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State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

June 10, 2020

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

VIA EFILE TEXAS

RE: SOAH Docket No. 701-19-4036.EC; Texas Education Agency Education Certification and Standards Division v. Michael Feinberg

Dear Ms. Moriarty:

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

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

Sincerely,

Handwritten signature of Beth Bierman in black ink.

Beth Bierman
Administrative Law Judge

Sincerely,

Handwritten signature of Robert H. Pemberton in blue ink.

Robert H. Pemberton
Administrative Law Judge

RP/tt
Enclosure

xc: SBEC Legal Assistant, TEA, Educator Certification & Standards, Travis Building, 2nd Floor, 1701 N. Congress, Austin, TX 78701 (with 1 CD of Hearing on the Merits) – **VIA EFILE TEXAS & INTERAGENCY MAIL**
Mark Duncan, Staff Attorney, Texas Education Agency, 1701 N. Congress Ave., 2nd Floor, Austin, TX 78701 – **VIA EFILE TEXAS**
Christopher Tritico, Tritico Rainey, PLLC, 1523 Yale, St., Houston, TX 77008 – **VIA EFILE TEXAS**

TEXAS EDUCATION AGENCY,
EDUCATOR LEADERSHIP AND
QUALITY DIVISION,

Petitioner

v.

MICHAEL FEINBERG,

Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

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**TEXAS EDUCATION AGENCY,
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BEFORE THE STATE OFFICE

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ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Education Agency (TEA), Educator Leadership and Quality Division, on behalf of the State Board for Educator Certification (Board), brought this disciplinary action seeking to permanently revoke the educator certificate of Michael Feinberg (Respondent).¹ The action is predicated on factual allegations that Respondent sexually abused a female fifth-grade student approximately twenty years ago. The Administrative Law Judges (ALJs) have concluded that Staff failed to meet its burden to prove any such allegations. Accordingly, the ALJs recommend that the Board not impose a sanction against Respondent.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No party contested notice or jurisdiction, so those matters are addressed solely in the findings of fact and conclusions of law. ALJs Beth Bierman and Robert Pemberton convened the hearing on the merits on February 12 and 13, 2020, at the hearings facilities of the State Office of Administrative Hearings (SOAH) in Austin, Texas. Attorney Mark Duncan represented Staff. Respondent appeared and was represented by attorneys Christopher Tritico and Ron Rainey. Following the presentation of evidence, the record was held open to allow the parties to file written closing arguments, and ultimately was closed on April 16, 2020.

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

II. BACKGROUND AND ALLEGATIONS

Since 1995, Respondent has held Texas Educator Certificate No. XXX-XX-63-63, a Provisional Certificate in Bilingual/ESL (Grades PK-6). A primary focus of Respondent's career as an educator has been his work in co-founding, teaching with, and growing what eventually became the KIPP (Knowledge Is Power Program) network of public charter schools in Texas and other states. KIPP schools have characteristically stressed academic rigor and college readiness, particularly for the benefit of underprivileged youth whose families desire an alternative to the standard public-school model. Respondent emphasizes, and Staff has acknowledged, that KIPP schools—and Respondent individually—have long achieved positive outcomes for students and received an array of accolades in both professional and popular arenas. There is no indication that Respondent was ever previously a target of a Board disciplinary action.

Respondent's professional path took a less favorable turn in April 2017. By then, Respondent was serving on the governing boards of KIPP Houston Public School (a nonprofit organization that ran what had become a large system of KIPP public charter schools in the Houston area) and KIPP Foundation (a nonprofit that trained KIPP teachers and facilitated the creation of new KIPP schools), as well as being employed by KIPP Houston in a supporting "co-founder" role that still included occasional teaching of students. While on the campus of one of the KIPP Houston high schools to present a lecture or seminar to graduating seniors, one of the students there expressed reluctance to attend the session, telling a faculty member that Respondent had "raped her cousin." The allegation triggered KIPP procedures and responses that included—at Respondent's own insistence—reporting of the allegation to Child Protective Services and to the KIPP Houston superintendent and Respondent being recused and placed on leave while the matter was investigated. Following an investigation conducted by KIPP Houston's outside education-law counsel (Ellen Spalding, who would later be called as a witness in this proceeding), Respondent was permitted to return to work. However, the KIPP Houston governing board subsequently retained a Washington D.C.-based law firm to conduct a second investigation, which Respondent has characterized as a response to unrelated events involving a KIPP affiliate in New York rather than any new allegations involving him. Following this second investigation, Respondent was terminated by KIPP Houston and was also forced out or removed from his

board-level roles. A disciplinary investigation by Staff followed, leading to the present proceeding.

The parties concur that the “rape” statement made by the KIPP high-school student in April 2017 had alluded to an account that she had heard through some of her relatives. The gist of the account was that Respondent had sexually abused the student’s first cousin—the two are related through mothers who are sisters—when, approximately twenty years earlier, the cousin had been a fifth-grade student at the KIPP Academy, then KIPP’s sole public charter school in Houston. It is undisputed that neither the cousin who was the alleged victim (later identified as “Student 1” in this proceeding), nor any other family member or other person, had ever asserted or divulged a claim of sexual misconduct by Respondent to any school, law-enforcement, or other governmental authority prior to the April 2017 “rape” statement. Once the claim came to public light in this way, however, the now-adult Student 1 gave interviews or statements in the various investigations, including Staff’s investigation, in which she implicated Respondent in alleged sexual abuse.

As the factual bases for the present disciplinary action, Staff has accused Respondent of sexually abusing Student 1 during two incidents that would have occurred during the spring of 1999.² At that time, Student 1 was completing the second of two years that she spent in KIPP Academy’s fifth grade while Respondent was serving as the school’s principal and as a teacher. In the first incident, according to Staff’s pleadings, Respondent “took [Student 1] into his office” at the school, ostensibly to conduct a “yearly check-up,” and then proceeded to reach under her shirt and run his fingers between her breasts and also along her back. The second incident allegedly occurred “[a] week or two later,” when Respondent “took [Student 1] back to his office,” this time under the pretense that he had “lost the file” from the earlier “check-up” and “would have to redo the exam.” Then, according to Staff, “Respondent asked [Student 1] to remove her clothing from the waist down,” “had [Student 1] sit on the desk and spread her legs,” then “approache[d] her with a Q-tip and inserted it into [her] vagina for a few seconds.”

² Although Staff’s pleadings placed the incidents “[d]uring the 1996-97 school year,” both sides would eventually agree that the incidents, had they occurred, would have taken place during the spring semester of the 1998-99 school year.

Staff's pleadings also emphasized a third incident that allegedly occurred later in the spring semester, when Student 1 was participating in a fifth-grade class trip to Washington D.C. and was swimming in a hotel pool with other classmates. Staff alleged that "Respondent pulled [Student 1] aside offering to give her dry clothing to wear back to her room," then "took [Student 1] into a men's bathroom and gave her a pair of his boxers and a KIPP t-shirt to change into in a bathroom stall." While Staff did not accuse Respondent of any improper touching in connection with this incident, it insinuated that Respondent had peered into the stall, pleading that Student 1 "did not think to check if Respondent was peeking at her while she changed."³

Respondent has denied ever engaging in any sexual conduct with Student 1 or any other child. The gravamen of his defensive theories is that Student 1's account is entirely a fabrication or otherwise untrue.

III. APPLICABLE LAW

Since 1995, the Board has been delegated regulatory and oversight powers over "all aspects of the certification . . . and standards of conduct of public school educators,"⁴ plus the specific duty to promulgate, subject to a veto power held by the State Board of Education, rules prescribing disciplinary rules and standards.⁵ Under the Board's current rules, sexual abuse of the nature alleged against Respondent would violate several different requirements and standards governing educator conduct, thereby providing grounds for professional discipline. In turn, the Board's

³ Staff's pleadings also included allegations about the second KIPP Houston investigation, including assertions that the investigation had uncovered other wrongdoing by Respondent that did not involve children. These additional allegations proved to be largely peripheral to this proceeding.

⁴ Tex. Educ. Code § 21.031(a); *see* Acts 1995, 74th Leg., R.S., ch. 260, Sec. 1, eff. May 30, 1995.

⁵ Tex. Educ. Code §§ 21.041(b) ("The board shall propose rules that: (1) provide for the regulation of educators and the general administration of this subchapter in a manner consistent with this subchapter; . . . (7) provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Chapter 2001, Government Code; [and] (8) provide for the adoption, amendment, and enforcement of an educator's code of ethics[.]; .042 (prescribing Board's power to "propose" rules that take effect unless vetoed by State Board of Education).

“Decision-Making Guidelines” rule would dictate only one option when choosing a sanction—permanent revocation of Respondent’s educator certificate.⁶

Respondent has not disputed that the Board would have power to revoke his educator certificate permanently if he had sexually abused Student 1 in the manner alleged. However, the timing of this proceeding relative to Respondent’s alleged misconduct creates some complications in identifying the specific conduct standards whose violation would provide grounds for that disciplinary action. Although Staff’s complaint cites a litany of conduct standards under the Board’s current rules, Staff later acknowledged in its closing argument that the Board may rely only on those standards that would have governed Respondent’s rights and duties at the time when the sexual-abuse incidents would have occurred.⁷ That time, again, would have been over twenty years ago, during the KIPP Academy’s 1999 spring semester.

To help resolve the difficulty, Staff refers us to a 1998 version of the Educators’ Code of Ethics whose violation would have served as grounds for professional discipline during the 1999 spring semester.⁸ At least two standards under this 1998 Code are fairly implicated by the rule violations pleaded in Staff’s complaint. First, Staff pleaded that Respondent violated current Educators’ Code of Ethics Standard 1.7 (“The educator shall comply with state regulations . . . and other state and federal laws”⁹), whose substance appeared in virtually identical wording in the

⁶ See 19 Tex. Admin. Code § 249.17(i)(1) (“the SBEC shall permanently revoke the teaching certificate of any educator . . . if, after a contested case hearing . . . , it is determined that the educator . . . engaged in any sexual contact . . . with a student or minor”).

⁷ See *State Bd. of Educ. v. Lange*, Cause No. 03-12-00453-CV, 2016 WL 785538, at *2-3 (Tex. App.—Feb. 25, 2016, pet. denied) (mem. op.) (in appeal from disciplinary proceeding based on educator’s sexual conduct with student from another school that would have been addressed specifically by intervening amendments to Educator Code of Ethics, central issue was whether conduct was proscribed under earlier version of Code that had been in effect at time of teacher’s conduct).

⁸ See 22 Tex. Reg. 11922-24 (Dec. 5, 1997) (proposing new Educators’ Code of Ethics, to be codified at 19 Tex. Admin. Code § 247.2, and providing in § 247.1 that “[t]he board is solely responsible for enforcing the ethics code for purposes relating to certification disciplinary proceedings, pursuant to Chapter 249 of this title (relating to Disciplinary Proceedings and Sanctions)”; 23 Tex. Reg. 1022-23 (Feb. 6, 1998) (adopting proposed rules with amendment to § 247.1 deleting clause referencing Chapter 249 (which would not be enacted until the following year, see 24 Tex. Reg. 2304-2346 (Mar. 26, 1999)), but leaving intact reference to Board’s enforcement power) (hereinafter “1998 Code”).

⁹ 19 Tex. Admin Code § 247.2(1)(G).

1998 Code.¹⁰ Second, Staff pleaded that Respondent violated current Code Standard 3.2 (prohibiting “treating a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of a student”¹¹) and Standard 3.5 (prohibiting “engaging in physical mistreatment, neglect, or abuse of a student or minor”¹²). The substance of these standards, at least as they would be implicated by the factual allegations here, were encompassed by a 1998 Code provision requiring the educator to “make reasonable effort to protect the student from conditions detrimental to learning, physical health, mental health, or safety.”¹³

Additionally, Staff pleaded violations of the “unworthiness to instruct or to supervise” standard that is currently incorporated into both the Educators’ Code of Ethics¹⁴ and Chapter 249 of the Board’s rules.¹⁵ While the unworthiness standard has deep roots in Texas education law,¹⁶ that history in itself does not necessarily establish that the Board had authority to enforce that standard against Respondent at all times potentially relevant to this case. In attempting to establish that the Board possessed such authority, Staff has cited only the original version of Chapter 249, which did not take effect until March 31, 1999,¹⁷ approximately two months before the end of the KIPP Academy’s 1999 spring semester.

Staff bears the burden of proving its allegations by a preponderance of the evidence.¹⁸

¹⁰ See 1998 Code § 247.2(c)(5) (Principle II, Standard 5: “The educator shall comply with . . . state regulations, and other applicable state and federal laws”).

¹¹ 19 Tex. Admin Code § 247.2(3)(B).

¹² *Id.* § 247.2(3)(E).

¹³ See 1998 Code § 247.2(e)(4) (Principle IV, Standard 4: “The educator shall make reasonable effort to protect the student from conditions detrimental to learning, physical health, mental health, or safety.”).

¹⁴ See 19 Tex. Admin. Code § 247.2(1)(J) (Professional Ethical Conduct, Practices, and Performance, Standard 1.10).

¹⁵ See *id.* § 249.15(b)(2).

¹⁶ See, e.g., *Gomez v. Texas Educ. Agency*, 354 S.W.3d 905, 913-16 (Tex. App.—Austin 2011, pet. denied) (analyzing “unworthiness to instruct or to supervise” standard and its history, including *Marrs v. Matthews*, 270 S.W. 586, 588 (Tex. Civ. App.—Texarkana 1925, writ ref’d)).

¹⁷ See 24 Tex. Reg. 2304-2346 (Mar. 26, 1999) (adopting new Chapter 249, effective March 31, 1999).

¹⁸ See 1 Tex. Admin. Code § 155.427; *Granek v. Texas St. Bd. of Med. Examin’rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.) (in rejecting application of higher proof standard, observing that “agency license-revocation

IV. EVIDENCE

A. Staff's Evidence

Staff offered one exhibit—Respondent's educator certificate—which was admitted.¹⁹ Staff called two witnesses to testify, Student 1—who, as noted previously, is now an adult—and her mother.²⁰

1. Student 1's Testimony

Student 1's testimony began with Staff eliciting that Student 1 felt "numbed," was nervous, and disliked recounting the alleged sexual-abuse incidents.²¹ She also denied having pursued any civil or criminal case against Respondent or ever telling police or KIPP personnel about her allegations prior to her cousin's independent and unilateral action to disclose them. Since that disclosure, Student 1 indicated, she had been called upon to retell her story more than a dozen times. As for her motives in testifying at the hearing, Student 1 professed a desire for "justice" and "to be the voice of that little girl that couldn't speak out back then."²²

Student 1 recounted that she had first met Respondent during the 1997-98 school year, when she entered the KIPP Academy as a fifth grader. That first year, she explained, Respondent had been her math teacher and that nothing strange had happened involving him. Initially, Student 1 acknowledged, she had found KIPP Academy to be "hard," "didn't like it at the beginning because of that," and that she was ultimately retained in fifth grade "[b]ecause of my English."²³ However, when repeating fifth grade during the 1998-99 school year, Student 1

proceedings are civil in nature and that in civil cases, no doctrine is more firmly established than that issues of fact are resolved by a preponderance of the evidence" (internal citations and quotations omitted)).

¹⁹ Staff Ex. 1.

²⁰ A third witness was excluded, as explained below.

²¹ Tr. at 24.

²² *Id.*

²³ *Id.* at 26.

indicated that both her academic performance and her feelings toward the school improved. It was during that second fifth-grade year, Student 1 claimed, when the sexual abuse occurred.

Student 1's account of the two alleged incidents during her direct testimony reflected an underlying premise, stated more explicitly during her subsequent cross-examination, that Respondent had not been one of her teachers during her second fifth-grade year, such that her contact with him that year had been correspondingly much less frequent than during her first year. Staff elicited from her the following testimony regarding the first incident, which she claimed to have occurred during the spring of 1999:

Q What – what happened when you first saw [Respondent] that spring?

A He had asked me that – I needed a physical exam done because I think I didn't – he checked that I haven't had mine in a while.

Q What was [Respondent's] position that year?

A I believe he was the principal.

Q Where were you when – when he told you about your physical?

A I know I was outside of class.

Q Was it between classrooms?

A Between classrooms.

Q And what happened when he told you about the physical?

A I said, okay. I mean, I didn't know. So, I'm like – I agreed. Okay. He told me to go to his office.

Q And did you go to his office?

A Yes, I did.

Q What happened then?

A At the first one, he just told me that he was – that he could perform this because he was a doctor. And he pointed at the degree he had on the wall, and I just glanced at it. I didn't even look at it. I just glanced, and that's it.

- Q How old were you when this happened?
- A Either 10 or 11.
- Q What happened after that?
- A After that, he told me to stand up, and that's when he came up to me. He put his hand under my shirt, with his finger he went up and down between my breasts to my belly button. And then, he told me to bend over, touch my knees – I mean, my toes, and he did – he did the same thing.
- Q You say he did the same thing to your front or back?
- A To my back.
- Q Okay. He ran his hand inside your shirt?
- A Yes.
- Q Was it one time each?
- A Yes.
- Q What did you think about this when it happened?
- A I didn't think about nothing. I didn't – I thought he was doing what he was supposed to be doing. I had no clue.
- Q Did you think he was a doctor?
- A Yes.
- Q What happened after that?
- A After that, after he went back to his desk and started typing on the computer, he told me I could go back to class.²⁴

The second incident involving Respondent occurred, according to Student 1, “probably a week after.”²⁵ Staff elicited the following account of that episode:

²⁴ *Id.* at 27-29.

²⁵ *Id.* at 29.

A I was walking to my class, and [Respondent] came up to me. And he's like – he told me he accidentally deleted the file where he wrote what he did to me. So, he had to redo it again.

Q And then what happened?

A To meet him at his office.

Q Did you follow him to his office or meet him later?

A No, I met him later.

Q What happened when you went to his office?

A The second time I went there it was different. I thought I was – he was going to do the same thing, but it was different. I had – I had some shorts, and I had – I had other shorts under my shorts. And at first he told me to undress from my waist down. And first, I took my – the first pair of shorts, I took them off. And I told him, like this? And then, when he looked at me, he's like, no, everything. So, I did. I took everything – and then, he told me to get on top of the desk and open my feet wide.

Q What happened next?

A And then from – he came – he opened a drawer from his desk, and he got a Q-tip. And then, he came towards me and inserted it into my vagina. And then, he just threw it in the trash, and he went back to his desk and started typing. And after, he just told me to get dressed and go back to my class.

Q How did you feel after this?

A After that, I felt weird as he was doing it. I felt confused. I'm like, I don't think this is right. So, I just put my – my clothes back on and went back to class.²⁶

Later that same day, according to Student 1, she told a female schoolmate about the Q-tip incident while riding the school bus together. While Student 1 indicated that she had been laughing initially, she claimed that her friend's reaction had prompted her to tell her mother about the incident after arriving home. According to Student 1, her mother "got upset" when told but agreed at Student 1's urging not to tell her husband, Student 1's father.²⁷ Student 1 testified that her father

²⁶ *Id.* at 29-30.

²⁷ *Id.* at 31.

had a history of violence with her and that she had feared he would, if told of the incident, “blame me for it and hit me.”²⁸ However, Student 1 also testified that she did not consider telling the police or the school “[b]ecause I thought they wouldn’t believe me because of my race,” an evident reference to her Hispanic heritage or ethnicity.²⁹

Student 1 also testified about the class trip to Washington D.C., confirming that it had taken place at some later point during the spring 1999 semester. She recounted that on what she thought was the last day of the trip, she had gone with classmates to their hotel’s swimming pool. According to Student 1, “I didn’t have a bathing suit, so I only had shorts on with a regular T-shirt” as she swam.³⁰ Respondent noticed her attire, Student 1 continued, and “he came up to me and told me that he had a pair of dry clothes so whenever everybody will go up to their—up to their rooms to stay behind so he can give me the dry clothes so I wouldn’t go wet back to my room.”³¹ She claimed that she felt “[w]eird” upon encountering Respondent once again, but “I’m like I didn’t think nothing of it. I mean, he was just giving me . . . a pair of dry clothes.”³² Thereafter, Student 1 indicated, Respondent “took me into the men’s restroom, and I went into one of the—to the stalls, and I changed.”³³ While she acknowledged that she did not think anything strange at the time about changing in a stall, Student 1 claimed that it had occurred to her long afterward to wonder whether Respondent “was peeking while I was changing.”³⁴

Student 1 denied that any further encounters with Respondent had occurred during the remainder of her enrollment at KIPP Academy. She testified that she was no longer comfortable and had left KIPP Academy after finishing sixth grade (her third year at the school) to attend the same school as her two brothers. Student 1 insisted that she had wanted to leave KIPP Academy

²⁸ *Id.*

²⁹ *Id.* at 32.

³⁰ *Id.*

³¹ *Id.* at 32-33.

³² *Id.* at 33.

³³ *Id.*

³⁴ *Id.*

immediately but had remained “[b]ecause my mom didn’t know how to tell my dad” about her desire to leave.³⁵

Anticipating cross-examination targets, Staff elicited Student 1’s perspective on an admittedly pleasant conversation she had had with Respondent in more recent years. Student 1 explained that she had been working in a Houston restaurant and recognized Respondent one day among the customers. Then, she testified, she had approached Respondent, asked if he remembered her, and visited with him regarding KIPP, revealing that she had enrolled her own daughter in a KIPP school and that “I like that school.”³⁶ But while acknowledging that their exchange had been pleasant on the surface, Student 1 claimed that her true motive had been to see if Respondent “had the audacity to look at me in the eyes like nothing ever happened.”³⁷ She added that “[i]nside, it was killing me. And I was real mad, like he was talking to me like nothing.”³⁸

Staff elicited a similar explanation from Student 1 as to why, as she also admitted, she had sent Respondent a Facebook “friend” request and added him as a “friend” following their conversation.

Staff inquired further as to Student 1’s view of KIPP and her decision to send her own daughter to a KIPP school. When asked what she liked about KIPP, Student 1 responded, “Everything. The way they’re concerned about the students. they take their time teaching. If you don’t understand, they’ll put you aside and . . . tutor you.”³⁹ And when asked why she had enrolled her daughter in KIPP despite the sexual abuse she claimed had occurred to her, Student 1 explained, “Because I believe a school should not be defined by the actions of this man because it

³⁵ *Id.* at 34.

³⁶ *Id.* at 35.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

doesn't matter what school my daughter goes [to], there's always going to be someone taking advantage of kids.”⁴⁰

Staff went on to inquire more specifically about the prospect that Student 1's daughter would encounter Respondent at her KIPP school. Although noting that Respondent was not a teacher or principal at her daughter's school, Student 1 admitted that she did not know whether or not Respondent would ever have been on the school's campus. And when Student 1 was asked whether she had been worried about her daughter coming into contact with Respondent, Student 1 answered, “No, because she [her daughter] didn't know who he was [and] still to this day she don't know.”⁴¹

At the conclusion of Staff's direct examination of Student 1, ALJ Bierman asked Student 1 to clarify when Student 1 had informed her mother about the alleged sexual-abuse incidents. Student 1 reiterated that she had informed her mother following the second incident, the incident involving the Q-tip. Later, ALJ Pemberton would ask Student 1 a version of the same question, and again Student 1 indicated that she had told her mother following the second incident.

Respondent began his cross-examination by eliciting Student 1's acknowledgement that her older brother had been expelled from KIPP Academy, a theme to which he would return subsequently in an attempt to develop a theory of motive to fabricate. However, Student 1 denied that her family had been upset with Respondent over the expulsion. She claimed that the family had instead been upset with the brother.

Respondent's remaining cross-examination of Student 1 was calculated to confirm or clarify Student 1's commitment to various factual assertions that would be, in Respondent's view, inconsistent with (1) a good-faith belief on the part of Student 1 that the alleged incidents had actually occurred; (2) the surrounding circumstances at the locations and times where Student 1 had claimed the alleged incidents occurred, as would be developed chiefly through other witnesses;

⁴⁰ *Id.* at 36.

⁴¹ *Id.*

and/or (3) Student 1's own previous statements. To these ends, Respondent relied in part on a deposition that Student 1 had given in the case in December 2019, approximately two months before the hearing. The deposition transcript, except for four redacted pages, would ultimately be offered and admitted into evidence.⁴² Respondent would also offer two other exhibits while questioning Student 1, both of which were admitted.

Student 1 acknowledged that, despite the alleged sexual-abuse incidents with Respondent, she had remained at KIPP Academy thereafter through the end of her second fifth-grade year and the entirety of her sixth-grade year. However, reiterating her testimony on direct, Student 1 insisted that "I had no choice."⁴³ Respondent then inquired of her, "[H]ad [Respondent], been your teacher in the second 5th grade, you would not have gone back after the D.C. trip. Right?"⁴⁴ To this, Student 1 responded, "Correct."⁴⁵ Respondent then elicited directly that it was Student 1's present understanding that Respondent had not been one of her teachers during her second fifth-grade year, only during her first year in that grade. Similarly, Student 1 indicated, in response to a clarifying question from ALJ Bierman, that Respondent likewise had not been one of her teachers during her sixth-grade year at KIPP.

Respondent sought thereafter to demonstrate, initially through Student 1 herself, that Respondent had in fact been one of Student 1's teachers during her second fifth-grade year, suggesting that this fact cast doubt on the genuineness of her professed reluctance to return to KIPP Academy had Respondent been one of her teachers⁴⁶ and, in turn, whether any sexual abuse had actually occurred in the first place. Respondent presented Student 1 with what purported to be a class photograph from her second fifth-grade year and asked her to identify herself in it. While

⁴² Respondent's Ex. 8. The ALJs admitted the deposition over a global hearsay objection from Staff. *See* Tex. R. Evid. 801(e)(1) (statements that are "not hearsay" include statements made in a deposition in the same proceeding).

⁴³ Tr. at 41.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Student 1 had also made a somewhat more equivocal version of this assertion during her deposition. Respondent's Ex. 8 at 96 ("Q. So if [Respondent] had been teaching you that [second fifth-grade] year, you would not have gone back, would you? A. Probably not.").

Student 1 insisted that an initial copy of the photograph was too “blurry” to discern,⁴⁷ she subsequently identified herself in a clearer version, and this copy was offered and admitted into evidence under seal to preserve student privacy.⁴⁸ Respondent is also present in the photograph.⁴⁹ Student 1 also identified herself in video footage of Respondent teaching a class. The footage was later proven through other witnesses to be an excerpt from a broadcast episode of television’s *60 Minutes* featuring KIPP Academy that had been filmed during the spring of 1999.

Respondent next turned to Student 1’s direct testimony regarding the two alleged incidents. As subsequently made clear by testimony from Student 1 and other witnesses, the KIPP Academy campus then consisted of a series of portable buildings connected by outdoor walkways with covers. Under Respondent’s questioning, Student 1 acknowledged a difference between her testimony on direct, in which she had indicated that Respondent had approached her while she was outside and stated that she needed a physical, and both her deposition and an earlier statement given to a Staff investigator, in which she had been unable to remember how Respondent had approached her. Student 1 similarly acknowledged a contrast between her testimony that Respondent had instructed her to meet him at his office and her deposition testimony and statement to Staff that that she had followed Respondent to his office.

Respondent next elicited that Student 1 had never previously been to Respondent’s office, that the office was one of several located in the same portable building, and that she first had to pass through a lobby area that contained desks for administrative staff. Student 1 also indicated that administrative staff had been sitting at their desks, but that she couldn’t recall how many people were present in the lobby area, and that she had asked someone where Respondent’s office was, but did not recall whom. Under further questioning, Student 1 admitted that she had denied any such witnesses being present in a statement given to the attorney conducting the first KIPP Houston investigation, Ellen Spalding.

⁴⁷ Tr. at 50.

⁴⁸ Respondent’s Ex. 2.

⁴⁹ Generally described the photograph shows approximately fifty youth, plus some adults that included Respondent, all clad in white shirts. Through further testimony by Student 1 and other witnesses, it was shown that KIPP Academy students wore uniform shirts that were color coded by grade level, with white being the color that distinguished fifth graders.

As questioning continued, Student 1 testified that the door to Respondent's office did not have a window and that she did not recall whether or not it had been open. She described the inside of Respondent's office as containing a desk and desk chair for him, plus "a student desk and a lot of paperwork."⁵⁰ Upon further inquiry, Student 1 denied recalling how many student desks had been in the room. Respondent then confronted Student 1 with her deposition testimony and an illustrative not-to-scale drawing of the office that she had provided during her deposition, and the drawing was separately offered and admitted into evidence.⁵¹ The drawing reflects that Student 1 had indicated there were "more than 4 student desks" between the front of Respondent's desk and the office door, plus "2 or 3 student desks" along the right side of the room; she also indicated there was a window behind Respondent's desk but none in the office door.⁵² Student 1 also agreed that, during her deposition, she had also described the floor of Respondent's office as being cluttered all over with stacks of paper over two-and-a-half inches in height, leaving only pathways to walk through.

Upon further questioning, Student did not recall there being any other pieces of furniture in Respondent's office. She gave the same response when asked, more specifically, whether she recalled "any obnoxious furniture in there."⁵³

As for the first incident of sexual conduct that allegedly ensued, Student 1 acknowledged that during her deposition two months earlier, she had mentioned being touched only on the front of her body, not her back. She denied any recollection of whether, when she departed to go back to class, if class was in progress, if any persons were present in the lobby area, or if she had a pass to go back to class.

⁵⁰ Tr. at 70.

⁵¹ Respondent's Ex. 9. Staff objected to the exhibit as irrelevant, urging that "it's a sketchy drawing with some changes of a memory 20 years ago." After obtaining Respondent's agreement that the drawing was not to scale, the ALJs admitted it into evidence.

⁵² Respondent's Ex. 9.

⁵³ Tr. at 82.

As Respondent turned to the second alleged incident, Student 1 initially departed from her testimony on direct and denied remembering whether she had followed Respondent back to his office or had met him there.⁵⁴ However, she subsequently maintained, consistent with her direct testimony, that she had been instructed to meet Respondent at his office later. She denied remembering at what point during the school day she had gone to Respondent's office. Upon further questioning, however, Student 1 acknowledged that her deposition testimony had placed the meeting before her last class period. Further, Student 1 admitted that she had described a third version of events to Staff's investigator, claiming then that Respondent had taken her out of class to come to his office, and that she had elaborated further to Ms. Spalding that the class from which she had been retrieved had been her last-period class.

Student 1 further recounted that when arriving back at Respondent's office before the second alleged incident, there were people sitting in the administrative staff desks in the lobby, although she denied recalling whether she had spoken to any of them. She acknowledged that she had identified two persons present in the lobby to Ms. Spalding, "Ms. Valdez" and "Ms. Bieber."⁵⁵ Student 1 also admitted that she had told Ms. Spalding, Staff's investigator, and Jim Willis, an investigator for Respondent's counsel, that Respondent had ordered the persons in the lobby not to disturb them and then closed the door. However, Student 1 acknowledged that during her deposition, she had testified that she had simply knocked on the door and gone inside, with no indication that Respondent had either given a do-not-disturb admonishment or closed the door.⁵⁶ Of final note, Student 1 stated that Respondent's office during the second alleged incident had the same appearance as during the first one, including the student desks and papers on the floor.

Under further questioning by Respondent, Student 1 reiterated her claims made during direct that she had first told a classmate about the second incident on the day it had occurred, then divulged the incident later that same day to her mother; she also confirmed that her mother had

⁵⁴ "Q Did you follow him to his office or meet him later? A No, I met him later." Tr. at 29. Also quoted above.

⁵⁵ *Id.* at 89. In her deposition, Student 1 gave a similar account, although she indicated there had been "probably three people" in the lobby area, including Ms. Bieber, whom she elaborated to be "the current-events teacher," and a "Mr. Valdez," whom she described as a staff member but not a teacher. Respondent's Ex. 8 at 74-77.

⁵⁶ Respondent's Ex. 8 at 77-78.

been the first person over age 18 whom she had told. Respondent also elicited that Student 1 claimed to have divulged the incident years later to a former classmate, identified as E.F., with whom she had reconnected via Facebook during adulthood.

As Respondent turned to the Washington D.C. trip, Student 1 elaborated that the fifth graders permitted to go on the trip were provided with a packing list and were required to bring their packed luggage to school before departure (Student 1 believed it was three days in advance) so KIPP staff could inspect them and ensure they had all required contents. Student 1 acknowledged that the packing list for her trip had included a bathing suit. However, when asked whether she had a bathing suit at home, she responded, “To be honest, I don’t think I did,”⁵⁷ but acknowledged that she had testified during her deposition that she had owned one.

Student 1 further acknowledged that students on the trip had been assigned a same-gender chaperone, with one chaperone per four or five students; that students were admonished not to ever leave their chaperone; and to being aware that a violation of such rules could get her sent home from the trip early. She maintained that, after Respondent had pulled her aside, her chaperone had left her, although she claimed not to recall whether she had spoken to her chaperone.

With respect to the alleged bathroom incident, Student 1 denied that Respondent had said anything to her of a sexual nature, had touched her, or that anything of a sexual nature had occurred. She described the interior of the men’s bathroom as having two or three stalls and two urinals. Regarding the t-shirt and boxer shorts Respondent had allegedly given her, Student 1 acknowledged that she was ten or eleven years old at the time and that the t-shirt on her went almost to the ground. Similarly, although Student 1 professed not to remember how the boxer shorts fit, she eventually acknowledged her deposition testimony indicating that the boxers would have fallen off of her without her holding them up. Under further questioning, Student 1 testified that she, dressed in this manner, holding up the boxer shorts, and also carrying the wet clothing she had swam in, had left the men’s bathroom and made her way alone from the pool area through the hotel lobby to an elevator, then up to the floor of her room, then down the hallway to the room,

⁵⁷ Tr. at 100.

where she rejoined her chaperone and fellow group members, all without incident. Student 1 claimed that her chaperone had seen her in her state but denied recalling anything said or done by the chaperone in response. Student 1 further testified that after her mother had discovered the t-shirt and boxers in her laundry, Student 1 had returned them to Respondent.

Respondent then elicited some additional details from Student 1 concerning her encounter(s) with Respondent in the restaurant where Student 1 had been employed. Student 1 explained that her first encounter with Respondent in the restaurant had occurred several years after she had finished high school. Student 1 acknowledged that there had actually been several occasions in which she had conversed with Respondent while he was a patron in her restaurant, that she had learned of Respondent's continued work with KIPP during their first conversation, and that she had informed him of her daughter's enrollment in her KIPP school. Student 1 further admitted that she had initiated the Facebook "friend" request to Respondent and had denied their Facebook "friendship" to both Ms. Spalding and Mr. Willis.

On redirect, Staff elicited Student 1's observations that the events in question had occurred over twenty years ago and that the furniture in Respondent's office had not been the most memorable aspects of the two events she claimed to have occurred there. Upon further questioning, Student 1 characterized her return to her hotel room following the alleged bathroom incident as a short walk and indicated that she did not remember whether anyone else, including her chaperone, ever saw her. She described the clothing in question more specifically as an orange t-shirt and Hanes boxers with blue stripes.

Under further redirect, Student 1 again denied that Respondent had been one of her teachers during her second fifth-grade year, adding that a Ms. Dippel, now Respondent's wife, had been her math teacher rather than Respondent. Also, while acknowledging that her brother had been expelled from KIPP Academy, Student 1 claimed that the expulsion had occurred only after the sexual-abuse incidents and had been unrelated to them.

On recross, Student 1 denied remembering numerous details of her fifth-grade class schedule, including whether her courses had included a class called "Thinking Skills."

At the conclusion of Respondent's recross-examination of Student 1, ALJ Pemberton asked Student 1 to reiterate whether she had first informed her mother about the alleged abuse immediately after the second (Q-tip) incident. He then inquired as to whether Student 1 had had an additional discussion with her mother about the alleged abuse following Student 1's return from the Washington D.C. trip. Student 1 denied that she had done so, explaining that her mother had washed the clothes allegedly belonging to Respondent, that Student 1 had told her mother to whom they belonged, "and that was it."⁵⁸ In ensuing further questioning, Staff elicited clarification from Student 1 that she had told her mother about the alleged changing incident after her mother had discovered the clothes in her luggage. According to Student 1, her mother had been angered to learn of the incident given Student 1's earlier revelations about sexual abuse.

Respondent then confronted Student 1 with deposition testimony inconsistent with her hearing testimony (in both her direct testimony and in questioning from both ALJs) that she had informed her mother immediately after the Q-tip incident. During her deposition two months earlier, Student 1 had claimed that, in contrast, she had divulged the alleged sexual abuse only after her mother had discovered the clothing not belonging to her in the laundry she brought back from Washington D.C.⁵⁹

2. Mother's Testimony⁶⁰

Testifying through a Spanish translator, the mother of Student 1 (Mother) gave the following account: Her daughter had "told me that the teacher put her inside his office to have her do a medical examination" in which he "made her stand over his desk and ask her to take out (sic) her clothes."⁶¹ And with one of those things that you [use to] clean up your ears, he started touching

⁵⁸ Tr. at 134.

⁵⁹ Respondent's Ex. 8 at 96 ("Q. When was the first time you told your mom? A. About everything? Q. Uh-huh. A. Well, that—after she washed them clothes, I told her about what he had done, about the yearly—the yearly checkup. That's when she found out.").

⁶⁰ Respondent objected to and moved to strike Mother as a witness on hearsay grounds, which the ALJs overruled.

⁶¹ Tr. at 146.

her parts.”⁶² When asked whether her daughter had told her about more than one check-up incident with Respondent, Mother responded, “She just told me that.”⁶³

Mother testified that her daughter’s revelation had made her very upset and caused her to cry. Mother further insisted that she had wanted to inform her husband, Student 1’s father, and also the school or law enforcement, but that “my daughter didn’t let me.”⁶⁴ Mother elaborated, “We needed to talk to my husband but we were scared of him because he was very strict and tough with her and with me.”⁶⁵

Mother also represented that she had discovered Respondent’s clothes in Student 1’s suitcase or bag following the Washington D.C. trip. Mother indicated that she had discovered “some shorts, underwear, and T-shirt” not belonging to her daughter, asked her daughter about them, and came away with the understanding that they had belonged to Respondent.⁶⁶

During cross-examination, Mother acknowledged that Student 1’s older brother, then in KIPP sixth grade, had been expelled during the spring of 1999 for stealing. Mother also admitted that she and her family had been angry with Respondent about the expulsion and how their son was treated, and had expressed those feelings openly.

Mother also confirmed her earlier account that she had wanted to call the school or the police in response to Student 1’s claim, but that her daughter would not “let” her. When Respondent’s counsel followed up by asking, “So, an 11 or 12 year old made the decision as to

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 148.

⁶⁵ *Id.*

⁶⁶ *Id.* at 149.

whether or not this would be reported?”⁶⁷ Mother responded, “Correct.”⁶⁸ Additionally, Mother agreed that this conversation with Student 1 had occurred after Student 1’s return from the Washington D.C. trip.

Regarding the clothes issue, Mother acknowledged that the only way she had discerned or decided that the clothes had belonged to Respondent was because her daughter had told her so when Mother had asked. Mother likewise agreed that she had not taken the clothes to the school afterward to confront Respondent with them, nor had ever taken the clothes to Respondent and afforded him the opportunity to confirm or deny they belonged to him.

Mother also denied that her daughter had owned a swimsuit at the time of her Washington D.C. trip or that a swimsuit had been included on the list of items that students and parents were required to pack for that trip. Similarly, while Mother acknowledged that parents had been required to send in their children’s packed suitcases early for inspection and were instructed that that suitcases would be returned if any items were omitted, she denied that Student 1’s packed suitcase had been returned.⁶⁹

⁶⁷ *Id.* at 152. Although there was some question during the hearing as to whether Respondent’s question had presumed an incorrect age for Student 1, it is generally consistent with Student 1’s direct testimony, in which she indicated that she had been “[e]ither 10 or 11” at the time of the alleged sexual-abuse incidents. *Id.* at 28. Likewise, in her deposition testimony, Student 1 indicated that she was “9 or 10” when starting her first fifth-grade year at KIPP in the fall of 1997. Respondent’s Ex. 8 at 43.

⁶⁸ Tr. at 152.

⁶⁹ Staff had also intended to call a third witness, E.F., the former classmate whom Student 1 had testified she had told of the alleged sexual abuse while the two were in adulthood. Respondent objected and moved to exclude E.F. on grounds of hearsay, failure to satisfy the requirements for an outcry witness, lack of personal knowledge, and relevance. In response, Staff insisted that E.F.’s testimony would not be offered for the truth of any matters Student 1 had asserted during the conversation, but merely to corroborate that the conversation had occurred (which Respondent had not disputed). The ALJs excluded the witness.

Incidentally, proof of Student 1’s claimed conversation with E.F. also came into evidence through admission of Student 1’s deposition. Respondent’s Ex. 8 at 96-98. During the deposition, Student 1 elaborated that the conversation had occurred “[m]ore than seven years ago” (*i.e.*, sometime before December 2012) and that, prior to the controversy triggered by her cousin’s April 2017 “rape” statement, Student 1 had divulged the sexual abuse solely to her mother, the childhood classmate to whom she had spoken on the day of the Q-tip incident, and later E.F. *Id.*

B. Respondent's Evidence

In his direct case, Respondent offered 37 additional exhibits, 35 of which were admitted. Respondent called fifteen witnesses to testify on his behalf, including himself.

1. Sam Lopez's Testimony

Sam Lopez explained that he had been a KIPP employee since 1996 and was currently serving as the testing coordinator for the statewide "district" of KIPP schools in Texas.⁷⁰ Between 1996 and 2000, Mr. Lopez indicated, he had been a teacher at KIPP Academy, including fifth grade "English/language arts" and sixth grade current events, before succeeding Respondent in the "school leader" or principal position.⁷¹ He testified that Respondent had taught fifth-grade life skills and math every day during the 1998-99 school year. Further, attesting that he had been into Respondent's office on "many occasions" during that year and had also occupied the same physical space himself after being elevated to school leader in June 2000, Mr. Lopez gave testimony about the room's layout and appearance at relevant times.⁷²

According to Mr. Lopez, the door to Respondent's office had a window. He also claimed that Respondent never had student desks in his office and that the furnishings during the 1998-99 school year had consisted of Respondent's desk, a desk chair, and another chair that Mr. Lopez termed "the ugliest thing I have ever seen in my life," "a Hanukkah gift from [Respondent's] mother to him" that was covered in beads and Chicago Bulls paraphernalia.⁷³ Through Mr. Lopez, two photographs of the Chicago Bulls-themed Hanukkah-gift chair were offered and admitted into evidence.⁷⁴

⁷⁰ Tr. at 171-72.

⁷¹ *Id.* at 172-73.

⁷² *Id.* at 190.

⁷³ *Id.* at 191.

⁷⁴ Respondent's Exs. 10, 11. Staff had initially objected to the photographs, asserting lack of foundation, but they were admitted after Mr. Lopez attested that he had seen the chair in Respondent's office during the 1998-99 school year.

Mr. Lopez also denied that Respondent had his college diploma hanging on the office wall during the 1998-99 school year. He added that the KIPP Academy protocol was for teachers to hang their diplomas in their classrooms to use as a motivational tool with students. Consequently, Mr. Lopez maintained, Respondent's college diploma had instead been hanging in the classroom where he taught.

Mr. Lopez also indicated that while he had been a KIPP Academy fifth-grade teacher, he had gone on fifth-grade trips to Washington D.C. but that these did not include the trip in which Student 1 participated. However, he was questioned at length regarding standard protocols he claimed that KIPP Academy had followed during all of these D.C. trips. According to Mr. Lopez, parent chaperones—known as “kings” for fathers and “queens” for mothers—would be responsible throughout the trip for supervising four to six children of corresponding gender, usually including their own child. He added that the chaperones were required to sleep in the same hotel room as their assigned children, could leave the room (or from any other subsequent location) only with all of their children, and had to verify through a “check-in” process that every child was present whenever preparing to leave a location and upon arrival at a new location. Mr. Lopez claimed that children would never be allowed to go anywhere alone, even within the hotel, and that if, for example, a child needed a forgotten item from his or her room, either the child would simply be forbidden to go or two chaperone groups would be combined temporarily so as to allow a chaperone to escort them—plus a second child, so the two would never be alone—to and from the room.

Another procedure, according to Mr. Lopez, was to provide parents a specified packing list and to require an advance inspection of the children's packed suitcases to ensure that all of the required items had been included. If an item had been omitted, Mr. Lopez indicated, the child's parent or parents would be notified so the missing item could be located or purchased and included. If a parent could not afford to purchase a missing item, he added, KIPP or teachers would frequently pool resources and purchase the item for the child. According to Mr. Lopez, the required packing list included a swimsuit and that a child who did not have a swimsuit on the trip would not have been allowed to swim.

Mr. Lopez was also questioned about procedures in the event one of the chaperones witnessed anything inappropriate or questionable, such as “if a kid shows up . . . wearing a man’s T-shirt draped to the floor, boxers falling off, carrying her swimsuit.”⁷⁵ Mr. Lopez indicated that the chaperone was to contact the KIPP person in charge of the trip. If that person had been implicated in the conduct, he added, the procedure was to call the school leader back in Houston, and if warranted, law enforcement or emergency personnel.

On cross-examination, Mr. Lopez denied that Respondent had any sort of academic document on his office wall, adding that the walls were “very plain” aside from “Michael Jordan stuff” and some sort of “motivational quote that was given to him” having some relationship to sports.⁷⁶ He also maintained in the face of questioning that the Chicago Bulls chair had been in the office by the 1998-99 school year, explaining that he had remembered this because KIPP Academy had first moved into the portable buildings that year. But Mr. Lopez also remembered that Respondent had “stacks and stacks of paperwork” in his office that would have been on his desk, although he acknowledged that Respondent could also have papers on the floor “[i]f he was working on a project, . . . especially when we’re doing scheduling.”⁷⁷ He further recounted that Respondent had a couple of chairs in front of his desk and that additional folding chairs might be brought in occasionally for conferences with parents and teachers.

With regard to the Washington D.C. trips, Mr. Lopez acknowledged that a student might be permitted to swim in a t-shirt and shorts. However, he was adamant that the chaperones, at least as they were trained and instructed, would not allow another chaperone, teacher, or the principal to go with a student alone to a restroom. On the other hand, Mr. Lopez admitted that the protocols to which he had been referring had not been written down and that there were variations from year to year.

⁷⁵ Tr. at 184.

⁷⁶ *Id.* at 197-98.

⁷⁷ *Id.* at 198-99.

On redirect, Mr. Lopez indicated that a “red flag” would have been raised and further inquiry would have been made by educators if, as Respondent’s counsel described it, “a 10-year old girl show[ed] up wearing a man’s XXL shirt and XXL boxer shorts carrying her bathing suit.”⁷⁸ He also indicated that the dimensions of the office occupied by Respondent and later him had been “very small” and did not have sufficient room to accommodate more than two chairs.⁷⁹ Although additional folding chairs would sometimes be brought in during meetings, he explained, they would be removed afterward.

2. Jasmine Bonner’s Testimony

Jasmine Bonner testified that she had been a fifth-grade student in KIPP Academy during the 1998-99 school year. She identified both Student 1 and Respondent in the 1998-99 fifth-grade class photograph that had been admitted previously.⁸⁰ Ms. Bonner asserted that Respondent had been one of the fifth-grade teachers that year, teaching a course called “Thinking Skills” that involved chants and had been the course shown in the *60 Minutes* episode. According to Ms. Bonner, Respondent had taught Thinking Skills to all fifth graders, including Student 1.

Ms. Bonner echoed that KIPP Academy kept their college diplomas in their classrooms to use as a motivational tool. She also testified that she had been on the same fifth-grade trip to Washington D.C. as Student 1. Ms. Bonner recalled being given a packing list that included a one-piece swimsuit, that suitcases were inspected in advance to ensure that students had all of the required items, and that any missing items would either have to be supplied by parents or else would be provided by someone from the school. If anyone did not have a swimsuit, Ms. Bonner added, they would not have been permitted to swim.

⁷⁸ *Id.* at 204-05.

⁷⁹ *Id.* at 206.

⁸⁰ Respondent’s Ex. 2. Ms. Bonner was also presented with a copy of a photograph that she identified as her sixth-grade class picture, and identified Student 1 within it. This photograph was subsequently offered and admitted under seal as Respondent’s Ex. 3. In contrast to Respondent’s Ex. 2, the fifth-grade photo, Respondent’s Ex. 3 depicts students wearing blue shirts (this uniform color for sixth graders, according to Ms. Bonner and other witnesses) and does not appear to show Respondent.

Ms. Bonner further testified that all of the girls went swimming together at the same time and that, although she had been present for the entire period of swimming, she never noticed anyone swimming in a t-shirt and shorts. She added that such a sight would have “most definitely” stuck out because students were supposed to wear swimsuits.⁸¹

Ms. Bonner also indicated that students had been required to stay near their chaperones and that it would “most definitely” been a big deal if a student had remained back at the swimming pool and then rejoined her queen and other girls in her room wearing a large t-shirt, boxer shorts hanging off, with clothes under her arm.⁸²

On cross-examination, Staff elicited Ms. Bonner’s admission that she did not specifically recall seeing Student 1 in the swimming pool, but reiterated that “we all went as a group.”⁸³ She did not remember what Student 1 was wearing.

On redirect, Ms. Bonner reiterated that she had not seen anyone swimming in a t-shirt and shorts and that had she done so, it “would have stuck out in my memory.”⁸⁴

3. Chris Barbic’s Testimony

Chris Barbic testified that he had been a friend and colleague of Respondent, first in Teach for America early in their education careers and then in each launching projects within the Houston Independent School District that eventually became public charter schools in 1998; whereas Respondent had launched KIPP Academy, Mr. Barbic had started a school called YES Prep. In order to secure the necessary physical plant for the new schools, Mr. Barbic explained, he and Respondent had worked together in purchasing portable buildings at the same time from the same supplier, including an administration building for each school that had an identical floor plan. A

⁸¹ Tr. at 220.

⁸² *Id.* at 223.

⁸³ *Id.* at 225.

⁸⁴ *Id.* at 226.

diagram of this floor plan was offered and admitted into evidence.⁸⁵ Mr. Barbic also testified that he had periodically visited Respondent in his office on the KIPP Academy campus.

Mr. Barbic was asked to identify on the floor plan the room in which Respondent's office was located, and did so. When asked whether Respondent's office was large enough for Respondent's desk and chair, a chair for adults, and four or five student desks, he responded that it was not. Mr. Barbic also denied ever having seen student desks in Respondent's office, nor a diploma on the wall.

4. Robert Bradford's Testimony

By telephone, Robert Bradford testified that he worked for an architecture and design firm that had since made modifications to the portable building that had housed the KIPP Academy administration. In the course of that work, Mr. Bradford explained, he had measured the original dimensions of the rooms in the building. A copy of the building's floor plan, with dimensions indicated for the room that Mr. Barbic had identified as Respondent's office, was offered and admitted into evidence.⁸⁶ In both the document and his testimony, Mr. Bradford indicated that the room was thirteen feet front-to-back and eleven feet side-to-side.

5. Leslie Salazar-Ibarra's Testimony

Leslie Salazar-Ibarra testified that she was employed at the KIPP Academy during the 1998-99 school year in capacities that included office clerk. She stated that her office or work area was at one of four desks in an open area immediately outside of Respondent's office—adopting a term coined by Respondent's counsel, she described the area as the “bullpen”—and that she was present and working there almost every school day during the 1998-99 year.

⁸⁵ Respondent's Ex. 5.

⁸⁶ Respondent's Ex. 6. The ALJs overruled a relevance objection from Staff. As ALJ Bierman observed, Respondent was contesting “whether or not the room was big enough for a certain number of furniture items,” such as the student desks Student 1 claimed to have seen there. Tr. at 242.

Ms. Salazar-Ybarra denied ever seeing any wrongdoing involving Respondent. She further indicated that Respondent's office door had a window big enough for anyone to look in and see the activity going on inside. She added that even staff working at their desks in the bullpen, including herself, were able to see into the office from those vantage points, either because they were aligned almost straight-on with the doorway or because they could see into the interior at an angle. She denied that Respondent had ever met with a student in his office behind a closed door. If he had, she insisted that she "would have questioned him," despite there being a window to see in, because of the appearances "especially in this day and age" of "an adult [being] behind closed doors with a child in a school setting."⁸⁷ Similarly, Ms. Salazar-Ybarra denied remembering any instance when Respondent had met behind closed doors with a student and asked for privacy or not to be disturbed. Had he done so, she claimed, she and the other staff sitting outside, whom she indicated included two young women in addition to herself and one young man, "would have got to talking, and I'm pretty sure the office manager would have gotten up and walked into [Respondent's] office to find out what was going on with that student."⁸⁸

Ms. Salazar-Ybarra likewise denied any recollection of a student coming into her lobby area, asking where Respondent's office was, and meeting behind closed doors, adding that she also found the account doubtful because "[e]veryone knew where [Respondent's] office was."⁸⁹ She also found it particularly unlikely to have occurred before the last class period because the administrative offices at that point in the school day were like "Grand Central Station," with people walking through her work area to the teacher work room, parents coming in for conferences about their kids, and "transitioning for after-school activities."⁹⁰

Ms. Salazar-Ybarra denied that Respondent ever had his diploma on his office wall, adding that KIPP Academy policy was that teachers kept their diplomas in their classrooms. She also denied ever seeing a student desk in Respondent's office, let alone four on one side and three on the other, which she indicated would not even have fit in that room. Ms. Salazar-Ybarra further

⁸⁷ Tr. at 253.

⁸⁸ *Id.* at 255.

⁸⁹ *Id.* at 254.

⁹⁰ *Id.* at 256.

denied ever seeing stacks of paper on the floor of Respondent's office and insisted that if she had, she and other administrative staff sitting outside would have asked Respondent if they could help and "figured out the filing system between the four of us."⁹¹

Through a series of clarifying questions from the ALJs, cross, and redirect that utilized a tape measure, it was established that Ms. Salazar-Ybarra recalled the precise dimensions of the window in Respondent's office door to be a rectangular shape around 23 inches in height, 8 and one-sixteenth inches in width, and located in the top half the door, above the doorknob. She went on to indicate, through further questioning by Respondent, that a person standing in the bullpen could see through the window Respondent's desk, the floor, the tops of any student desks if any had been placed inside, and anyone who would have been sitting on one. However, elaborating somewhat on the viewing perspectives she had described previously, Ms. Salazar indicated that "[Respondent's] door was not closed" but "always open to the wall."⁹²

6. Irma Valdez's Testimony

Irma Valdez testified that she was a classroom teacher in San Antonio who had taught at KIPP Academy between 1997 and 2002 before relocating due to her husband's medical residency. As Respondent pointed out in his questioning, Ms. Valdez had apparently been mentioned in one of Student 1's accounts of the second alleged sexual-misconduct incident, in which Student 1 had claimed that a "Ms. Valdez" had been present in the lobby or foyer area outside Respondent's office before Student 1 went inside.

Ms. Valdez stated that she had been into the KIPP Academy administration building frequently and had observed Respondent's office on numerous occasions during the 1998-99 school year.⁹³ When asked whether she had ever seen student desks in that office, Ms. Valdez

⁹¹ *Id.* at 253.

⁹² *Id.* at 264.

⁹³ In addition to other occasions for her to go there, Ms. Valdez explained, she had been pregnant that year and needed to make frequent use of restroom facilities located in the administration building.

didn't "recall seeing any desks because of the size of the office."⁹⁴ She also denied ever seeing stacks of paper on the floor or a diploma or degree on the wall, adding that Respondent had placed his diploma instead in his classroom and that KIPP Academy policy required teachers to place their high school and college diplomas in their classrooms. However, Ms. Valdez did remember the Chicago Bulls chair and also that Respondent's office door had a window large enough that persons outside could look into the office and see anything going on inside.

Ms. Valdez denied remembering any instance during the 1998-99 school year when (as Student 1 had depicted) a young female student had entered the open or foyer area in front of Respondent's office, knocked on the door, gone into the office, and met with Respondent behind closed doors. Had that occurred in her presence, Ms. Valdez claimed, she would have gone over and opened the door. She gave the same answer when asked what she would have done if Respondent had also asked not to be disturbed during that meeting.

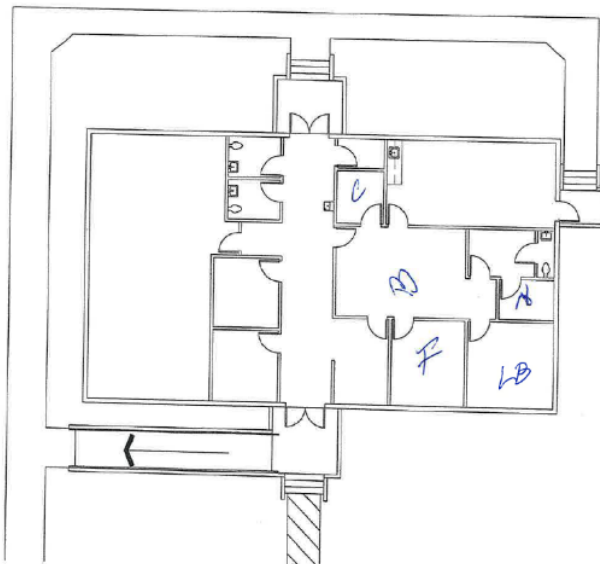
Ms. Valdez also testified that Respondent had a dual role during the 1998-99 KIPP Academy school year, serving as both the school's director or principal and also teaching a fifth-grade class, which she believed to be Thinking Skills. Ms. Valdez further indicated that all fifth graders had to take Thinking Skills and thus would have had Respondent as their teacher in that course. She added that if a person who had been a KIPP Academy fifth grader in 1998-99 had denied having Respondent as a teacher that year, that claim would be untrue.

7. Patricia Mercado's Testimony

Patricia Mercado testified that she had worked at KIPP Academy during the 1998-99 school year, sitting in the same "bullpen" area as Ms. Salazar (as she was then known) and serving as the attendance clerk and also an administrative-office greeter or receptionist. Ms. Mercado indicated that she had shared what she considered to be a single "long desk" with Ms. Salazar, comprised of two tables pulled together, and that two other individuals sat at separate desks in the

⁹⁴ *Id.* at 270.

bullpen, a “Ms. Yepez” and “Orlando.”⁹⁵ Ms. Mercado was shown a copy of the same floor plan that had presented to Mr. Barbic and, at Respondent’s request, she indicated with handwritten markings the locations of the bullpen; Respondent’s office; a nurse’s office; a room that served as a copy, work room, and break room for teachers; and the office of Laurie Bieber (whose surname corresponds to the “Ms. Bieber” mentioned, along with “Ms. Valdez,” in one of Student 1’s accounts). A copy of the marked-up floor plan was offered and admitted into evidence,⁹⁶ and is reproduced below.



As she was marking the floor plan, Ms. Mercado explained that the “F” indicated Respondent’s office, “LB” Ms. Bieber’s office, “N” the nurse’s office, “C” the teachers’ coffee/break/work room, and “B” the bullpen where Ms. Mercado sat with Ms. Salazar and the other two staffers. Ms. Mercado described the bullpen as being heavily trafficked during the school day, with teachers going to and from their break/copy room, others similarly bound to and from the other destinations. Ms. Mercado also indicated that parents would come in the afternoons to meet teachers in a library within the same portable building.

⁹⁵ *Id.* at 288.

⁹⁶ Respondent’s Ex. 5A.

Ms. Mercado further testified that Respondent's office door had a window, but that she could not recall the size because "[t]he door was always open."⁹⁷ She denied ever seeing Respondent close the door to meet with a student or ever seeing student desks in his office. In contrast, the furnishings she recalled consisted solely of Respondent's desk, his desk chair, and an "ugly chair" she confirmed to be the same Chicago Bulls-themed Hanukkah gift that Mr. Lopez had identified in photographs.⁹⁸

8. Colleen Dippel's Testimony

Colleen Dippel had been a teacher at KIPP Academy for two school years, first teaching a technology course and leading a related club on a part-time basis during 1997-98,⁹⁹ then in a full-time role continuing to teach technology and also fifth-grade math in 1998-99. In her latter role, Ms. Dippel indicated, she co-taught KIPP Academy fifth graders with Respondent throughout the entire 1998-99 year in what were considered the complementary courses of Thinking Skills (Respondent) and "straight up" math (Ms. Dippel).¹⁰⁰ She added that under KIPP Academy's scheduling system, each fifth grader's school day would begin either with her math course followed by Respondent's Thinking Skills or the same two courses in reverse order, such that two alternative scheduling arrangements came to be known as, respectively, "Dippel-Feinberg days" or "Feinberg-Dippel days."¹⁰¹ The two would subsequently marry in 2001, although Ms. Dippel denied "formally dating" Respondent until after she had first resigned her KIPP teaching position following the end of the 1998-99 school year.¹⁰²

⁹⁷ Tr. at 291.

⁹⁸ *Id.* at 292; Respondent's Exs. 10, 11.

⁹⁹ Ms. Dippel explained that she had come to Houston with the Teach for America program in 1996 and was assigned to teach in a Houston Independent School District (HISD) elementary school for two years. During her second year in HISD, 1997-98, Ms. Dippel also took on her part-time role at KIPP Academy.

¹⁰⁰ Tr. at 307.

¹⁰¹ *Id.*

¹⁰² *Id.* at 306.

Ms. Dippel testified that Student 1 had been a student in the fifth-grade class taught by Respondent and her throughout the 1998-99 academic year, “from August to May.”¹⁰³ In addition to her classroom duties, Ms. Dippel recounted, she had also served as “one of the . . . teacher coordinators” for the fifth grade Washington D.C. trip that year, who “planned and managed the trip, . . . kept the agenda moving and worked with the chaperones.”¹⁰⁴ Ms. Dippel stated that parents were sent typewritten documents, written in both English and Spanish, consisting of an itinerary, packing list, “expectations from everything from what they were to bring on the trip to how much money we would let the kids spend . . . [at] designated . . . places where they could buy souvenirs,” which the parents were expected read, sign, and return.¹⁰⁵ She added that these same matters were communicated to parents verbally and “a lot.”¹⁰⁶

According to Ms. Dippel, the requirements included prior inspection of luggage to ensure that all items on the packing list were included and the requirement that students bring a swimsuit. If the inspection revealed that the student had not packed a swimsuit, Ms. Dippel indicated, they would either have to obtain one from their parents or, if their parents could not afford one, one would generally be purchased for them. If a student nonetheless made it to Washington D.C. without a swimsuit, she maintained, the student would not be allowed to swim. There was but a single time when the students were permitted to swim on the 1999 trip, Ms. Dippel claimed.

Ms. Dippel also indicated that the children, the parents, and the parent chaperones (a/k/a kings and queens) were made aware of the rule that students always stay with their assigned chaperone and that the consequences of failing to do so could include being sent home. This rule extended to the group’s hotel, Ms. Dippel insisted, “[b]ecause safety was the number one priority on that trip” and “they’re 10-year-old kids.”¹⁰⁷

¹⁰³ *Id.* at 309.

¹⁰⁴ *Id.* at 310.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 314.

Ms. Dippel also recounted that she and Respondent had obtained their master's degrees at the same time and that this had not occurred until around 2004; she denied that Respondent had obtained a master's degree by 1999. She added that when she worked at KIPP Academy, Respondent's college diploma had always hung in his classroom, not in his office. Ms. Dippel denied ever seeing student desks inside Respondent's office, that there had been sufficient space for student desks in that room, or that she had ever seen the office door closed. She also echoed that there was a window in the door to Respondent's office.

In response to clarifying questions from ALJ Bierman, Ms. Dippel explained that the "student desks" to which she had referred and that were used at KIPP Academy each consisted of a desk with chair attached as a single unit. ALJ Pemberton then elicited that each king or queen on the Washington D.C. trip had been assigned "five maybe six students they were responsible for."¹⁰⁸

Under brief cross-examination, Ms. Dippel indicated that she was aware of the allegations against Respondent in the case, although she had not read any pleadings or statements. She stated that she had first learned of any allegations against Respondent after Respondent had come home following the accusations made against him by Student 1's cousin.

9. Sharon Simpson's Testimony

Sharon Simpson testified that she had been one of the parent chaperones—a "queen," in her case—during the KIPP Academy's fifth-grade class trip to Washington D.C. in the spring of 1999. Ms. Simpson was asked to describe the process by which she became a queen and the associated training and duties. She indicated that chaperones were selected from among the parents who volunteered, following which the selectees were required to attend an orientation. At this orientation, Ms. Simpson recalled, it was impressed upon the group that the trip was "not a vacation" but that the queens "would be responsible for the girls that [were] assigned to us."¹⁰⁹

¹⁰⁸ *Id.* at 318.

¹⁰⁹ *Id.* at 322.

She indicated that each queen could be responsible for five or six fifth-grade girls, but that she didn't recall specifically how many had been assigned to her.

Specific duties for queens on the trip, according to Ms. Simpson, included staying each night of the trip in the same hotel room as her assigned girls and always remaining with the entire group of girls in going to and from meals, activities, or anywhere else, whether in the hotel or outside of it. She added that queens were required to perform a head count to ensure that their entire group was accounted for both before leaving to go to another location and again when arriving at that location. Additionally, having also been a parent required to pack for her own child, Ms. Simpson attested that the required packing list for girls had included a swimsuit, specifically a one-piece, and that the rules for the trip had required a swimsuit in order to swim.

Ms. Simpson also explained that when her charges went to the hotel pool, they all dressed in their hotel room (in their one-piece swimsuits) and went to and from together. She added that only girls swam at that time. When asked whether she would have left one of her girls in the pool area with Respondent if he had requested to talk with the girl, Ms. Simpson indicated that the queens' duties would have required her to wait with the remaining girls until the whole group could return to their room together.

In response to questions from ALJ Bierman, Ms. Simpson acknowledged that she did not know who Student 1's queen had been and had remembered only one other queen from the trip by name, Denise Duvernay (who would also testify).

Under cross-examination, Ms. Simpson could not say how many fifth-graders had gone on the trip, but thought there had been around 8-10 chaperones. She also indicated that when her group of girls had gone swimming, not all of the girls on the trip were at the pool. She denied seeing Student 1 in the pool.

10. K.M.'s Testimony

K.M. had been another of the KIPP Academy fifth-grade students who had gone on the Washington D.C. trip during the spring of 1999. K.M. testified by telephone to some additional details in the pre-trip packing and planning process, including how the school conducted the suitcase inspections. She also recalled that girls had been required to pack a one-piece swimsuit.

K.M. additionally recounted that girls had been forbidden to leave their queen's sight or their group. She also remembered going swimming, and that all the girls had gone swimming at the same time, the boys at a different time, with each group of girls going with their respective queens to their hotel rooms, changing into swimsuits and often coverups, going to the hotel pool as a group, remaining within their queen's sight while in the pool, and returning as a group to the room afterward. However, K.M. did not remember seeing Student 1 in the pool, nor did she see anyone swimming in a t-shirt and shorts.

In response to questions from ALJ Pemberton, K.M. clarified or reiterated that as she remembered it, all of the groups of fifth-grade girls had swam at the same time and all of the boys had gone at a different time. In response to a question from ALJ Bierman, K.M. indicated that in addition to their queens being present when the girls swam, "our female teachers were there."¹¹⁰ She did not recall any male teachers being there.

During cross-examination, K.M. denied that she had heard about the allegations in the case from any of Respondent's attorneys or persons associated with him.

11. James Willis's Testimony

James Willis explained that he was a private investigator who had both a private practice and an employed position with the law firm representing Respondent. Mr. Willis testified regarding an inspection he had performed, approximately one month before the hearing, of the

¹¹⁰ *Id.* at 337.

Washington D.C.-area hotel where the KIPP Academy fifth graders had stayed during their spring 1999 trip, the Embassy Suites in Crystal City, Virginia. In part, Mr. Willis served as a means of admitting into evidence several photographs he had taken of the hotel's pool area that subsequent witnesses (including Respondent) would attest to be consistent with their memories of the pool area at the time of the 1999 trip.¹¹¹

A more critical role sought to be served by Mr. Willis in Respondent's case, however, was in establishing—similar to Respondent's evidence regarding the features of his office—that the interior of the poolside men's restroom in 1999 had features that differed markedly from the description given by Student 1 in her testimony about the alleged clothes-changing incident. Whereas Student 1 had described multiple stalls and urinals in the poolside men's restroom where she had allegedly changed, Mr. Willis ascertained that this restroom, at least by the time of his inspection, only contained a single toilet without a stall, a shower, a sink, and no urinals.¹¹² But as for whether those features corresponded to the restroom's appearance in 1999, Respondent acknowledged that he had no witness who could testify directly as to the restroom interior's appearance in 1999 (and, as indicated below, Respondent denied ever having entered that room). Further, according to Mr. Willis, he had attempted to obtain historical building plans that would reflect the restroom's features in 1999, only to find that the plans had already been destroyed in accordance with the records-retention schedules imposed by Virginia law. It happened, though, that Mr. Willis, besides having a professional background in law enforcement, also possessed considerable past experience serving as a general contractor on commercial "build-out" construction projects, including "hundreds" of bathrooms.¹¹³

Respondent sought to present Mr. Willis as a witness knowledgeable about commercial-bathroom-construction requirements and methods who would essentially extrapolate that the poolside men's restroom did not or could not have accommodated multiple stalls and

¹¹¹ Respondent's Exs. 18-23, 29-33.

¹¹² Several photographs of the men's restroom and immediately adjacent surroundings were offered and ultimately admitted into evidence, Respondent's Exs. 33-43, 51, 52, as was a drawing of the restroom interior made by Mr. Willis that also reflected measurement he had made. Respondent's Ex. 44.

¹¹³ Tr. at 361.

urinals during any relevant time period, including the spring of 1999. Staff lodged various objections, and the ALJs ultimately permitted Mr. Willis to testify (for whatever weight it might warrant) regarding the manner in which he would have constructed the restroom given the building parameters that currently existed. He did so, and the gravamen of his testimony was that the restroom lacked both the space (especially in light of requirements under the Americans with Disabilities Act) and the plumbing capacity that would allow him to include multiple toilets in stalls and also urinals. Mr. Willis also pointed out various features of the hotel building and pool area that, in his view, made it highly unlikely that the parameters within which the men's restroom was built would have been materially altered since its construction. These features included use of concrete in the restroom floor and walls and indicia that the restrooms had been constructed with the pool area and building support structures as part of a single unit.¹¹⁴

Finally, Mr. Willis, who in his contractor role had also managed the construction of the building that currently houses the law firm representing Respondent, was called upon to prove up two photographs of a women's restroom in that building.¹¹⁵ They were deemed relevant and admitted in light of deposition testimony from Student 1 that she had used that facility and that the stall dividers therein had resembled those in the Embassy Suites poolside men's restroom.¹¹⁶

12. Ellen Spalding's Testimony

Ellen Spalding is the attorney who conducted the first investigation of Respondent for KIPP Houston following the April 2017 "rape" accusation and issued a report. Through Ms. Spalding, Respondent offered a redacted copy of her report, but the ALJs excluded it upon Staff's hearsay objections.¹¹⁷ However, Respondent was able to elicit from Ms. Spalding that she found in the report "that the great weight of the circumstantial evidence preponderated against the v[e]racity of

¹¹⁴ In this discussion, Mr. Willis referred to overhead images of the hotel that were offered and admitted as Respondent's Exs. 62 and 63.

¹¹⁵ Respondent's Exs. 64, 67, 68.

¹¹⁶ Respondent's Ex. 8 at 89-92.

¹¹⁷ Similarly, during Respondent's earlier cross-examination of Student 1, the ALJs had also sustained Staff's objections to various questions from Respondent that referenced language in the report.

the allegations” made by Student 1 and concluded that those allegations “cannot be confirmed and cannot be substantiated.”¹¹⁸

During cross-examination, Staff was able to elicit that Ms. Spalding’s investigation had uncovered a different allegation, which she described as “of a sexual nature,” made against Respondent by a female former student, albeit based on conduct allegedly occurring while she was an adult.¹¹⁹ On redirect, Ms. Spalding indicated that her report made no findings concerning that allegation.

13. Denise Duvernay’s Testimony

Testifying by telephone, Denise Duvernay indicated that she had been another of the female parent chaperones who had accompanied the KIPP Academy fifth-grade class on its spring 1999 Washington D.C. trip. She indicated that Respondent’s counsel had texted her two photographs, which had been included among the photos from the Embassy Suites hotel pool area that had been admitted earlier through Jim Willis.¹²⁰ According to Ms. Duvernay, the photos looked “exactly like the pool” that she remembered from the trip.

14. Debbie Hurwitz’s Testimony

Debbie Hurwitz was a former board member of KIPP Houston who testified briefly regarding the allegation against Respondent involving an adult former student that had come into evidence during the testimony of Ms. Spalding. Ms. Hurwitz testified that the KIPP Houston board had settled a 2005 sexual-harassment claim made by the former student and had done so despite Respondent’s “vehement[.]” objections to settling.¹²¹ While the ALJs sustained Staff’s objections to questions that would have had Ms. Hurwitz speak to the board’s collective motives, she was

¹¹⁸ Tr. at 404, 406.

¹¹⁹ *Id.* at 419.

¹²⁰ Respondent’s Exs. 21, 33.

¹²¹ Tr. at 431.

permitted to testify that she had personally voted to settle based purely on financial considerations rather than any belief in Respondent's guilt.

15. Respondent's Testimony

Respondent took the stand as his final witness. He professed to have waited "almost two years" for the opportunity to respond to Student 1's allegations,¹²² claiming that he had never been told of the precise allegations against him during either of the two KIPP Houston investigations or at any time prior to his termination.

Counsel then elicited Respondent's account of his educational background and the history, mission, growth, and achievements of KIPP. In the course of that discussion, Respondent corroborated Chris Barbic's account that KIPP Academy and YES Prep had purchased identical portable buildings from the same supplier to serve as each school's physical plant.¹²³ Respondent also recounted the evolution of his roles with KIPP Academy, KIPP Houston, and related entities. These roles included, in 1998, serving as KIPP Academy's "school leader" or principal and also a teacher, and in 2017, a "co-founder" role supporting both the KIPP Houston school system (as it had grown to become) and the KIPP Foundation, which trained KIPP teachers and establish new KIPP schools. Although he was no longer a full-time teacher in 2017, Respondent explained, he "would every now and then go in classrooms and teach seminars to students."¹²⁴

Respondent was asked to give his account of the April 2017 incident when Student 1's cousin had made the "rape" allegation. Respondent indicated that he did not know the cousin's name, but explained that the cousin had made the allegation to a teacher, who in turn had reported

¹²² *Id.* at 433.

¹²³ However, Respondent added the additional explanation that KIPP but not YES Prep then had 501(c) status, such that KIPP had allowed Yes Prep to operate under the "KIPP umbrella" of charter, state, and private funding, and in making a single purchase order for modular buildings. *Id.* at 449. He added that the two schools had each obtained ground leases of land in different parts of Houston on which to place their respective buildings, with KIPP Academy's location being on the campus of Houston Baptist University (HBU). Respondent further recounted that KIPP's lease with HBU was for three years and that KIPP Academy had thereafter relocated (initially in the same portable buildings) to land it had acquired through a successful capital campaign.

¹²⁴ *Id.* at 454.

it to an assistant principal. The assistant principal had then come to Respondent, he recounted, appearing “very flustered [and] asking me what she – what she should do.”¹²⁵ According to Respondent, he “told her that she had to stop talking to me, that she knew the drill, that it doesn’t matter who it was about, she needed to go to the office, report to CPS.”¹²⁶ Further, “[g]iven my role as a leader within all of KIPP Houston,” the assistant principal was to notify the KIPP Houston superintendent, who would then notify the board chair.¹²⁷ “And I said, you have to quit talking to me because I’m recused from this right now.”¹²⁸ After finishing the seminar, Respondent claimed that he “left and waited for KIPP to figure out what they wanted to do next” while also ensuring that a report was made to CPS.¹²⁹

Respondent was then asked a series of questions about events in 1999. During that year, he explained, he served in a dual role of both superintendent and principal of KIPP Academy, then a single charter school, and also a full-time member of the fifth-grade faculty, teaching Thinking Skills. He described Thinking Skills as “an extension of math. . . . [S]ome of it is word play and rhyming, and some of it is just getting into the word problems and application of math.”¹³⁰ He confirmed that *60 Minutes* had filmed footage from his Thinking Skills class during the spring of 1999 and that the footage showed Student 1 as one of the fifth-grade students in the class. When asked whether he had taught Student 1 during the 1998-99 school year, Respondent stated, “I did every day.”¹³¹

Respondent further testified that as of 1999, he had earned only a bachelor’s degree, with his master’s degree not coming until 2004 and honorary doctorates still later. The bachelor’s degree, he added, was always kept hung on the wall of this classroom and never in his office. He elaborated that he had instituted a rule at KIPP that “as long as the teachers still had their diploma,

¹²⁵ *Id.* at 455.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 456.

¹³¹ *Id.* at 485.

I wanted it hanging in the classroom to inspire the kids on the daily basis why we were there, not for test prep, not to pass and get to 6th grade, but that diploma was going to be their diploma someday.”¹³² Respondent added that he had “put a—a strip of paper over my name and with a bunch of question marks,” so “all the kids could picture that that would be their diploma someday.”¹³³

Respondent described the 1999 furnishings in his office, located in “the front modular,” as limited to “my desk, which had a little extension on it, . . . a desk chair, two bookshelves, one regular chair, and one excellent Chicago Bulls decorative chair” that his mother had sent him as a Hanukkah present.¹³⁴ “I did not have much on my walls,” Respondent added, explaining that he had a “very big” Michael Jordan poster “with a William Blake quote on it, I think I had another Chicago Bulls poster, and then that was it.”¹³⁵ However, “closer to where—where I was sitting in the corner, I would have . . . taped like the calendar and some cheat sheet budget codes” used in state reporting, “and things like that on the wall.”¹³⁶ Respondent denied that he ever had student desks in his office. On “very rare” occasions, he explained, additional chairs might be brought in temporarily for “a larger pow wow in my office,” but indicated that most meetings would occur in “a conference room next door that was bigger,” in his classroom, on a deck outside, or in or near the school cafeteria.¹³⁷ Respondent denied that he ever had papers strewn all over his office floor, explaining that he had “a very meticulous office manager and office clerks” who would have filed the papers away so the nightly cleaning crew could vacuum the floors.¹³⁸ However, he acknowledged that his desk “was a mess with stuff.”¹³⁹

¹³² *Id.* at 457.

¹³³ *Id.*

¹³⁴ *Id.* at 457-58.

¹³⁵ *Id.* at 458.

¹³⁶ *Id.*

¹³⁷ *Id.* at 459-60.

¹³⁸ *Id.* at 462-63.

¹³⁹ *Id.* at 462.

Respondent was then asked a series of questions about the expulsion of Student 1's brother. Respondent recounted that the brother had been expelled for stealing a GameBoy from another student and then lying about it. He added that the matter had been of considerable notoriety within the school "because basically the entire 6th grade knew about it because, in the course of trying to locate where this Game Boy was, we basically were spending a lot of time talking to just about the entire 6th grade."¹⁴⁰ Also, Respondent explained, at KIPP Academy "our philosophy was called Team & Family. We were trying . . . to build this really tight unit and tight relationships between all the kids, between the kids and the teachers and involving the parents and families as well."¹⁴¹ In these contexts, he continued, "it was unfortunate that it looked like that the student was going to have to get expelled, but we decided that the silver lining was [to] . . . turn it into a good teachable moment for all the other kids. So, we actually had a team meeting where we packed one classroom with about 75 kids," not including the culprit, "told them what we were thinking about doing leading up to expulsion" and asked the students to decide on the feedback they should provide the school leadership regarding whether or not the student should be expelled, for the leadership to consider in making its decision.¹⁴² According to Respondent, Student 1's brother was aware that this discussion was occurring and "his family was extremely upset at the way we were handling that."¹⁴³

Next, Respondent firmly denied committing either of the two sexual-abuse incidents of which he had been accused.¹⁴⁴ He likewise denied the alleged incident in which he had given her clothing and had her change in the poolside men's restroom,¹⁴⁵ or even ever having been inside

¹⁴⁰ *Id.* at 461.

¹⁴¹ *Id.* at 460-61.

¹⁴² *Id.* at 461.

¹⁴³ *Id.* at 462.

¹⁴⁴ "Q Student No. 1 claims that you went to her one day in the spring of 1999 and told her to come to your office for a physical examination. Did that happen? A That did not happen. Q Did she come to your office and you tell her to take her clothes off and rub her in the chest with your finger? A Absolutely not. Q Did you then tell her to turn around and do it again on her back? A Absolutely not. Q She claims that a week later you approached her and told her to meet you in her – meet you in your office and you told her to disrobe and she set on a student's desk and you took a Q-tip and inserted it into her vagina. Did that happen? A That did not happen." *Id.* at 463.

¹⁴⁵ "Q Student 1 claims that the – she was at the swimming pool and you were there and told her to hang behind and took her in the men's room in the pool area to give her dry clothes and took her into the men's room and she went into

that restroom. However, Respondent did attest that he had been in the hotel's pool area "several times" and pointed out various of the photographs admitted through Mr. Willis that squared with his recollection.¹⁴⁶

Respondent added that he had not been present for the entirety of the fifth grade's Washington D.C. trip in 1999 because he had split time with another KIPP grade's trip. As a consequence, he explained, he had not been one of the teachers who had been assigned the role of supervising students and their parent chaperones during swim time. Respondent also confirmed that the girls and the boys had swum separately, with their respective same-gender chaperones. Respondent also testified that if students did not follow rules on the trip, they would be "[s]ent back home because . . . we had no time or energy or business to deal with shenanigans and mess with anything involving student safety," and that this had actually happened "[o]nce or twice. Not often, because everyone knew we took it very seriously."¹⁴⁷

Respondent also recounted that he had been permitted to return to work at the conclusion of Ms. Spalding's investigation.¹⁴⁸ The second investigation had come, according to Respondent, "close to two months later" and without any new allegations being made against him.¹⁴⁹ Respondent acknowledged that he had been accused of sexual harassment by an adult former student, but insisted that "I did not want to settle because I did not do anything wrong. I didn't sexually harass anyone, and I wanted to -- I wanted to fight it. I wanted to defend it."¹⁵⁰ While the KIPP Houston board had voted to settle the claim, Respondent maintained that it had been purely a financial decision, that the board "wanted also to convince to me that it was a -- a good business decision. This was my first rodeo, and something like that."¹⁵¹

the stall and you gave her a pair of boxer shorts and T-shirt to change into. Did that happen? A That did not happen." *Id.* at 464-65.

¹⁴⁶ Respondent's Exs. 22, 29.

¹⁴⁷ Tr. at 466.

¹⁴⁸ Respondent also offered a copy of a letter from KIPP Houston to Respondent concerning the investigation, Respondent's Ex. 70, but Respondent ultimately withdrew it in the face of hearsay objections from Staff.

¹⁴⁹ Tr. at 480.

¹⁵⁰ *Id.* at 484.

¹⁵¹ *Id.*

Respondent also testified that he had worked for KIPP Houston on an at-will basis, without the protection of a contract, in the view that because teachers and staff were at will, leadership should be also. Around the time of the investigations, Respondent stated, a move had been afoot to consolidate what had formerly been four separate KIPP charter schools—KIPP Houston and three others elsewhere in the state—into a single entity. According to Respondent, he had been “asking some pointed questions” about the proposal, which in his view departed from an historic KIPP emphasis on local-level leadership in favor of a “statewide behemoth.”¹⁵² The consolidation proposal, he added, would come to fruition within a few months after he had been ousted from his KIPP positions.

As the concluding question in his direct examination, Respondent was asked, “did you violate this young lady? Did you sexually assault Student 1 in any form or fashion?”¹⁵³ He responded, “Absolutely not.”¹⁵⁴

Staff began its cross-examination of Respondent by offering, “Congratulations on your success with KIPP” and noting that “even Student 1 had positive things to say about your schools.”¹⁵⁵ Staff then elicited Respondent’s acknowledgments that he had generally had good relations with the KIPP Houston board and that a majority of the board, then 12 to 14 members, would have had to vote on his termination. He was then asked about his understanding of the reasons for his termination. Respondent indicated that the question was one that he had been “somewhat confused and wrestling with for the last two years because in the termination meeting they told me that they found no guilt and there was no evidence of wrongdoing. But, as they said, they decided that I had put myself in situations where my actions could be misconstrued.”¹⁵⁶ Respondent was then asked about the basis for his termination that KIPP had shared with supporters and friends of his. He was asked whether it was his understanding from talking with KIPP supporters and friends “that the allegations that make up this case were the basis of your

¹⁵² *Id.* at 483.

¹⁵³ *Id.* at 486.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 487.

¹⁵⁶ *Id.* at 486.

termination.”¹⁵⁷ He responded, “Yes. This – my understanding is that what we’re talking about here is – is what they were dealing with at the time.”¹⁵⁸

Under further cross-examination, Respondent indicated that he did not know precisely when in the 1998-99 school year Student 1’s brother had been expelled or whether it had occurred in the fall or spring semester. However, he insisted that the event had been neither at the “very beginning” nor the “very end,” but “somewhere in the middle of the year.”¹⁵⁹ He was also asked about the timing of the fifth-grade trip to Washington D.C., and placed it “[n]ear the end of the year in May.”¹⁶⁰

Respondent was then asked whether he was contending that Student 1 was lying. He answered, “I contend that what she is saying are not the facts and is not what happened.”¹⁶¹

V. ANALYSIS AND RECOMMENDATION

Although the alleged clothes-changing incident and related questions about bathrooms were a primary focus of the hearing, Staff ultimately conceded in closing argument that the evidence regarding that incident, even if taken as true, “seemingly [did] not involve[e] any violations of policy or statute.” Similarly, Staff acknowledges that the “evidence at trial did not reveal lesser violations separate from the incidents involving sexual conduct.” Consequently, as Staff observes, the evidence and procedural posture “make only one allegation relevant. Respondent is alleged to have engaged in sexual conduct with a student,” namely Student 1, during either or both of the two incidents Staff has claimed. Staff bore the burden of proving that allegation by a preponderance of the evidence, *i.e.*, that based on the evidence presented, it is more likely than not that one or both of the incidents actually occurred.

¹⁵⁷ *Id.* at 490.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 490-91.

We cannot conclude that Staff met its burden. There were only two witnesses who could provide a direct, first-hand account regarding the two alleged sexual-conduct incidents: Student 1, who testified that the incidents occurred and also implicated Respondent as the wrongdoer, and Respondent, who denied engaging in any such conduct. Both witnesses, and indeed others, labored under an inherent and obvious difficulty in recalling facts from approximately two decades ago. Under the applicable burden of proof, that difficulty operates chiefly to Staff's detriment.

While Student 1 maintained consistently that the sexual-abuse incidents had occurred and that Respondent was the culprit, there were significant discrepancies between Student 1's account of the incidents and the greater weight of the evidence regarding the locations, timing, and setting in which she claimed the incidents had taken place. Student 1 claimed that both incidents occurred in Respondent's office, during a school day, and some versions of her narrative specified further that at least one of the incidents occurred during the last period of the school day. Student 1's descriptions of Respondent's office were contrary to the greater weight of the evidence. This is not merely a matter of weighing Student 1's account that Respondent had pointed to diploma on his office wall as providing his "doctor" authority *vis a vis* the strong evidence that any diplomas at KIPP would have been hanging in classrooms.¹⁶² Rather, Student 1 also claimed that she saw multiple student desks in Respondent's office. While Student 1 testified at the hearing that she did not remember the number of desks she saw, she had indicated during her deposition that there were more than six.¹⁶³ Through the testimony of Chris Barbic, Robert Bradford, and Patricia Mercado, among others, Respondent established that his office during the 1998-99 school year was housed in a portable building, in a room that had dimensions of eleven feet side-to-side by thirteen feet front-to-back. All witnesses to address the topic, including Student 1, agreed that the office had contained Respondent's own desk and accompanying chair, and numerous witnesses indicated that Respondent also had at least one other chair in the room, including the distinctive Chicago Bulls-themed chair. The spatial limitations of this office lend credence to the testimony of Respondent and others that student desks were never placed in that room, as it is difficult to fathom

¹⁶² Moreover, the evidence was undisputed that Respondent did not obtain a doctorate or other postgraduate degree until well into the 2000s.

¹⁶³ Respondent's Ex. 8 at 52-54, Ex. 9.

how any desks would have fit in that confined area, let alone the small-classroom-like arrangement that Student 1 had described.

But more critically, Respondent presented persuasive evidence that the work environment surrounding his office would have rendered it highly improbable that he (or anyone else) could have perpetrated the alleged sexual abuse without being detected, or would have dared risk trying. Through the testimony of Ms. Mercado, Ms. Salazar-Ibarra, and Ms. Valdez (the former KIPP teacher whom Student 1 had claimed was present before the second incident), Respondent showed that the lobby or “bullpen” immediately outside his office housed the regular work areas of four administrative staffers (including both Ms. Mercado and Ms. Salazar-Ibarra) and who would have been prone to notice any unusual activities in or around Respondent’s office involving a student (and none of which were ever detected by them). Even Student 1 acknowledged that there was a lobby area outside of Respondent’s office where administrative staff and others were present and by whom she passed before entering.

Further, as credibly explained by Ms. Salazar-Ibarra, the administrative staff or other persons in the bullpen area would have been able to see into Respondent’s office, either because the door was typically open or because it had a window above the doorknob whose dimensions she quantified as approximately two feet tall and over eight inches wide.¹⁶⁴ These risks of detection were only further increased by a high level of foot traffic by others through the bullpen, which served as a hub through which school personnel and visitors would pass to reach a second administrator’s office, the school nurse’s office, a copy and break room shared by the school’s teachers, and an additional room. This was especially true during the last class period of the day, when the bullpen’s environment became what Ms. Salazar-Ibarra compared to “Grand Central Station,” with teachers going to and from the copy/coffee room, parents coming in for conferences about their kids, and “transitioning for after-school activities.”

Staff suggests that Respondent is quibbling over trivial questions about Respondent’s office décor that would not impugn Student 1’s “extremely consistent” core claim that Respondent

¹⁶⁴ Additionally, while Student 1 insisted that Respondent’s office door lacked a window, she indicated that his office had a window behind his desk.

had sexually abused her. The ALJ's might agree with Staff's basic logic that if Student 1 had been sexually abused by Respondent, her most vivid memories would likely center on the trauma itself and not necessarily also the fine details of furnishings or wall hangings, especially when being recollected many years later from impressions formed originally during childhood. But Student 1's accounts of the alleged sexual abuse bespeak more than forgetfulness or confusion about such details. Rather, her accounts incorporate as central elements timing and a location—in Respondent's office, and on a school day—at which it was highly implausible that the incidents could possibly have occurred. And Staff has not attempted to develop any alternative theory as to where or when else the alleged sexual-abuse incidents would have occurred. In the absence of any, the ALJs cannot find that the incidents more likely than not did occur.

Also weighing against Staff are significant discrepancies between Student 1's hearing testimony and her own prior statements regarding the alleged sexual-abuse incidents, including contradictions with the deposition testimony she had given a mere two months earlier. For example, Student 1 testified during her deposition that she had made her first outcry to her mother only after returning home from Washington D.C., her mother had found an adult-sized KIPP t-shirt and boxer shorts in Student 1's laundry, and had confronted Student 1 about them. (And Student 1's mother would echo this same sequence in her testimony at the hearing). However, in her own hearing testimony, Student 1 repeatedly and contrastingly insisted—including in answers responding to questioning from both ALJs—that she had first made an outcry to her mother much earlier, on the same day as the second sexual-abuse incident.¹⁶⁵

Similarly, Student 1 was inconsistent as to the manner in which Respondent had allegedly summoned her to his office, whether she had been pulled out of class or from between classes, and whether Student 1 had been instructed to meet Respondent at his office or had followed him there. She also professed during her hearing testimony to not remember various facts to which she had testified in her deposition (e.g., the number of student desks supposedly located in Respondent's office), and vice versa (such as with whether persons had been present outside Respondent's office

¹⁶⁵ And arguably an outcry that had originated immediately after her mother's discovery of the mystery clothes might tend to be viewed differently, when evaluating credibility or veracity, than an outcry that had been made earlier and wholly independently.

at the time of the incidents). Student 1 was also inconsistent in her testimony regarding her brother's expulsion from KIPP Academy—while Student 1 acknowledged during her deposition that her family had been angered at Respondent by her brother's expulsion from KIPP Academy,¹⁶⁶ she denied that possible motive for fabrication in her hearing testimony.

Respondent suggests that these and other inconsistencies or implausibility in Student 1's testimony reflect intentional fabrication.¹⁶⁷ We need only conclude that even if one credits Student 1 with a good-faith belief in the truth of her testimony, there are simply too many inconsistencies within her own recollections, and also with the evidence of what would have been the circumstances surrounding the incident, to establish that Respondent more likely than not abused her sexually. Accordingly, Staff has failed to meet its burden of proving its allegations against Respondent. Therefore, the ALJs recommend that no sanction be imposed on Respondent.

VI. FINDINGS OF FACT

1. Michael Feinberg (Respondent) holds Texas Educator Certificate No. XXX-XX-63-63, issued by the Texas State Board for Educator Certification (Board) in 1995. Respondent holds a Provisional Certificate in Bilingual/ESL for Grades PK through 6.
2. Respondent's educator certificate was in full force and effect during the times relevant to this case.
3. A primary focus of Respondent's career as an educator has been his work in co-founding, teaching with, and growing what eventually became the KIPP (Knowledge Is Power Program) network of public charter schools in Texas and other states.
4. KIPP schools have characteristically stressed academic rigor and college readiness, particularly for the benefit of underprivileged youth whose families desire an alternative to the standard public-school model. KIPP, and Respondent's contributions to it, have long garnered positive outcomes for students and an array of accolades in both professional and popular arenas.

¹⁶⁶ Respondent's Ex. 8 at 45.

¹⁶⁷ Respondent would also place in the latter category Student 1's account of returning to her Washington D.C. hotel room while dressed in an oversized t-shirt and boxer shorts, where she rejoined (and was seen by) her chaperone and fellow group members there, yet created no incident that she could recall.

5. There is no indication that Respondent has ever previously been the target of a Board disciplinary action
6. In addition to serving as the KIPP Academy principal during the 1997-98 and 1998-99 school years, Respondent taught a course, "Thinking Skills," to the school's fifth-grade students.
7. Student 1 was a fifth-grade student at the KIPP Academy during both the 1997-98 and 1998-99 school years and had Respondent as one of her fifth-grade teachers.
8. Student 1 testified that Respondent twice abused her sexually during the spring semester of the 1998-99 school year, under the pretense of acting as a "doctor" performing a required medical "check-up" of her.
9. In the first incident Student 1 alleged, Respondent put his hand under her shirt and ran his finger between her breasts and down her back. In the second incident alleged, Respondent directed Student 1 to undress herself below the waist and inserted a Q-tip briefly into her vagina. According to Student 1, both incidents occurred in Respondent's office in the KIPP Academy administration building, during a school day.
10. It is improbable that either incident could have occurred in Respondent's office during a school day without detection. Respondent's office during the 1998-99 school year was located in a portable building shared with other KIPP Academy administrators and staff, including four staff members who sat at desks in a lobby-type area immediately outside Respondent's office door. This lobby was also a high-traffic area, the access route to a coffee/copy/break room shared by the school's teachers, a nurse's office, and other destinations in the building. From the lobby area, there was also visibility into Respondent's office.
11. Student 1 also testified that there were as many as six or more student desks in Respondent's office. To the contrary, Respondent's office had the dimensions of eleven feet in width by thirteen feet front-to-back, housed his own desk, a desk chair, and at least one other chair, and could not have accommodated the student desks Student 1 claimed to see there.
12. Student 1 also testified that Respondent had pointed to a diploma on his office wall to validate his claim of authority as a "doctor." To the contrary, Respondent did not and would not have hung his diploma in his office because KIPP Academy policy required that teachers display their diplomas in the classrooms to use as motivational tools.
13. Although Student 1's deposition was taken only about two months before the hearing, there were significant inconsistencies between Student 1's deposition testimony and her hearing testimony. There were also discrepancies between Student 1's hearing testimony and statements she had given previously.

14. The evidence fails to establish that Respondent more likely than not engaged in sexual conduct with Student 1.
15. On March 8, 2019, the staff (Staff) of the Texas Education Agency, Educator Leadership and Quality Division, on behalf of the Board, issued an Original Petition to Respondent, and a hearing on the merits set for September 10-11, 2019, was set by Order No. 1, issued on June 5, 2019. The hearing was continued until December 16-19, 2019, by Order No. 2, issued on July 17, 2019. The hearing was subsequently continued again, until February 12-13, 2020, by Order No. 4, issued on November 25, 2019.
16. The Original Petition and Order No. 4 together contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
17. State Office of Administrative Hearings (SOAH) Administrative Law Judges Beth Bierman and Robert Pemberton convened the hearing on the merits on February 12 and 13, 2020, at the SOAH hearings facilities in Austin, Texas. Attorney Mark Duncan represented Staff. Respondent appeared and was represented by attorneys Christopher Tritico and Ron Rainey. The record closed on April 16, 2020.

VII. CONCLUSIONS OF LAW

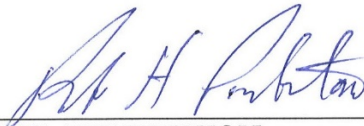
1. The Board has jurisdiction over this matter. Tex. Educ. Code ch. 21.
2. SOAH has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Respondent received proper and timely notice of hearing. Tex. Gov't Code §§ 2001.051-.052.
4. The Board regulates and oversees all aspects of the certification and standards of conduct of public school educators. Tex. Educ. Code § 21.031(a).
5. The Board has the burden to prove its allegations by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427; *Granek v. Texas St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
6. At all relevant times, the Board has had authority to impose sanctions against an educator for violating the Educators' Code of Ethics. See 22 Tex. Reg. 11922-24 (Dec. 5, 1997); 23 Tex. Reg. 1022-23 (Feb. 6, 1998) (hereinafter "1998 Code").

7. At relevant times, the Educators' Code of Ethics, codified in 19 Texas Administrative Code § 247.2, has included the following pertinent standards:
- 1998 Code § 247.2(c)(5) (Principle II, Standard 5): "The educator shall comply with . . . state regulations, and other applicable state and federal laws."
 - 1998 Code § 247.2(e)(4) (Principle IV, Standard 4): "The educator shall make reasonable effort to protect the student from conditions detrimental to learning, physical health, mental health, or safety."
8. At least since March 31, 1999, the Board had authority to authority to impose sanctions against an educator based on satisfactory evidence that the educator is unworthy to instruct or to supervise the youth of this state. *See* 23 Tex. Reg. 12,618 (Dec. 11, 1998); 24 Tex. Reg. 2304-2346 (Mar. 26, 1999).
9. Staff failed to prove, by a preponderance of the evidence, that Respondent engaged in sexual conduct with Student 1.
10. Because Staff failed to meet its burden to prove its allegations against Respondent, the Board should not impose any sanction against him.

SIGNED June 10, 2020.



BETH BIERMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



ROBERT H. PEMBERTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS