



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200  
SAN FRANCISCO, CA 94105

REGION IX  
CALIFORNIA

JUN 03 2013

Dr. Kevin Skelly  
Superintendent  
Palo Alto Unified School District  
25 Churchill Avenue  
Palo Alto, California 94306-1099

(In reply, please refer to case number 09-13-6901.)

Dear Superintendent Skelly:

The Office for Civil Rights (OCR), the civil rights enforcement arm of the U.S. Department of Education (Department), implements Federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, sex, disability, and age by educational institutions that receive Federal financial assistance. Specifically, OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs or activities operated by a recipient of Federal financial assistance. The Palo Alto Unified School District (District) is a recipient of Federal financial assistance from the Department and is therefore subject to Title IX and the regulation.

I am writing to advise you that OCR is opening an investigation of the District's compliance with Title IX. Specifically, OCR will examine whether the District provides students at Palo Alto High School (High School) with a nondiscriminatory educational environment free of sexual harassment, and whether it responds promptly and effectively to complaints or other notice of sexual harassment of students. Pursuant to the regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, at 34 C.F.R. § 100.7(c), OCR will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with the regulation. This requirement is incorporated by reference in the Title IX regulation at 34 C.F.R. § 106.71. OCR has received information that the High School has not provided a prompt and equitable response to notice of peer sexual harassment, including peer harassment related to sexual assault.

Please note that opening an investigation in no way implies that OCR has made a determination with regard to its merits. During the investigation, OCR is a neutral fact finder, collecting and analyzing relevant evidence from the recipient, and other sources as appropriate. OCR will ensure that its investigation is legally sufficient and is dispositive of the report of discrimination in accordance with the provisions of Article III of OCR's *Case Processing Manual*.

Please read the enclosed document entitled "OCR Complaint Processing Procedures" which includes information about:

- OCR's complaint evaluation and resolution procedures;
- regulatory prohibitions against retaliation, intimidation and harassment of persons who file complaints with OCR or participate in an OCR investigation; and
- application of the Freedom of Information Act and Privacy Act to OCR investigations.

Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Upon receipt of this letter, please notify OCR of the name, address, telephone number and email of the person who will serve as the District's contact person during this investigation. OCR would like to speak to this individual as soon as possible. If you have questions, please contact the following OCR attorneys: Anamaria Loya at (415) 486- 5404 or [anamaria.loya@ed.gov](mailto:anamaria.loya@ed.gov), or Kendra Fox-Davis at (415) 486-5418 or [kendra.foxdavis@ed.gov](mailto:kendra.foxdavis@ed.gov).

Sincerely,



Arthur Zeidman  
Regional Director

Enclosure

Subject: RE: Free Expression Run Amok

Date: Wednesday, June 5, 2013 9:44:11 AM Pacific Daylight Time

From: [REDACTED]

To: Phil Winston, [REDACTED]

CC: palyedcouncil, [REDACTED], [REDACTED]

Me three. Besides the issue of student safety, it's a sexual harassment lawsuit waiting to happen.

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From: Phil Winston

Sent: Wednesday, June 05, 2013 9:17 AM

To: [REDACTED]

Cc: palyedcouncil; [REDACTED]; [REDACTED]

Subject: Re: Free Expression Run Amok

I agree. Next year will be different.

Sent from my iPhone

On Jun 4, 2013, at 4:13 PM, "[REDACTED]" wrote:

Dear Colleagues,

After much reflection and discussion with many colleagues I'd like to share my concerns with this leadership team about the spate of streaking that seems to have encroached on more and more of our time and space at the end of each successive school year in the past four years. From one week to two to now a whole month..from the quad to now the library we seem to have no where that is safe for students during their precious break periods. I use that word safe because that is the word many students used when they came up to me and [REDACTED] and asked where they could shelter during the streaking. The fact that students do not feel safe on the quad for almost an entire month is of great concern to me and I assume to all of you as well. A variety of students also wanted to know if there were consequences for the streakers and I assured them that there were—*but are these consequences sufficient and is the message that streaking is absolutely unacceptable a message that we as a staff are sending students loud and clear?* Many senior students told me they have received very mixed messages about the school's stance on streaking.

Every year we tell students they can hang out in the library but then that space was breached as well by students who had no regard for other's privacy. I use that word with care as well because I believe streaking comes down to a privacy issue for students who do not want to be subjected to nudity. One student told me they were revolted when a streaker brushed up against them in the quad and another said she couldn't concentrate in class knowing the that person sitting next to her was running through the quad nude the day before. In my view it is a student's right to privacy, to be safe at school that is being infringed upon by a minority of senior students who wish to indulge in what they assume is a harmless act of self expression. However, as I have been told by students time and time again, streaking is not a harmless act.

I would like us to have a better plan going forward to protect these students who want to feel safe at school, not to mention our teachers who I'm sure would rather not witness their students free expression either. (I guess we can file that one under working conditions.)

Let's also consider our school's reputation. And there is always that specter of legal action should a student feel extremely unsafe and unprotected.

On a personal note..I went to high school in the 70's and witnessed the birth of streaking at my very own Pali High in Los Angeles, but I fear this once quirky random act of free expression has now taken over Paly for the last few weeks of school—I hope we can reign it in.

Respectfully  


## Summary of Report

[REDACTED]

On Wednesday, June 5th, 2013, I contacted Associate Superintendent of Ed Services, Charles Young, requesting a confidential meeting. I asked that we meet soon and that our meeting remain confidential. Dr. Young responded promptly via email, and we agreed to meet the following day, Thursday, June 6th, 2013 at 2:30 pm.

During our meeting on Thursday, June 6th, 2013, I shared with Dr. Young that this was the most difficult professional decision and conversation that I've had during my time in the district [REDACTED]. I explained to Dr. Young that I contacted [REDACTED] on this matter.

It was during this conversation with [REDACTED] that I was informed of my duty to report the many incidences that have been brought to me by numerous staff members at Palo Alto High School. Hence, my request to meet with Dr. Young, our uniform complaint and Title IX Officer for the Palo Alto Unified School District. My only regret is that I did not come forward sooner and bring this matter to the attention of the district officials earlier this school year. The information that I have known and been made aware of has caused me many sleepless nights, yet as I explained, I feared retaliation from [REDACTED] Phil Winston. I also struggled with the decision to speak with him directly about the concerns I have been made aware of and of my own personal concerns, but felt that he would not respond appropriately and the situation would be made worse.

As I explained to Dr. Young in our meeting, I have had many conversations over the last 3 years with staff members from all departments about numerous insensitive, inappropriate, and sexually harassing comments I have witnessed or others have witnessed involving our Principal, Phil Winston. These comments caused staff immediate discomfort when Principal Winston began his tenure at Palo Alto High School in 2010-2011. For example, he told the classified staff members in a meeting in September of 2010 that if they didn't like his decision (to hold students more accountable) "they need to look for a job elsewhere." This caused great fear among the classified staff and when brought to Phil's attention [REDACTED] he tried to rectify the situation. However, the damage was done and the message remained that there was "a new sheriff in town" as one classified staff member explained it. In 2010-2011, I began to notice early on that Phil [REDACTED] and felt as though he [REDACTED]

[REDACTED]

"Stop thinking like a Mom" was an expression he has said [REDACTED] in front of others and on more than one occasion. He told [REDACTED] and other staff members that "sometimes I like to ask [REDACTED] what [REDACTED] thinks and then do the complete opposite." This speaks to the power dynamic Phil has carefully created during his tenure at Palo Alto High School and

my inability to confront him sooner on his concerning behavior.

The environment at Palo Alto High School has worsened over time. In early April 2013 shortly after Spring Break, three [REDACTED], [REDACTED], [REDACTED] and [REDACTED] approached me on separate occasions to discuss their concerns regarding comments made by Principal Winston to their colleague, [REDACTED]. It was reported to me that [REDACTED] shared with [REDACTED] colleagues that [REDACTED] believes Phil Winston is flirtatious, "hitting on [REDACTED]" and causing [REDACTED] great discomfort [REDACTED]. [REDACTED] told [REDACTED] colleagues that it is so bad [REDACTED] does not want to be alone in a room with him. [REDACTED] reports that he would hug [REDACTED] rub [REDACTED] back, put his arms around [REDACTED] and make comments that were inappropriate. I witnessed some of the physical touching firsthand after it was reported to me.

When the other [REDACTED] learned of this, they urged [REDACTED] to go to HR or the District Office. [REDACTED] refused saying [REDACTED] fears retaliation and feels that a "good ole' boys network" exists at 25 Churchill. "Who would protect [REDACTED]? [REDACTED] needs a job and career now [REDACTED] and [REDACTED] were very upset by what [REDACTED] had reported and felt someone must do something. They each came to me separately out of concern for [REDACTED] well-being. [REDACTED] reported that he has had conversations with [REDACTED] on our campus about similar feelings towards our Principal. When I asked who, [REDACTED] said, [REDACTED] would not tell me names of others, but said they are not the only [REDACTED] has talked to who feel this way.

After listening to their concerns about [REDACTED], I advised them to speak with HR, Dr. Young and/or Dr. Skelly directly themselves to report what they learned. [REDACTED], [REDACTED], and [REDACTED] did not want to proceed at the time because they feared retaliation against [REDACTED] and wanted to respect [REDACTED] wishes so that the situation would not be made worse. I approached [REDACTED] the same day I first learned of this and reassured [REDACTED] that if [REDACTED] spoke to HR, [REDACTED] name would be kept confidential and that [REDACTED] would be doing "the right thing." I explained that if [REDACTED] couldn't speak with Principal Winston directly, [REDACTED] should speak to HR, Superintendent Dr. Skelly, [REDACTED] or [REDACTED] PAEA rep for advice. [REDACTED] still refused, but was grateful for the support and acknowledgement I offered [REDACTED]. I told [REDACTED] that I needed to look into next steps further to see what I must do on my end now that I know [REDACTED] feelings. [REDACTED] understood.

In my meeting with Dr. Young, I shared a hard copy of an email sent to Ed Council on June 4, 2013, regarding the student streaking on campus and safety concerns as expressed by our [REDACTED]. Again, I've had numerous conversations with staff members about the "mixed-messages" they feel Principal Phil Winston has sent the entire community regarding this "tradition." For instance, he has made jokes of the streaking in his speeches at Baccalaureate and Graduation every year. In 2011, he wore one of the masks of a streaker at Baccalaureate, despite [REDACTED] others [REDACTED] saying this

was probably not a good idea. On May 23, [REDACTED] reported to me that [REDACTED] told him "Mr. Winston asked me if my friends boobs hurt when she was running naked through the quad."

In May of 2013, we had streakers every day during brunch and lunch for the entire month. I don't have an exact count, but am sure it is well over 100. The streaking has now extended into the library and other places on campus. Not all students are comfortable with how streaking is handled, or not handled, by the administration, but they are afraid to speak up. Principal Winston has sent the message to the students that there are clearly little or no consequences. I've spoke with parents who also feel the same pressure to not speak out. Finally, staff members report that they will not go outside during the month of May for fear they will see a naked student of theirs. Quite honestly, I'm tired of having to watch naked students everyday for an entire month, [REDACTED] and believe this situation has created a hostile work environment on our campus. When [REDACTED] up the idea of increased security or police presence, I'm dismissed and/or the "lack of support from the DO" is blamed.

I shared all of the above information with Dr. Young in our conversation on Thursday, June 6th, 2013. Dr. Young informed me that he would speak with Dr. Skelly and Dr. Bowers as next steps, and that I should expect follow-up with HR.

On Friday, June 7th, 2013, I met with Assistant Superintendent Scott Bowers to discuss my concerns. Dr. Bowers explained next steps in the process, which included speaking directly with Principal Winston on his part. [REDACTED]

On Monday morning, June 10th, 2013, I spoke with Dr. Bowers, who informed me that the report was be taken very seriously. First, Dr. Bowers requested I hand over my notes in a sealed envelope, and I contact all of the teachers who have spoken to me about Principal Winston's behaviors to notify them of my report. I told Dr. Bowers that I had some concerns about these steps, but I would comply if this is what he wanted. At 10:30 am, Dr. Bowers called me again and asked me to hold off on contacting individuals and that the district would be conducting their own investigation. I responded that I would willingly hand over my notes and names for investigative purposes. By presenting Dr. Bowers and the Palo Alto Unified School District the attached notes and detailed information, I hope I have met my obligation for my role in this process to report this matter.

Please find attached to this document my personal notes regarding different incidences and comments that speak to Principal Winston's inappropriate conduct and behavior as Principal of Palo Alto High School. This is not an exhaustive list. It is my belief that if an investigation were conducted, many staff members would add examples that have been upsetting and hurtful to them and/or resulted in an unsafe learning/working environment for the students and staff at Palo Alto High School.

I bring this information forward as my duty to report and in the hopes that the district will conduct their own fair investigation on this matter. I believe the staff at Palo Alto High School need to be ensured that the working/learning conditions at Palo Alto High School will greatly improve for the 2013-2014 school year. While I have great concerns about Phil Winston's general competence in his role and how this relates to our upcoming WASC process and the Title IX investigation, as I shared with Dr. Young on June 6th, 2013, the immediate issue that I hope to see resolved is improving the climate for women and girls on our campus.

If the district conducts an investigation, the individuals below can provide additional details and information. I put an asterick next to those who have witnessed sexually harassing behavior with either colleagues, themselves or students. I've been asked to provide this list of names to the Assistant Superintendent of Human Resources, Dr. Bowers. The following individuals have spoken directly to me concerning Principal Winston's inappropriate behavior and general concerns regarding his competence.

[REDACTED]



[REDACTED]

Please do not hesitate to contact me if I can be of further assistance in this matter.

Respectfully submitted,

[REDACTED]

Notes from  
conversations  
w/ [redacted]  
6/7/13

Worried about what he will do to students if  
he finds out they complained.

CONFIDENTIAL

To: Kevin Skelly  
From: Charles Young  
Date: 6/7/13  
Re: Summary of meeting with [redacted] alone.  
[redacted] Regarding [redacted] Concerns about Mr. Winston,  
Principal of Palo Alto High School

Worried about what he  
said to student when they are  
alone.

(Boundaries)

I met with [redacted] Thursday, June 6. [redacted] said it was the most difficult  
conversation [redacted] was about to have professionally. [redacted] started by saying [redacted]  
hoped [redacted] will be provided some level of professional protection, and that no  
retaliation will take place, after sharing [redacted] concerns with me.

Wore one  
of the streaker  
masks at  
Bacc last  
yr. Mention  
this in  
comment

[redacted] shared concerns regarding comments several [redacted] have  
shared regarding their discomfort being in the same room with Mr. Winston, that  
he "hits" on them and makes them feel uncomfortable.

(both single & married) flirtations, unwanted hugs, arm on shoulder.

[redacted] stated that several staff members have expressed their concerns about  
increasingly erratic behavior, including wearing shorts and sandals to work for  
the last month, including to the prom, canceling many of the I.S. meetings, telling  
staff he prefers to do much of the work through email, being dismissive to staff  
including to [redacted]

slip & slide  
dismissed  
input from

[redacted] stated that much of the staff have lost confidence in  
his leadership.

members  
came  
to share  
concern  
of other  
staff  
members

[redacted] also shared that [redacted] have shared that they also feel  
uncomfortable in his presence and that he has made sexually inappropriate  
comments. The examples [redacted] shared include: telling [redacted] if  
wants [redacted] boyfriend to be more helpful with [redacted] regarding [redacted] homework, [redacted] just  
"needs to sit on his face," telling [redacted] who was caught streaking  
across campus that [redacted] "boobs must have hurt as you ran across the squad,"  
telling [redacted] at the Vagina Monologue presentation, who tried to leave saying,  
several times, "Why do you want to leave, we are talking about vaginas here?"

Student  
came to  
after Phil  
made this  
comment  
student was  
worried/  
concerned

[redacted] has kept notes regarding [redacted] comments, has  
sought [redacted] and is very concerned about Mr. Winston's  
behavior.

Escalated in last semester (lots of water cooler talk)  
up to that point

[redacted] shared concerns  
(bringing info about comments to students)

Worried about retaliation - reporting Phil. He said he asks  
Phil is often dismissive of [redacted] ideas [redacted] will do opposite.

CONFIDENTIAL

Phil has said

needs larger T-shirt size to staff member w/ big

asks personal questions about personal finances  
relationship

~~did~~ your friends books hurt when she runs  
through the queue at lunch. Said to a group.

went to I.S. - I.S. came to

@ Haymarket presentation. got out of sect.

Virginia Monologs -

"Hey, were all you going  
we are learning about  
vagina's, you can't leave  
we are learning about  
vagina's

6/12/13

Phil,

Here is the information that came in regarding inappropriate comments to students.

1. At the Vagina Monologues, [REDACTED] stood up to leave and you made the comment to [REDACTED] "Hey, where are you going? This is about vaginas. Don't you want to hear about vaginas?"
2. [REDACTED] reported to a teacher that you said to [REDACTED], "did your friends boobs hurt when [REDACTED] was running through the quad a lunch?"
3. [REDACTED] told [REDACTED] that you said to [REDACTED] "You know how to make your boyfriend do what you want, don't you? If you want him to do better, you need to sit on his face."
4. You commented [REDACTED], "Hey, is there a Facebook page for streakers? Will you start one and friend me?" [REDACTED] responded, "I don't think that would be appropriate."
5. You have made the comment on several occasions to [REDACTED] wearing short shorts, "your butt cheeks are hanging out."
6. There was one more item that was non-specific but I thought you should have. [REDACTED] have expressed that they don't want [REDACTED] alone with you because they are afraid you will say "stupid, thoughtless, sexual, insensitive things to them."

I will share your response to these issues with the Board as soon as possible after I receive it. Once I know more about when the Board may be able to have a closed session I will be in touch.

Scott

June 13, 2013

Dear Dr. Skelly:

I am writing this letter to inform you of my resignation from the Principal position at Palo Alto High School, effective 6/28/13, with retention of my permanent employment with the District in a certificated spot.

I have enjoyed my tenure as an administrator in PAUSD for the last 7 years, and will value these years professionally and personally. However, my role as an administrator has not come without sacrifice. I have made significant sacrifices as a father, spouse, and person in order to fully and successfully fulfill my duties to the District. As I have shared with District leadership repeatedly in the past, and specifically this year during my end of year review, I have worked diligently to find better work-life balance. However, in order to meet the demands and responsibilities of the job, which my positive reviews reflect I consistently have, this balance has been near impossible.

As you are aware, I recently had a life-threatening medical illness. This caused me to seriously reevaluate my priorities, health, and personal and professional goals. At this stage in my life, spending time with my family and having a better work-life balance are my top priorities. I owe it to myself and family to protect my health which it difficult to do in a job that never sleeps. The job of a High School Principal is non-stop and demanding.

My passion has always been the classroom, and I am thrilled about going back. In addition, I am excited about being part of a school community as a teacher and being challenged in a new and different way. I will be an asset to a school and will continue to be a dedicated employee of this District.

During the transition I am willing to assist the incoming administrator of Paly to make the changeover as seamless as possible. Paly has been my heart and soul for the past three years and my departure will be bittersweet. I am confident the school will continue to excel because of the staff, students, and the team that I helped build. I only want to see great things for the school and our District. I am committed to working with the District to ensure minimal disruption in the community.

I appreciate your support and understanding of this decision. Please know that this decision was not made lightly and I appreciate you respecting my personal and professional reasons. The move will allow me to return to my love of teaching and working directly with students who need additional support.

I look forward to continuing to be an asset to the District as we work together to ensure all students succeed.

Sincerely,

A handwritten signature in black ink, appearing to read "Phil Winston", written in a cursive style.

Phil Winston

6/14/13

Scott,

Thank you for the opportunity to address the comments that you shared with me. Here are my responses:

1. Working with a parent we were able to coordinate a visit from Eve Ensler, the author of *The Vagina Monologues*. The visit was prompted by the Verde Article about rape culture. Our journalism, theatre, and teacher librarian collaborated to create an amazing experience for students with this visit by Ms. Ensler. The event was moderated by two Paly students and was just the beginning of a larger conversation. While I do not recall my exact words, I do remember saying something like "Why are you leaving? This is about vagina monologues."
2. Streakers continue to be an ongoing nuisance at Paly. This year teachers and students have expressed concerns about the frequency and number of streakers. We have devoted ongoing and serious staff efforts to control this issue. We have stationed staff at entry and exit points, discouraged streaking with a letter home and verbal conversations with the Seniors. During brunch one day there was a group of at least 10 female streakers. I was walking through the quad as the streakers ran across the front area of the senior deck. As I made my way to the senior deck, I said "Gosh, that looks painful. That must hurt their boobs."
3. My initial reaction to this comment is that I have never said anything of the sort and I never would say anything of this nature. This is simply not a comment I would make in any situation, social or professional. The only conversation I can recall that this comment may be in reference to is one in which the [REDACTED] who was struggling significantly, both academically and emotionally, was talking to me about [REDACTED] attending end of the year activities at Paly. [REDACTED] but struggled so significantly that the best educational environment was [REDACTED] so that he could rapidly recover credits in order to graduate from high school. In addition to the Paly staff, [REDACTED] had supported him extensively academically. When [REDACTED] asked me about him attending end of the year events, I said "no" and stated that [REDACTED] so he could not attend baccalaureate, picnic, graduation, or the graduation party. I do not remember exactly what I said, but I am absolutely confident I did not say you need to sit on his face, but rather something like, "Make sure you stay on him and make sure he gets his work done." For the last three years, I have been extraordinarily supportive of [REDACTED] and our staff has invested a massive amount of time in his well-being. I also think that it is significant to note that during graduation the [REDACTED] leaned into me as she shook my hand and stated with a smile that [REDACTED] hates me.

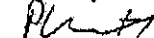
4. I was talking to [REDACTED] and asked if there was a Facebook page that seniors used to communicate about streaking. I said that they should add me so we could stop the streaking. I followed up with a statement indicating that if they saw their Principal as a member then maybe they would stop streaking, because it is not something any of us support and we need to stop it. [REDACTED] said "no, there is not a Facebook page and that it wouldn't be appropriate if there was."

5. Our District has a dress code that indicates that appearance and dress be in the limits of decency and appropriateness for school. Students continually push these limits of decency and expose themselves. It is a constant struggle. Yes, I have said "Your butt cheeks are hanging out, that is not appropriate" followed up with a directive that they need to cover up and not wear shorts that do not provide adequate coverage at school. It should be noted that students adjusted and changed to more appropriate clothing. I have, as have other administrators and staff, had similar conversations with male students about excessive displays of skin. Furthermore, many staff members have consistently expressed concerns to administration about students' body parts showing or hanging out, so this was done in support of staff with the purpose of creating a safe learning and teaching environment for all. I also want to note that the words used above were only used for students who were grossly inappropriately dressed for school.

6. My favorite educational experiences are [REDACTED]. As my teaching reviews indicate, I have proven myself as an outstanding advocate and educator [REDACTED]. If any of my staff felt that my interactions with [REDACTED] were inappropriate they did not indicate that to me or, to the best of my knowledge, my administrative team. Just as I've always encouraged professional growth for teachers, I've frequently solicited feedback on my performance from staff and my team. Had this information been shared with me, I would have been eager to resolve any concerns or make adjustments if necessary.

It is always disappointing when statements or conduct are misinterpreted, but I understand that this is going to happen from time to time, and I do my best to avoid such misinterpretations. I am certain I can do still better in that respect and I will take these comments as a learning experience that will help me further improve.

Sincerely,

  
Phil Winston

6/12/13

Phil,

Here is the information that came in regarding inappropriate comments to students.



6/18/13

Scott Bowers phone conversation with [REDACTED], 6/13/13

I phoned [REDACTED] and we played phone tag before we connected. I asked [REDACTED] about the conversation [REDACTED] had with [REDACTED] who reportedly said the principal told [REDACTED] to "sit on [REDACTED] boyfriend's face". [REDACTED] didn't remember many details so I asked [REDACTED] if [REDACTED] would contact [REDACTED] to get more details on the circumstance.

The exchange took place in the library in the spring of the 2011-12 school year. [REDACTED] mentioned this is conversation with [REDACTED] during the fall of the 2012-13 school year when [REDACTED]

[REDACTED] called [REDACTED] and reported the following:

1. [REDACTED] said that [REDACTED] and [REDACTED] boyfriend were in the library talking with the principal.
2. [REDACTED] boyfriend got up and left the library and [REDACTED] said the principal then said to [REDACTED], "You know how you get your boyfriend to do what you want? You need to sit on him, whip him, and wrap your legs around his head."
3. [REDACTED] said [REDACTED] though what he said was "icky" and let it go.

6/18/13

Scott Bowers conversation with [REDACTED] 6/13/13

I went to talk with [REDACTED] and we took a walk [REDACTED] to chat about what had been reported to us about the principal's possible sexual harassment of [REDACTED]. The following are the key points of that conversation.

[REDACTED] was with other [REDACTED] and they were having a general "bitch" session about the principal. During the conversation, [REDACTED] shared [REDACTED] feelings about the principal and recounted certain situations that made [REDACTED] feel the way that [REDACTED] did. [REDACTED] indicated that [REDACTED] didn't feel the need to report any of this.

1. [REDACTED] said that [REDACTED] feels the principal is stupid and ridiculous in his behavior
2. [REDACTED]
3. [REDACTED] indicated [REDACTED] was pretty fed up professionally with the principal.
4. [REDACTED] said [REDACTED] didn't think he was being malicious—that he was in a state of arrested adolescence and that he was not trying to be annoying.
5. [REDACTED] said [REDACTED] should have given him feedback but that [REDACTED] were a bigger focus for [REDACTED]
6. [REDACTED] said, "Did I think, should I go to the D.O.---no, I didn't"
7. [REDACTED] believe the principals thinks that they are buddies and that his behavior was not "come-on-to" behavior.
8. [REDACTED] didn't think he was going after [REDACTED]—that this was his general behavior.
9. [REDACTED] felt the need to warn [REDACTED] that came to school that he was "unconventional"
10. [REDACTED] said he would make comments that might be okay on fishing trip with his buddies but not a principal at a high school. (e.g. "No male should complain about how the girls on the school are dressing")

When I asked [REDACTED] whether [REDACTED] felt sexually harassed [REDACTED] said no. When I went on to ask if we went down a checklist and ticked off those things that constituted harassment would it qualify and [REDACTED] said probably. [REDACTED] again indicated that [REDACTED] felt [REDACTED] could handle the situation which is why [REDACTED] didn't go to anyone.

June 24, 2013

Dear Kevin,

[REDACTED]

Kevin, I also wanted to write about a sensitive matter I saw in the paper: Phil Winston's resignation and request for transfer to the classroom. If the latter occurs, I would regretfully like to recommend some attention to some issues of professional conduct which I have witnessed, and which are concerning.

Last spring when you recommended that [REDACTED]

[REDACTED] included watching him interact with students as he monitored the courtyard during lunch hour. Actions which concerned me were:

1. Phil saw an obviously distressed teen girl walking with an adult. He went up to her and told her he wished her well...while standing close in to her, face to face, and stroking her arm up and down repeatedly from shoulder to below the elbow.
2. A few minutes later he went up to a group of girls, one of whom had just gotten an extra pierce in her ear. The other girls were exclaiming over the piercing; Mr. Winston again stood close and began playing with the girl's ear lobe and twisting various earrings, and did the same with a second girl in the group while bantering. One of the girls stepped back; Mr. Winston only moved closer and kept playing with earrings.
3. As we walked back to the main office, Mr. Winston discussed such examples of "rapport" with pride, and then brought up repeated negative comparisons with his predecessor, [REDACTED]

I have hesitated more than a year to bring these up with you. [REDACTED]

[REDACTED] But now that I see that Mr. Winston may return to classrooms in which he will be alone with students, I feel an ethical responsibility to contact you. I share these observations in the hope that Mr. Winston can be helped to make better choices in the interest both of students he will serve, and in respect for his own career.

Sincerely,

[REDACTED]

6/27/13

Scott Bowers phone conversation with [REDACTED], 6/27/13

I met with [REDACTED] during a break from [REDACTED]. I asked [REDACTED] what [REDACTED] experiences had been with Mr. Winston. I also asked [REDACTED] had had anyone else on the staff approach [REDACTED] with concerns about comments that Mr. Winston may have made to them.

[REDACTED] related the following incidents:

1. Phil would ask [REDACTED] questions about [REDACTED] income. ("How much does your [REDACTED] make?") [REDACTED] found this inappropriate and chose not to give him an answer.
2. Sat down at a desk and picked up a pair of "Bucky Balls" and made the comment about playing with the balls.
3. [REDACTED] mentioned that a student reported to [REDACTED] that Phil had said to a male student that he must be "getting a lot of pussy" from his girlfriend.
4. He said to [REDACTED] to "stop thinking like a mom" during a discussion about a student. [REDACTED] responded with "Seriously" and he backed off on his comment.

I asked [REDACTED] if [REDACTED] ever felt harassed by Phil and [REDACTED] responded "no." [REDACTED] indicated that [REDACTED] felt he made comments that were sophomoric but that [REDACTED] just dismissed them and went on with [REDACTED] business.

I also asked [REDACTED] to contact any of the teachers who had spoken to [REDACTED] and ask if they would speak with me. [REDACTED] emailed me several days later to let me know that I had already talked with one of the teachers [REDACTED] and the [REDACTED] asked the other one to call me (I haven't received a call from someone as yet).

7/31/13

Scott Bowers conversation with [REDACTED], 7/31/13

I was finally able to meet with [REDACTED] on Wednesday afternoon. We had been trying to find mutual time for a couple of weeks. The following are the key points of our discussion.

1. [REDACTED] said that [REDACTED] got to the point of not wanting to meet alone with him.  
[REDACTED]
3. Indicated the behaviors started in Spring 2012
4. Indicated that Phil once referred to a male colleague as a pansy [REDACTED]
5. Indicated that Phil made comment in a meeting as he looked into the quad that the only reason [REDACTED] was popular with white girls is because of his black dong.
6. When [REDACTED] [REDACTED] Phil said "that is just their culture"
7. Phil asked [REDACTED] [REDACTED] didn't respond and he asked again in February. Told [REDACTED] that [REDACTED] was manipulative, inconsistent, no one wanted to work with [REDACTED], didn't even want to talk with [REDACTED]
8. [REDACTED] asked him where that was coming from so I know how to improve? He said, "when was the last time you collaborated with the [REDACTED]?" [REDACTED] told him [REDACTED] uncomfortable with a [REDACTED]. His response was to say, "You are just going to have to learn to keep your [REDACTED] at home." [REDACTED] left the meeting at that time.
9. [REDACTED] asked [REDACTED] what [REDACTED] should do about it. Got no response.
10. Met with Phil several weeks later and he didn't seem to remember that there had been a problem between them. No real contact after that.



PALO ALTO UNIFIED SCHOOL DISTRICT  
HUMAN RESOURCE CENTER

25 CHURCHILL AVENUE  
PALO ALTO, CALIFORNIA 94306  
(650) 329-3958 FAX (650) 323-5162

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August 13, 2013

Mr. Phil Winston  
[REDACTED]

Re: 45-Day Notice of Unprofessional Conduct/ 90-Day Notice of Unsatisfactory Performance

Dear Mr. Winston:

Pursuant to Education Code section 44938, you are hereby notified that you have demonstrated unprofessional conduct and unsatisfactory performance in the performance of your duties. This formal notice is designed to furnish you with specific information concerning those areas where you have exhibited unprofessional conduct and/or unsatisfactory performance. This notice is further designed to provide you with the opportunity to correct these faults. Please note that the incidents described below may additionally form the basis for discipline on grounds other than unprofessional conduct and unsatisfactory performance, including but not limited to evident unfitness for service.

Your unprofessional conduct and unsatisfactory performance is based upon the following:

Student Related Issues

1. You have, on multiple occasions, made the comment to [REDACTED] wearing short shorts, "your butt cheeks are hanging out," or words to that effect.
2. On or about May 21, 2013, at a production of The Vagina Monologues, [REDACTED] stood up to leave and you said to them, "Hey, where are you going? This is about vaginas. Don't you want to hear about vaginas?," or words to that effect.
3. On or about May 23, 2013, you asked [REDACTED] "if [REDACTED] friend's boobs hurt when [REDACTED] was running naked through the quad," or words to that effect, in relation to [REDACTED] who participated in streaking on campus.
4. You have used terms that are inappropriate and unprofessional to describe [REDACTED]. For example, in May of 2013, you referred to the approximately [REDACTED] as "bitches." In a separate instance, you stated to a [REDACTED] that "we need to do something about the pussies on this campus," or words to that effect.

5. You said, "Oh that's sexy," or words to that effect, to a [REDACTED] after [REDACTED] implied that [REDACTED] had diarrhea.
6. On or about May 7, 2013, you directed [REDACTED] to breathalyze all students getting on the Prom buses, and then you chose not to breathalyze students on the Prom bus(es) for which you were responsible.

Staff Related Issues

7. Since the beginning of the 2010-2011 school year, you have, on numerous occasions, dismissed the work related feedback, ideas and advice of [REDACTED] by stating "stop thinking like a mom," or words to that effect. This conduct was unprofessional and dismissive of these [REDACTED] colleagues.
8. Several [REDACTED] expressed that they do not want you to be alone with [REDACTED] because they are concerned that you will say "stupid, thoughtless, sexual, or insensitive things to them," or words to that effect.
9. On or about February 5, 2013, during an incoming 9th grade open house, you introduced [REDACTED] or words to that effect, which reportedly made [REDACTED] feel uncomfortable.
10. A [REDACTED] employee has reported that you were very flirtatious with [REDACTED] and have hugged [REDACTED], rubbed [REDACTED] back, put your arms around [REDACTED] and made inappropriate comments toward [REDACTED]. [REDACTED] stated that this behavior has made [REDACTED] uncomfortable enough to avoid being in a room alone with you. [REDACTED] observed an instance of this behavior, on or about May 6, 2013. In addition, [REDACTED] have reported that your comments and innuendo cause them to be uncomfortable and to avoid being alone with you.

As indicated by the foregoing, your conduct has been insensitive, inappropriate, unprofessional and unsatisfactory. You have previously been apprised of several of these allegations and were provided an opportunity to respond to them, which you did via letter dated June 14, 2013, a copy of which has been attached hereto. In an effort to assist you in overcoming these deficiencies, you will be expected to comply with the following directives:

- A. Communicate with students and District staff in a professional and respectful manner, and refrain from profanity, sexual comments and innuendo, and derogatory terms. Commenting on physical attributes and the dress of students or colleagues is inappropriate. You must also avoid patronizing terms such as "sweetheart" when addressing women.
- B. When interacting with students or District staff, avoid actions and language that are flirtatious or sexual in nature. This includes avoiding any physical contact with students or staff members.
- C. Be sensitive, respectful, and professional toward others at all times.

- D. You are directed to complete a sexual harassment prevention training (which may be online) within 90 days and provide proof of completion to the Assistant Superintendent for Human Resources. The District will reimburse you for the cost of the training.
- E. You are strongly encouraged to seek counseling to assist you in understanding the appropriate behavior boundaries for your interactions with students and staff. The District will pay for three counseling sessions.
- F. Follow all District directives, policies and procedures.

The District is willing to further assist you in overcoming these deficiencies. If you have any questions concerning the above directives or require assistance, please contact me directly. However, please be advised that you must correct these deficiencies immediately. Your failure to immediately implement the directives listed above could result in further disciplinary action, up to and including dismissal.

Please be advised that the District reserves the right to proceed with a suspension or dismissal proceeding prior to the expiration of the 45/90-day remediation period specified in Education Code section 44938 in the event and to the extent that past or future instances of misconduct may constitute causes for disciplinary action on grounds other than unprofessional conduct or unsatisfactory performance.

A copy of this notice will be placed in your personnel file. You have the right to prepare a written response to this notice within ten (10) days following receipt. Your response will be attached to this notice and also placed in your personnel file. Enclosed please find a copy of your last Performance Evaluation.

Sincerely,

Scott Bowers, Ed.D  
Assistant Superintendent, Human Resources  
Palo Alto Unified School District  
25 Churchill Avenue  
Palo Alto, CA 94306-1099  
sbowers@pausd.org

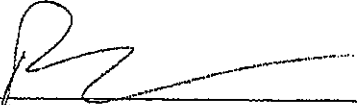
cc: Personnel File

Enclosures: Acknowledgement of Receipt



**ACKNOWLEDGMENT OF RECEIPT**

I, Phil Winston, hereby acknowledge that on 8/14, 2013, I received a copy of this notice of unsatisfactory performance and unprofessional conduct. I further acknowledge that on 8/14, 2013, I met with Dr. Scott Bowers, Assistant Superintendent for Human Resources and reviewed this notice.

  
\_\_\_\_\_  
Phil Winston

8/14/13  
Date

August 22, 2013

Dr. Scott Bowers  
Assistant Superintendent, Human Resources  
Palo Alto Unified School District  
25 Churchill Avenue  
Palo Alto, CA 94306-1099

Re: Notice of August 13, 2013

Dear Dr. Bowers,

I am writing for two purposes. The first is to assure you that I will comply in all respects with the directives contained in your letter of August 13, 2013, even though the notice you provided does not comply with Education Code §44936. Because your letter of August 13, 2013, ~~does not comply with statutory prerequisites, I require that your letter be removed from my personnel file if it has been placed there.~~

I previously responded to most of the items in your letter of August 13, 2013, in my earlier response of June 14, 2013, which was delivered to the Superintendent. In addition, please note the following:

The comments regarding my failure to use a breathalyzer on prom busses are inaccurate.

~~The new reference to an alleged comment I made about "stop thinking like a mom" has been taken entirely out of context. I believe this comes from a matter on which [REDACTED] was working on a delicate and complicated discipline situation, and she and I were discussing how difficult it can be to make tough discipline decisions. We were talking about how sometimes as parents we have to make those decisions with our own kids, and what I said was something to the effect, "I have to stop thinking like a dad when doing school discipline and make sure that I follow what is in the handbook."~~

Sincerely,



Phil Winston

## Statement of Palo Alto School Board Vice President Dana Tom

One of the Board's highest priorities has always been to maintain a safe and respectful school environment for all students and staff. Our District has high expectations for professional conduct, and when these standards are not met, we expect a prompt, informed and fair response from District staff.

Last June, complaints of inappropriate behavior regarding the former Palo Alto High School Principal were reported to District administrators by school staff members. These concerns were taken seriously and an investigation began immediately, with assistance from the District's legal counsel.

While disputing some of the allegations, the employee accepted responsibility for his behavior. Citing matters both related and unrelated to the complaints, he requested support and a reassignment to a classroom position for the 2013-'14 school year.

Following the investigation and further consultation with legal counsel, the Board approved a corrective action plan in accordance with California Education Code, including - clear notice of unsatisfactory performance; clear guidance on expected conduct; clear consequences; and clear provisions for District assistance.

The Board authorized the requested reassignment to a classroom position after thoroughly considering the circumstances, the employee's successful record as a District teacher, and the employee's legal rights. He has been successful in meeting the District's high performance and behavioral expectations in his current teaching position.

Providing a welcoming and safe setting for students and staff continues to be of the utmost importance and we believe all staff members are committed to this goal.

April 8, 2014

**Statement from current Board President Barb Mitchell**

When people make mistakes, whether they are employees or students, our community expects prompt, informed and fair responses from District officials, and this is what took place.

## STATEMENT OF KEVIN SKELLY

As Superintendent of the District, it is my responsibility to carry out the goals of the Board. One of those goals is to create and maintain a safe and respectful environment at all of our schools for our students and staff.

Last June, we received concerns about the behavior of the former Palo Alto High School Principal. On the same day, we contacted our legal counsel and commenced an investigation into those concerns under his guidance and direction. The employee took responsibility for some of the allegations but disputed others.

Upon completion of the investigation, the Board and I met with our legal counsel and evaluated the options that were available to the District. We determined that the most appropriate course was to provide the employee with a corrective action plan—providing notice of unsatisfactory performance, clear guidance on expected conduct, clear consequences if our expectations are not met, and clear provisions for assistance.

The employee requested a reassignment back to the classroom where he had demonstrated success. He has been in this assignment since the beginning of this school year and continues to show his success as a teacher.

Personnel matters of this nature are always sensitive involving the rights of the employee, the rights of the staff and students and the public's right to information, all of which requires a careful balancing. We believe that in this instance all those rights were considered and protected.

While the behavior that was exhibited at Palo Alto High School was totally unacceptable, we have no reason to believe that the type of conduct that occurred there will be repeated. We will continue to monitor the situation and make sure that our goal of achieving and maintaining a safe school environment for all students and staff is met.

Any further questions about his matter should be directed to our legal counsel, Lou Lozano at (831) 646-1501.

## Summary of Certificated Employee Suspension/Termination Process

By Louis Lozano, Counsel to the Palo Alto Unified School District  
April, 2014

Regarding the suspension without pay or termination of a certificated employee, it may be helpful to know the following:

1. The process is the same for suspension without pay and termination.
2. The misconduct must be categorized into one of the California Education Code section 44932 causes.
3. As a precondition to suspension or dismissal on the basis of unprofessional conduct, the employee must have been given a "Notice of Unprofessional Conduct" which states specific conduct that is unprofessional, how the conduct must be changed, and an opportunity to remediate. No action may be filed for 45 days after the Notice is served, and, in any event, no action may be filed for suspension or termination of a certificated employee between May 15 and September 15 of any year. This is referred to as the moratorium period. The 45-day period following the service of the Notice of Unprofessional Conduct is the remediation period. If the conduct does not recur, there would, in most cases, not be a basis to file for suspension or termination.
4. A case that sustained termination for "evident unfitness" involved over one hundred acts of misconduct with repeated warnings to cease and correct. Under *Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444, the District would have had to prove that the certificated employee was "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies."
5. If a district initiates a dismissal action and either withdraws it before the hearing or loses at the hearing, the district is liable for all costs incurred by the employee including attorney's fees.
6. The panel that hears certificated employee suspension and termination actions is an ad hoc Commission on Professional Competence (CPC) which consists of one member appointed by the District, one member appointed by the employee and one administrative law judge (ALJ). The members appointed by the employee and the District must have taught in the same subject area or grade level of the employee for at least 5 years in the past 10 years. They may not be related to the employee subject to the discipline or employed by the District. If the District was unsuccessful in either a suspension or termination action, it would also pay for the cost of the ALJ as well as the salaries of the two lay members of the CPC.
7. Below is a summary of facts and outcomes of four certificated discipline cases. Two are published California Court of Appeal cases and two are recent Commission on Professional Competence decisions. These cases provide brief examples of how challenging it can be to suspend or dismiss a teacher.
  - a. A high school PE teacher was charged with unprofessional conduct for the following misconduct:
    - Putting his arm against a student's throat, causing the student to nearly lose consciousness.
    - Slamming a male student into the wall in a restroom and putting one hand around the student's throat.
    - Giving a fourteen year-old female student a "birthday spanking" with a paddle. He hit her so hard she was bruised and unable to sit the next day.

The CPC panel issues a suspension, which was overturned by the Court of Appeal. The Court stated that the employee needed to be given notice and opportunity to correct his behavior. (*Crowl v. Commission on Professional Competence* (1990) 225 Cal.App.3d 334.)

b. After three trials, a teacher was convicted of eight counts of lewd acts with four female children and was sentenced to seven concurrent 15-years-to-life prison terms. The conviction was overturned four years later based on juror bias and the District Attorney chose not to retry the case. The school district tried to dismiss him based on the same facts in 2008. The hearing did not occur until January 2010. The CPC found he was not unfit for service and reinstated him.

Specifically, the CPC found that the student (who was six or seven years old at the time of the acts and was fourteen when she testified) was not credible in part because she “laced significant emotion” and her mother, another witness, appeared to overdramatize the events during her testimony. The CPC’s findings and credibility determinations were upheld by the appellate court. (*San Diego Unif. School Dist. v. Commission on Professional Competence* (2013) 214 Cal.App.4th 1120.)

c. In 2013, a school district attempted to suspend or dismiss a high school P.E. teacher based on the following:

- The teacher approached two students who were “squaring off” to fight, but were not engaged in fighting. The teacher punched one student in the mouth so hard it loosened teeth. That student was a special education student with a hearing impairment. The student reacted violently in response.
- The altercation was witnessed by a host of students, who wrote incident reports articulating their observations of the fight. At the hearing, a majority of the students admitted to omitting facts in the witness statements that could get the teacher “in trouble.”

The CPC refused to suspend or dismiss the teacher.

d. Also in 2013, a school district attempted to dismiss a second grade teacher for the following:

- He was caught on video shaking and yelling at a 2nd grade student.
- He dragged the student to the office by his neck and shoulders.
- Teacher admitted to overreacting, but sought anger counseling and therapy.

The CPC found violations of policy but stated that his actions were not adequate grounds for termination.