

BEFORE THE  
COMMISSION ON TEACHER COMPETENCE  
BURLINGAME SCHOOL DISTRICT  
SAN MATEO COUNTY  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JODI YOUNG,

Respondent.

OAH No. 2013030599

**DECISION**

A panel consisting of Beth Kanaly, appointed by Respondent, Michael Williams, appointed by the District, and Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Burlingame, California, on September 3, 4, 6, 9, 10, 11, and 12, 2013.

Ingrid Meyers, Attorney at Law, represented Burlingame School District.

Respondent Jodi Young was present and represented by Christopher E. Schumb, Attorney at Law.

The matter was submitted on September 12, 2013.

**FACTUAL FINDINGS**

1. Maggie MacIsaac made this accusation in her official capacity as the Superintendent of the Burlingame School District (District), San Mateo County, State of California.

2. Jodi Young (respondent) is a permanent certificated employee in the District assigned to teach Physical Education (P.E.) at Burlingame Intermediate School (BIS) for the 2012 - 2013 school year.

3. On February 5, 2013, the Superintendent filed with the Board of Education of the District written charges alleging that cause exists for immediate suspension without pay and dismissal, or in the alternative suspension for 60 days without pay, of respondent.

4. On February 5, 2013, the Board authorized and directed the service of a notice upon respondent that she would be dismissed, or in the alternative suspended for 60 days without pay, at the expiration of 30 days from service as an employee of the District unless she requested a hearing as provided by law and that she was being immediately suspended without pay.

5. It was stipulated by the parties that all the jurisdictional requirements were met by the District and that on March 4, 2013, respondent demanded a hearing to determine if there was cause to dismiss her, or in the alternative to suspend her for 60 days without pay.

### *Immoral Conduct*

6. It was not established by a preponderance of the evidence that respondent engaged in immoral conduct within the meaning of the law. The District has alleged sexual harassment on the part of respondent. The allegation that respondent touches female students' buttocks while they are performing push-ups is without merit. The allegation that respondent stares at students in P.E. when they are changing is also without merit. The testimony of Child #1, who was in respondent's third period P.E. class in the 2012 - 2013 school year, concerning these matters was not credible or persuasive. Her allegations started out as reasonable. She alleged that respondent touched her on the hips to help position her to do push-ups and that she did not like to be touched and asked respondent to stop once or twice in the previous school year. It may have happened that respondent did it again in the 2012 - 2013 school year and she was not sure if she had asked her to stop. After repeated questioning by District personnel, including the counselor, vice principal, and principal, the District's attorney, the police, and a deposition, Child # 1's story grew to outrageous proportions. For example, she claimed that respondent grabbed her buttocks in front of the entire P.E. class. None of the other students, including Child #1's friends, corroborated this allegation. In fact, at least two students testified that Child #1 fabricated this ever increasing allegation to get a transfer from respondent's P.E. class into another teacher's class, who she perceived as an easier teacher.

The allegation that respondent brushed her hand up against a female student's breast when walking past the student into the gym and turning and smiling at the student was also not established by a preponderance of the evidence. If anything similar did occur, it was accidental.

### *Evident Unfitness for Service*

7. It was not established by a preponderance of the evidence that respondent is evidently unfit for service as a teacher in the District within the meaning of the law. It was not established that respondent is unable to remediate her actions. There is no evidence that she has a defect of temperament or an inadequacy that is a fixed character trait, irremediable, and renders her unfit to teach. In fact, respondent successfully taught in the District for almost 20 years. She taught in the elementary school for about one half that time and then at the intermediate school for about nine years. Respondent was not sent to any educational

courses to learn how to deal with difficult students or increase her skills in managing difficult classroom situations.

*Persistent Violation or Willful Refusal to Obey the Laws of the State or Reasonable Regulations*

8. It was not established by a preponderance of the evidence that respondent persistently violated or willfully refused to obey the laws of the state or reasonable regulations prescribed for the government of public schools by the State Board of Education or by the Governing Board, within the meaning of the law. Respondent did not engage in sexual harassment or discrimination. While respondent did let her P.E. class play basketball and volleyball in the rain, there is no written rule or policy that does not allow a P.E. teacher discretion to make that call if it is too wet to stay outside. There was some miscommunication between respondent and the principal concerning Child #15's return to school after being expelled/suspended. The evidence did not establish that the principal sent an email to respondent and the other teachers in the school at the beginning of the day the child returned reminding them to let the child have a fresh start. No email was produced at the hearing. Respondent saw an email at the end of the day, after she had already spoken to the child. This does not constitute a violation of a school law or rule and regulation.

*Unprofessional Conduct*

9. It was established by a preponderance of the evidence that respondent engaged in unprofessional conduct within the meaning of the law. Respondent told a child that he was thought of as a "cheater, a liar, and a crook." This is the same student referred to as Child # 15, above. This was inappropriate and respondent recognized that it was inappropriate. She spoke to the student's father, and said she was sorry. She also apologized to the student. The father was not only concerned about respondent's comments, but about a number of other things he felt the District had mishandled. The District claims that they gave an oral warning to respondent about this matter, but there was no evidence presented to corroborate this claim. The principal's memory was poor and she could not recall anything with specifics.

In March 2011, respondent asked two female students, Child # 13 and Child # 14, who had been suspended for fighting in the locker room to retell their version of the incident and had each of them write a statement about what had occurred. They had completed their suspension and returned to school. Respondent wanted to resolve any dispute between the girls that may have still existed for the safety of the students in the locker room. Engaging in dispute resolution with the girls was not unprofessional conduct, but having them write out statements was going too far after the matter had already been investigated and the students disciplined. The principal gave respondent a written warning requiring her to speak with the administration before speaking with students regarding student discipline matters.

In October 2011, respondent was on duty at the front of the school when Child #10 started yelling at another student and threatened to go after her. Respondent stopped her by grabbing the student's arm. The child's father complained to the administration. Respondent

spoke to the father and the matter appeared to be resolved. On October 26, 2011, respondent walked up to the child in the yard. She said she wanted to talk to the child and lifted up the child's sleeve to check her arm for bruise marks. Respondent did not see any bruise marks and commented that she "thought so" and walked away. Stopping the student from going after another student was not unprofessional conduct. However, confronting the child and looking for a bruise was unprofessional conduct. Respondent should have spoken to the administration before speaking to the student. On November 16, 2011, respondent was provided with a Notice of Unprofessional Conduct based on the incidents with Child #15, Child #13, Child #14, and Child #10. On November 16, 2011, respondent was also suspended without pay for one day for grabbing a student.

10. On December 21, 2012, the last day of school before winter break, four female students (Child # 1, Child # 6, Child # 7, and Child #8) in respondent's third period P.E. class came to the main office very upset and reported to the Assistant Principal that respondent had required the class to remain outside even though it was raining. It was not established by a preponderance of the evidence that it was "pouring rain." There was no written policy at BIS concerning having P.E. class out in the rain. It is left to the discretion of the teacher. Respondent did bring the students into the locker room early that day. It was not established by a preponderance of the evidence that the students were at risk. It was not established by preponderance of the evidence that any student became ill because they were required to participate in P.E. in the rain.

Respondent called Child #1 into the P.E. office at the end of the class period. It was not established by preponderance of the evidence that respondent yelled at the student or threatened the student. In fact, it was established through the testimony of at least two other students who witnessed Child # 1's behavior during P.E. class that day and after class that the child was disrespectful and rude to respondent. Child # 1 wanted to switch classes because respondent took away points when the child was not participating in P.E. No other students testified that respondent's conduct made them upset, afraid, and or that they believed that respondent was going to hit the student. This incident does not constitute unprofessional conduct.

11. Respondent admitted that she changed her clothes in the P.E. office from her street pants to her gym shorts where students could see her. Respondent should have changed in private. Respondent also admitted that she discussed breast development with female students during class. This conduct is unprofessional. Respondent should take care not to be too familiar with her students. An educational opportunity involving appropriate boundaries for P.E. teachers and students would be helpful.

#### *Other Matters*

12. All other allegations not specifically dealt with in this decision that are in the accusation in this matter have been considered and found to be without merit.

13. While respondent did engage in a number of acts that constituted unprofessional conduct, none of them individually or in combination, were so serious as to support respondent's termination from her position with the District. Suspension for 10 days without pay is adequate to discipline respondent for her conduct.

### LEGAL CONCLUSIONS

1. By reason of the matters set forth in Factual Finding 6, cause for termination and/or suspension does not exist pursuant to Education Code section 44932, subdivision (a)(1) (immoral conduct).

2. By reason of the matters set forth in Factual Finding 7, cause for termination and/or suspension does not exist pursuant to Education Code section 44932, subdivision (a)(5) (evident unfitness for service).

3. By reason of the matters set forth in Factual Finding 8, cause for termination and/or suspension does not exist pursuant to Education Code section 44932, subdivision (a)(7) (persistent violation of state laws or rules and regulations).

4. By reason of the matters set forth in Factual Findings 9, and 11, cause for suspension exists pursuant to Education Code section 44932, subdivision (a)(1) and 44933 (unprofessional conduct). However, by reason of the matters set forth in Factual Finding 10, cause for termination and/or suspension does not exist pursuant to Education Code sections 44932, subdivision (a)(1) and 44933 (unprofessional conduct).

5. The matters set forth in Factual Findings 12 and 13 have been considered in making the following order.

ORDER

Jodi Young, tenured teacher for the Burlingame School District, is hereby suspended for 10 days without pay pursuant to Legal Conclusion 4. Respondent is given credit for the time she has been suspended without pay since January 2013. The District shall pay respondent back pay except for the 10 days of suspension set forth in this order.

DATED: 10-17-13



RUTH S. ASTLE  
Administrative Law Judge  
Office of Administrative Hearings

 10/21/13

BETH KANALY  
P.E. Teacher  
Appointed by Respondent



MICHAEL WILLIAMS  
Vice Principal  
Appointed by the District