



GLENDALE UNIFIED SCHOOL DISTRICT

"Preparing our students for *their* future"

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OFFICE OF THE ASSISTANT SUPERINTENDENT
HUMAN RESOURCES
CYNTHIA M. FOLEY, Ed.D.

March 22, 2019

PERSONAL AND CONFIDENTIAL

HAND DELIVERED

Re: Investigative Findings

Dear Mr. Axelgard:

As you know, the District conducted an investigation into the November 16, 2018 allegations that you took inappropriate pictures/videos of female students. My findings are as follows.

I. SUMMARY OF COMPLAINT

On November 16, 2018, it was reported by several female students that you had taken pictures and videos on your personal cell phone of the backside of female students while doing push-ups in PE class. Students also reported that during snack on this particular day, you held your cell phone close to your chest with the camera application open while they were waiting in the cafeteria line. Students reported you were taking pictures/videos of female students, unbeknownst to them.

INVESTIGATION PROCEDURES

In order to determine if you had committed sexual harassment, violated board policy/administrative regulations, or otherwise had taken action that evidences your unfitness to teach, the District conducted a thorough factual and legal investigation and review of the issues alleged the complaint. The investigation included a review of documents requested and collected from the school, review of material stored on personal cell phone, review of district-issued laptop/desktop computers, on-site interviews, and the assessment of credibility of interviewed witnesses.

The veracity of the claims alleged and the supporting facts discovered in this investigation were analyzed according to the "preponderance of the evidence" standard.

FACTUAL FINDINGS

The preponderance of the evidence supports finding that while you worked in the capacity of PE teacher at Clark Magnet HS, you took pictures and videos of female students. You did so over the period of August 2016-November 2018. These pictures/videos were all taken while on school campus as evidenced by the photos of students found on your personal cell phone (pictures of female students' chests and buttocks, picture of two female students against a school wall backdrop). A review of surveillance cameras confirms you held your cell phone close to your chest with the camera application open, facing

female students, while they waited in the cafeteria line. Additionally, you admitted to the Assistant Superintendent, HR that you had a history of taking pictures/videos of female students. You further shared this behavior goes back to 2016. These images were captured unbeknownst to students and without their permission. During student interviews, students shared your behavior was known among students and students commented this made them feel extremely uncomfortable.

APPLICABLE LAWS, POLICIES AND STANDARDS, CONCLUSION AND DISPOSITION

Education Code section 200 and District Board Policies 5145.7 and 4119.11 prohibit sexual harassment of any student. Education Code section 212.5 defines unlawful sexual harassment as follows:

“Sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

- (a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
- (b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
- (c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.
- (d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

District Administrative Regulation 5145.7 defines sexual harassment as:

Prohibited sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the educational setting, under any of the following conditions: (Education Code 212.4; 5 CCR 4916)

- 1. Submission to the conduct is explicitly or implicitly made a term or condition of a student's academic status or progress.
- 2. Submission to or rejection of the conduct by a student is used as the basis for academic decisions affecting the student.
- 3. The conduct has the purpose or effect of having a negative impact on the student's academic performance, or of creating an intimidating, hostile, or offensive educational environment.

District Board Policy 4119.11 states in pertinent part:

- 2. Sexual or Inappropriate Social Conduct by Employees Toward Students

It is the policy of the District that employees shall not engage in sexual or inappropriate social conduct toward students, including those who are adults by age. "Sexual or inappropriate social conduct" includes, but is not limited to, dating, inappropriate sexual comments or innuendo, inappropriate physical contact and display or circulation of inappropriate visual or audio material. In the employee-student context, all such employee conduct is prohibited even if student initiated or consensual. Such conduct may also violate various federal and state statutes, and may require reporting to local child protective agencies under applicable child abuse statutes. Nothing in this policy shall prohibit employees from implementing the District's curriculum in the area of sex education. For further definition and examples of sexual harassment conduct prohibited by this Policy refer to Administrative Regulation 5145.7

District Administrative Regulation 4119.21, 4219.21, 4319.21, Code of Ethics states Guiding Principles:

A. Commitment to the Student

District personnel work to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals; serve as a model of ethical standards, continually reflecting on our actions as educators regarding ethical issues and how they apply to our district, school, classroom, curriculum and our profession; and strive through fair and just treatment to help each student achieve and succeed by fulfillment of the following obligations to students(s).

4. Make every effort to protect the student from conditions harmful to learning or to health and safety.
5. Protect the student from embarrassment and disparagement.
7. Guard diligently against unfair treatment of any student on the basis of actual or perceived race, religious creed, color, gender, gender identity, gender expression, sex, sexual orientation.....
8. Use professional relationships with students only for student benefit and not in any way for private advantage.

C. Commitment to the Profession

District personnel believe the quality of the services provided in the education profession directly influences the nation and its citizens. Therefore, every effort is expected to be exerted to raise professional standards, improve service, promote a climate in which the exercise of professional judgment is encouraged, and to achieve conditions which attract persons worthy of trust to careers in education by fulfillment of the following obligations to the profession:

1. Act and speak at all times in a manner which exemplifies personal integrity, dignity, and mutual respect.
4. Regard the employment agreement as a pledge to adhere to both the letter and the spirit of the contract and the law.
6. Pursue appropriate measures to align laws, policies and regulations with sound educational goals.

8. Use time granted for the purpose for which it is intended.

11. Adhere to established professional standards.

Based on the above findings and the preponderance of the evidence, the District has determined your conduct was deliberate and sexually harassing that was not welcomed by the female students and had the effect of creating an intimidating, hostile, or offensive educational environment. Moreover, your conduct violated the above referenced Code of Ethics, constituted unprofessional conduct, and evidences your unfitness to teach. Your behavior has not placed you in good standing as an employee of the Glendale Unified School District. In the absence of your resignation form and early retirement effective May 31, 2019 that was accepted by me and approved by the Board of Education on March 12, 2019, the District would have pursued dismissal and termination of your employment.

In view of these findings, you will remain on administrative leave until the effective date of your resignation/retirement. My prior directives to you concerning your actions while on administrative leave shall continue to apply.

Please note, the District is required by California Code of Regulation (CCR) section 80303 and Education Code section 44030.5, to report allegations of misconduct to the Commission on Teacher Credentialing. A copy of this letter will be placed in your District personnel file. If you wish to prepare a written response to this letter and its enclosures, you may do so within ten (10) working days, and it will be attached to this letter.

RETALIATION ADMONITIONS

The District does not tolerate retaliation against participants in a complaint process or investigation and reminds you not to retaliate against or bully other parties or witnesses that were interviewed in this investigation.

Sincerely,



Dr. Cynthia M. Foley
Assistant Superintendent, Human Resources/Director of Classified Personnel

cc: Personnel file