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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Joshua R. Daniels, Chief Governance Officer

Meeting Date December 14, 2022

Subject Proposed Amendments to Board Policy 5145.3 - Nondiscrimination, Harassment and Transgender Policy

Ask of the Board Approval by the Board of Education of proposed amendment to Board Policy 5145.3 - Nondiscrimination, Harassment and Transgender Policy

Background Board Policy 5145.3 - Nondiscrimination, Harassment and Transgender Policy includes both the District’s policy against discrimination and harassment but also the District’s policy regarding Transgender students.

Discussion While a student’s actual or perceived gender can be a basis for discrimination or harassment, the District’s policy regarding Transgender students should be separate and apart. This is the case with similar Board Policies – e.g., Board Policy 5145.7 - Sexual Harassment specifically focuses on sexual harassment. The proposed amendment would remove the Transgender Policy portion of BP 5145.3 so that a companion item can create it as a standalone policy under Board Policy 5145.4 – Transgender Policy.

Fiscal Impact N/A

Attachment(s)

- Proposed Amendments to Board Policy 5145.3 - Nondiscrimination, Harassment and Transgender Policy (Redline)
- Proposed Amendments to Board Policy 5145.3 - Nondiscrimination, Harassment and Transgender Policy (Clean)

OAKLAND UNIFIED SCHOOL DISTRICT
Board Policy Students

BP 5145.3

Nondiscrimination/Harassment/Intimidation ~~and Transgender Policy~~

Nondiscrimination Policy

The Governing Board recognizes that the District is responsible for ensuring that it complies with state and federal laws and regulations governing educational programs. Further, the Board shall ensure equal opportunities for all students in admission and access to academic courses, guidance and counseling programs, athletic programs, testing procedures, vocational education and other activities.

This policy shall apply to all acts constituting unlawful discrimination or harassment related to school activity or to school attendance occurring within the District, and to acts which occur off campus or outside of school-related or school-sponsored activities but which may have an impact or create a hostile environment at school.

The Governing Board desires to provide a safe school environment that allows all students equal access and opportunities in the District's academic and other educational support programs, services, and activities. The Board prohibits, at any District school or school activity, unlawful discrimination, harassment (including sexual harassment), intimidation, and bullying of any student based on the student's actual or perceived race, color, ancestry, immigration status, national origin, ethnic group identification, citizenship, age, religion, marital or parental status, physical or mental disability, medical condition, status as a veteran or disabled veteran, sex, sexual orientation, gender, gender identity or gender expression, or homeless status; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.

Unlawful discrimination, including discriminatory harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct based on any of the categories listed above. Unlawful discrimination also occurs when prohibited conduct is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects a student's educational opportunities.

Unlawful discrimination also includes disparate treatment of students based on one of the categories above with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services.

The Board also prohibits any form of retaliation against any individual who reports or participates in the reporting of unlawful discrimination, files or participates in the filing of a

complaint, or investigates or participates in the investigation of a complaint or report alleging unlawful discrimination. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.

The Superintendent or designee shall facilitate students' access to the educational program by publicizing the District's nondiscrimination policy and related complaint procedures to students, parents/guardians, and employees. In addition, the Superintendent or designee shall post the District's policies prohibiting discrimination, harassment, intimidation, and bullying and other required information on the District's web site in a manner that is easily accessible to parents/guardians and students, in accordance with law and the accompanying administrative regulation.

The Superintendent or designee shall provide training and/or information on the scope and use of the policy and complaint procedures and take other measures designed to increase the school community's understanding of the requirements of law related to discrimination. The Superintendent or designee shall regularly review the implementation of the District's nondiscrimination policies and practices and, as necessary, shall take action to remove any identified barrier to student access to or participation in the District's educational program. The Superintendent or designee shall report the findings and recommendations to the Board after each review.

Regardless of whether a complainant complies with the writing, timeline, and/or other formal filing requirements, all complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying, shall be investigated and prompt action taken to stop the discrimination, prevent recurrence, and address any continuing effect on students.

Students who engage in unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, in violation of law, Board policy, or administrative regulation shall be subject to appropriate consequence or discipline, which may include suspension or expulsion when the behavior is severe or pervasive as defined in Education Code 48900.4. Any employee who permits or engages in prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall be subject to disciplinary action, up to and including dismissal.

The associated administrative regulation shall provide contract information for questions or complaints.

Record-Keeping

The Superintendent or designee shall maintain a record of all reported cases of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, to enable the District to monitor, address, and prevent repetitive prohibited behavior in District schools.

~~The California Code of Regulations defines “gender” as: “a person's actual sex or perceived sex and includes a person's perceived identity, appearance or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with a person's sex at birth.”~~

~~This policy is meant to advise school site staff and administration regarding transgender and gender non conforming student concerns in order to create a safe learning environment for all students, and to ensure that every student has equal access to all components of the District's educational program.~~

~~Schools are expected to implement this Policy as follows:~~

~~● **Names/Pronouns**~~

~~Students shall have the right to be addressed by a name and pronoun corresponding to their gender identity that is exclusively and consistently asserted at school.~~

~~● **Official Records**~~

~~The District shall change a student's official records to reflect a change in legal name or gender upon receipt of documentation that such legal name and/or gender have been changed pursuant to California legal requirements.~~

~~● **Restroom Accessibility**~~

~~Students shall have access to the restroom that corresponds to their gender identity exclusively and consistently at school.~~

~~● **Locker Room Accessibility**~~

~~Transgender students shall not be forced to use the locker room corresponding to their gender assigned at birth.~~

~~● **Sports and Gym Class**~~

~~Transgender students shall not be denied the opportunity to participate in sports and gym.~~

~~● **Dress Codes**~~

~~Students shall have the right to dress in accordance with their gender identity that is exclusively and consistently asserted at school, within the constraints of the dress codes adopted at their school site.~~

~~● **Gender Segregation in Other Areas**~~

~~As a general rule, in any other circumstances where students are separated by gender in school activities, students shall be permitted to participate in accordance with their gender identity exclusively and consistently asserted at school.~~

7/14/04; 10/26/11A; 11/14/12A; 02/24/21A; 12/14/22A

OAKLAND UNIFIED SCHOOL DISTRICT
Board Policy Students

BP 5145.3
Nondiscrimination/Harassment/Intimidation

Nondiscrimination Policy

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Gary Yee, President, BOE



Kyla Johnson-Trammell, Superintendent & Secretary, BOE