considered as a vendor." To which Trustee Davila replied, "It will happen if we want it to happen."

3. After the administrator refused to cancel the MetroClean Contract, the owner of MetroClean told the administrator that ABM Inc. had approached MetroClean to give them a consultant agreement. On March 19, 2019, SIU contacted Jose Perez, owner of MetroClean Commercial Building Services, and discussed his interaction with Ricardo Aguirre, owner of ABM Inc. (See Exhibit 3.4). On March 19, 2019, during an interview with SIU, Mr. Perez confirmed that Ricardo Aguirre approached him and attempted to force him to sign a consulting agreement stating that "MetroClean" would pay "Accel" a monthly salary of 2% of gross revenue received. In addition, "MetroClean" would increase the monthly payment to 3% if more contracts were secured. Mr. Perez provided the administrator a photographic document of what Mr. Aguirre wanted him to sign. (See Exhibit 3.5). Mr. Perez stated that he was in the Request for Proposal process with HISD for custodial services when he was approached by Mr. Aguirre to circumvent the procurement process. Moreover, Mr. Perez mentioned that Mr. Aguirre attempted to pressure him into signing the agreement stating, "Diana Davila's husband sent me here to have you sign this agreement." Additionally, Mr. Perez stated that Aguirre threatened him saying, "If you don't sign the agreement, HISD will not approve your contract."

4. Problems with contracting procedures are not a recent development within HISD. Historical evidence of unlawful contract awarding can be traced to 2013 through the internal documentation of Job Order Contract misuse. SIU received documents from an HISD internal audit demonstrating the district split Job Order Contracts to avoid the state law limit. (See Exhibit 3.6) The investigation, conducted by the former Internal Auditor, revealed that the HISD violated Tex. Educ. Code § 44.031(a)(5) a method provided by Chapter 2269, Government Code, for construction services; and Tex. Gov't. Code §2269.403 (c) the governing body of a governmental entity shall approve each, job, task, or job purchase order that exceeds \$500,000. The audit determined that 14 Job Order Contracts were split to avoid the \$500,000 limit, with one contract going over \$1 million in funds. The following table illustrates a sample of Job Order Contracts that were audited and found to be non-compliant.

Job Order Contracts

Job Order Number	Contractor Num.	Contractor	Campus	Split Amounts	Actual Contract Value
KBR 20104	84879	Kellogg Brown & Root	NFISD Career and Tech. Center	\$480,000	\$960,000.00
KBR 20105	84879	Kellogg Brown & Root	NFISD Career and Tech. Center	\$480,000	
KBR 30006	84879	Kellogg Brown & Root	NFISD Kirby MS	\$324,600	\$732,900.00
KBR 30007	84879	Kellogg Brown & Root	NFISD Kirby MS	\$408,300	
KBR 30008	84879	Kellogg Brown & Root	NFISD Lakewood Elem. School	\$174,923	\$505,039.00
KBR 30009	84879	Kellogg Brown & Root	NFISD Lakewood Elem. School	\$330,116	
KBR 30063	84879	Kellogg Brown & Root	Cage Elementary School	\$491,376	\$851,298.00
KBR 30064	84879	Kellogg Brown & Root	Cage Elementary School	\$359,922	
JLS 30079	64938	Jamail & Smith Construction	Sanchez ES	\$499,150	\$532,870.89
JLS 30148	64938	Jamail & Smith Construction	Sanchez ES	\$33,720.89	
P2M 30044	93555	P2MG	Jones High School	\$381,758.96	\$1,487,254.25
P2M 30045	93555	P2MG	Jones High School	\$481,060.71	
P2M 30047	93555	P2MG	Jones High School	\$484,475.00	
P2M 30048	93555	P2MG	Jones High School	\$139,959.58	
P2M 30054	93555	P2MG	Jones High School	\$288,909.81	\$1,170,675.47
				\$498,341.11	
				\$383,424.55	

5. As stated in the Job Order Contracting Report (JOC Report) issued September 8, 2015, HISD internal auditors found that Job Orders (KBR 20104 and KBR 20105, issue date June 11, 2013) had been awarded to Kellogg Brown & Root (KBR) independently however should have been awarded as a single contract with a “not to exceed” value of \$960,000. Instead, HISD awarded two \$480,000 contracts to KBR for the “Demolition” and “Asbestos Abatement” for the NFISD Career and Technology Center. Auditors reported that the HISD Board of Trustees approved funding for these job orders on July 18, 2013, a month after the funding had been awarded to KBR. Furthermore, the report goes on to say that KBR did not provide HISD with any final accounting and mentioned that HISD failed to request an audit of the records to determine the final cost of the project.
6. The JOC Report finds that on August 6, 2013, HISD awarded two (2) “not to exceed” job order contracts to KBR for demolition and abatement of buildings at Kirby Middle School. Contract KBR 30006 was valued at \$324,600 and KBR 30007 was valued at \$408,300. HISD internal auditors concluded that since the two projects were performed simultaneously, a single contract valued at \$732,900 should have been approved by the Board of Trustees.
7. As per the JOC Report, job orders KBR 30008 and KBR 30009 were awarded to KBR on August 6 and 7, 2013 for work at Lakewood Elementary School. As per HISD auditors, KBR 30008 was awarded for the “Abatement of Existing Structures” for a total value of \$174,923. KBR 30009 was awarded to KBR for “Demolition of Buildings” for a total value of \$330,116. HISD internal auditors concluded that since the two projects were performed simultaneously, a single contract valued at \$505,039 should have been approved by the Board of Trustees.
8. Job orders KBR 30063 and KBR 30064 as referenced in the JOC Report were awarded to KBR on May 8, 2014 for work at Cage Elementary School. KBR 30063 cited “Architectural and Site Work for the Principals Restroom, and Restroom Nos. 110A, 111A, 114A, 123A, 123B, 164 and 165” at a final value of \$491,376. KBR 30064 cited “Electrical, Plumbing and Mechanical for the Principal’s Restroom and Restroom Nos. 110A, 111A, 114A, 123A, 123B, 164 and 165” at a final value of \$359,922. Because of the value of the contracts were less than the \$500,000 threshold, there was no board item approving these contracts. HISD internal auditors concluded that since the two projects were performed simultaneously, a single contract valued at \$851,298 should have been approved by the Board of Trustees.
9. The JOC Report identified Jamail & Smith Construction (JLS) as another entity that conducted business with HISD. As per the report, JLS was awarded job order contract JLS 30079 for “Sanchez Elementary Bathroom TDLR Renovations” on April 4, 2014, at a value of \$499,150. The project included “Site work for concrete and paving details for bathrooms X60B, 45B, 43B, 41B, Boys and Girls Restrooms 31 and 31A, Specialty Rooms 26A and 26, State Area Room X63, and Classroom 32 and 33. Moreover, JLS 30148 was awarded on September 15, 2014, at a value of \$33,720.89. The purpose of JLS 30148 was for “Sanchez Elementary Bathroom TDLR Renovations Additional Works”. HISD internal auditors concluded that since the two projects were performed simultaneously, a single contract valued at \$532,870.89 should have been approved by the Board of Trustees.
10. The JOC Report also reviewed contract work performed by P2MG for projects at Jones High School. The following job orders were approved:

- a. P2M 30044, awarded on June 10, 2014, for “Renovation of the Specialty Areas at Jones High School, 1. Culinary Arts Area, 2. New Administration Area, 3. New Wall between the classrooms,” for a value of \$381,758.96.
- b. P2M 30045, awarded on June 10, 2014, for “Renovation of the Specialty Areas at Jones High School, 1. Welding, 2. HVACR, 3. Cosmetology,” for a value of \$481,060.71.
- c. P2M 30047, awarded on June 5, 2014, for “Jones High School, 1. Canopy Painting, 2. Upgrade Lights,” for a value of \$484,475.
- d. P2M 30048, awarded June 5, 2014, for “Jones High School, 1. Resurface Tennis Courts, 2. Restroom Renovations, 3. Bus Lane,” for a value of \$139,959.58.

On September 11, 2014, the HISD Board of Trustees approved this Board Item (H-2) after the work was paid and completed. HISD internal auditors concluded that since the four projects were performed simultaneously, a single contract valued at \$1,487,254.25 should have been approved by the HISD Board of Trustees.

11. The JOC Report pointed out an additional job order awarded to P2MG for work at Jones High School. Order P2M 30054 was awarded as three separate requisitions on July 23, 2014, for “Jones High School (Design and Grading) Parking Lot Addition -Phase I”, at a value of \$288,909.81, “Jones High School Parking Lot Addition (Paving Parking Area) - Phase II” at a value of \$498,341.11, and “Jones High School Parking Lot Addition (Paving Parking Area) - Phase III” at a value of \$383,424.55.

On September 11, 2014, the HISD Board of Trustees approved this Board Item (H-2) after work was paid and completed. HISD internal auditors concluded that since the three projects were performed simultaneously, a single contract valued at \$1,170,675.47 should have been approved by the HISD Board of Trustees.

12. A closer look the audit report “Internal Audit of the Design and Selection Process for Job Order Contracts, General Construction – Major & Minor Projects” Issued March 10, 2015 provided additional insight as to the contract awarding process at HISD (See Exhibit 3.7). Not only did the report highlight a lack of transparency, non-compliance with state laws, non-compliance with HISD policy and procedures and a lack of timely and cost effective/best value services, it also cited an alarming concern, “Historical instances existed where contractors actually received an award even though they were not recommended for an award.”

Analysis of Allegation Three

TEA finds that the HISD Board of Trustees violated contract procurement rules and failed to ensure staff followed these rules and procedures while the district was selecting a vendor/contractor, as well as attempting to tamper with contracts that had been awarded in violation of Tex. Educ. Code §44.031. Section 44.031 (a)(1) specifies that “except as provided by this subchapter, all school district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district: (1) competitive bidding for services other than construction services.” HISD failed to monitor contractual obligations allowing the district to manipulate and abuse Job Order Contracts.

Tex. Educ. Code §44.031 (d) allows the district to adopt rules and procedures for the acquisition of goods and services. HISD adopted policy CAA (LOCAL), which details the district's code of silence. CAA (LOCAL) states "Code of Silence" shall mean a prohibition on any communication regarding any RFP, bid, or other competitive solicitation (as defined in the procurement methods above) between:

1. Any person who seeks an award from the district or its affiliated entities (including, but not limited to, the HISD Foundation and the HISD Public Facility Corporation), including a potential vendor or vendor's representative; and
2. A Board member, the Superintendent, senior staff member, principal, department head, director, manager, or other District representative who has influence in the evaluation or selection process.

The investigation revealed numerous instances of trustees violating the District's rules and procedures with regard to the process of purchasing contracts.

Interference in the contract procurement process has been an ongoing problem at HISD. Garland Blackwell, the current Chief Audit Executive for the district, told SIU that HISD Board of Trustees have been investigated internally by the Ethics and Compliance Office and Internal Audit Office on more than one occasion.

As detailed in Findings of Fact 1, Trustee Adams' intervention in the RFP process posed a great risk to the procurement process and defeats the controls set in place to prevent fraudulent contract awarding. As mentioned in the memo drafted by former Compliance Officer Debi Fincher, Trustee Adams provided non-public information to a sub-contractor affiliated with the vendor in an ongoing RFP. Unbeknownst to the district, that sub-contractor was a colleague of Trustee Adams which could lead to the conclusion that Trustee Adams was pushing for the contract to go in favor of that vendor. This conduct violates Tex. Educ. Code §44.031(a)(1) because this was a board member who interfered with the competitive bidding process. This conduct also violates CAA (LOCAL) because the board member shared confidential information to a vendor, during the RFP process, breaking the Code of Silence.

As detailed in Findings of Fact 2 and 3 Trustee Davila violated Tex. Educ. Code §44.031 (a)(1) when she met with an HISD senior administrator to influence the administrator to choose a certain vendor for a custodial contract. Trustee Davila violated this statute because she tried to circumvent the competitive bidding process. Furthermore, a colleague of Trustee Davila visited with a vendor who was in the RFP process and tried to coerce the vendor into a consulting contract.

As detailed in Finding of Fact 4, HISD violated Tex. Educ. Code § 44.031 (a)(5) and Tex. Gov't. Code §2269.403 (c) when the district split job order contracts to avoid the \$500,000 limit, which should have been approved by the HISD Board of Trustees.

As detailed in Finding of Fact 5, HISD split a contract that should have otherwise been awarded as a single contract. This was determined by the date issued and the sequence number of the job order contracts for KBR. HISD approved funding for these contracts prior to approval from the HISD Board of Trustees. Moreover, the board item that was later approved did not specify the use

of Job Order Contracting or a waiver of the statutory pricing limits. There was no justification as to why HISD awarded two contracts to the same contractor on the same day.

As detailed in Finding of Fact 6, the job order contracts with KBR regarding Kirby Middle School demonstrates that HISD split a contract and therefore evaded board approval once more. This conclusion was reached based on the fact that KBR was awarded two contracts that had the same objective and therefore should have been awarded as a single contract that required board approval. Again, HISD could not justify awarding two contracts to one contractor on the same day for doing simultaneous work on Kirby Middle School.

As detailed in Findings of Fact 7, there was no reasonable explanation as to why two work orders were issued to complete the work at Lakewood Elementary School. KBR's objective was to demolish the school, so the scope of work order KBR 30008 and KBR 30009 were the same. In addition to the same scope of work, the total value to this project totaled \$505,039, which exceeds the amount required for board approval.

As detailed in Findings of Fact 8, KBR was awarded two contracts that reflected work to be completed concurrently at identical locations. Because KBR was awarded both contracts on the same day and the job orders are numerically sequential, this contract should have been awarded as a single item valued at \$851,638. These actions demonstrate how HISD continued to award contracts under the \$500,000 threshold to circumvent the required board approval.

Although not approved on the same day and not in sequential order, the contracts (JLS 30079 and JLS 30148) should have been approved by the board as the cost of the project totaled \$532,870.89. The nature of the second contract is considered to be a change order to JLS 30079 and should not have been assigned a separate job order number. Evidently, HISD did not receive approval from the board for awarding these contracts.

As detailed in Findings of Fact 10, P2MG was awarded four job order contracts which remained under the \$500,000 threshold. However, P2M 30044 and P2M 30045 were requested in sequential order and were identical in nature. Those two job orders should not have been requested separately and should have been combined which would be valued at \$862,819.67. Nonetheless, these four job orders total \$1,487,254.25, which exceeds the annual limit of \$1 million per campus per year (see Exhibit 3.6 p.4). Moreover, the work was completed and billed by September 3, 2014, of which, \$767,957.99 was paid before the HISD Board of Trustees approved Board Item (H-2) in September 11, 2014. Therefore, HISD did not seek approval of the board prior to awarding contracts or prior to completion of the work.

As detailed in Finding of Fact 11, P2MG was awarded three job orders that, when combined, were valued at \$1,170,675.47. These contracts should not have been issued as individual orders and should have been procured properly. The contracts should have been initially valued at \$1,170,675.47 as the nature of the work completely focused on the parking lot addition of Jones High School. Moreover, when HISD presented the contract as part of Board Item (H-2), the HISD Board of Trustees approved the requisitions almost two months after P2M 30054 was awarded.

Government contracts are easily susceptible to fraud and therefore contract procurement rules should be followed accordingly. However, HISD manipulated contract procurement rules through the abuse of Job Order Contracts and multiple change orders. The district not only intentionally split Job Order Contracts to avoid the \$500,000 limit, they approved multiple change orders to projects subsequently increasing the cost of projects, thus, proving fraudulent behaviors that contribute to a lack of transparency.

Therefore, allegation four, “Did the HISD Board of Trustees fail to follow contract procurement rules and procedures, and fail to ensure staff followed these rules and procedures when awarding contracts for goods and services in violation of Tex. Educ. Code §44.031?” is substantiated because on multiple occasions the HISD Board of Trustees violated the law by interfering with the contract procurement process. The HISD Board of Trustees intentionally tried to award contracts indirectly by contacting vendors during the RFP process, advocating for contractors, and HISD was found to be manipulating contracts to circumvent contract procurement rules.

Summary

The HISD Board of Trustees violated the requirements of the Texas Open Meetings Act by setting up a secret and unposted meeting of a quorum of the board of trustees to conduct important district business in secret. The findings establish a systemic breakdown of the HISD Board of Trustees’ ability to govern and oversee the management of HISD. This behavior is demonstrated by taking actions outside the scope of their authority, in directing district employees to perform tasks that exhibit overreach, intimidating and questioning employees about their responsibilities, and directing hiring decisions. Further, the HISD Board of Trustees interfered with contract procurement laws by contacting vendors during the RFP process and allowing Job Order Contracts to be awarded with lowered amounts to circumvent the threshold as required by law.

The findings establish that there is a failure of the HISD Board of Trustees to collaborate with the district superintendent within the limits of the board’s statutorily specified duties. Also, there is an demonstrate and inability to provide leadership for the district. The dissention between board members, the superintendent, and other district leadership is detrimental to the students of Houston Independent School District, thus affecting student outcomes.

Recommendation for Sanctions

Based on the findings, the SIU will recommend to the Commissioner of Education that the accreditation status of the district be lowered, a conservator be appointed, and a Board of Managers be installed in accordance with Tex. Educ. Code §39.057(d) to replace the existing board of trustees due to the HISD Board of Trustees’ demonstrated inability to appropriately govern, inability to operate within the scope of their authority, circumventing the authority of the superintendent, and inability to ensure adherence to contract procurement policies and laws are followed.

The above recommendation will enable HISD to function in the best interest of students, while policies and procedures can be implemented to address the issues raised in this investigation. TEA reserves the right to implement all available interventions and sanctions under Tex. Educ. Code,

Chapter 39, and 19 Tex. Admin Code Chapter 97, to address the current, or any future deficiencies identified for HISD.