

Board Office Use: Legislative File Info.	
File ID Number	15-0300
Introduction Date	2-25-15
Enactment Number	15-0269
Enactment Date	2/25/15 O.A.



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Memo

To Board of Education

From Jacqueline Minor, General Counsel

Board Meeting Date February 25, 2015

Subject Amendment to Board Policy – BP 4020 Drug and Alcohol-Free Workplace

Action Requested Approval of updates to the Oakland Unified School District Board Policy BP 4020 Drug and Alcohol-Free Workplace

Background Periodically modifications to board policies are recommended to align with changes in law or recommended best practices. The proposed modifications to the board policies reflect the District's standards for employee use of technology.

Discussion In order to ensure that our policies are current, it is important for us to review and update our policies. The proposed changes are based upon the California Association of Schools Board's recommended model. The modifications have been reviewed and vetted by the General Counsel.

The changes to the policy are shown on the attachment. The proposed deletions are indicated with **blue strikeouts**. The recommended additions are shown in **red**.

Recommendation Approval of modification to the Oakland Unified School District Board Policy BP 4020 Drug and Alcohol-Free Workplace

Fiscal Impact No direct funding implications

Attachments Amendment to Board Policy BP 4020 Drug and Alcohol-Free Workplace

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

Personnel

BP 4020

Drug and Alcohol-Free Workplace

The Governing Board believes that the maintenance of a drug- and alcohol-free workplaces is essential to school staff and district operations.

~~No employee shall unlawfully manufacture, distribute, dispense, possess, use or be under the influence of any alcoholic beverage, drug or controlled substance as defined in 21 USC 81 at any school district workplace. These prohibitions apply before, during student safety and after school hours. A school district workplace is any place where school district work is performed, any school owned or school approved vehicle used to transport students to help ensure a productive and from school or school activities; any off school sites when accommodating a school sponsored or school approved activity or function where students are under district jurisdiction; or during any period of time when an employee is supervising students on behalf of the district or otherwise engaged in district business safe work and learning environment.~~

(cf. 4112.41/4212.41/4312.41 - Employee Drug Testing)

(cf. 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers)

An employee shall not unlawfully manufacture, distribute, dispense, possess, or use any controlled substance in the workplace. (Government Code 8355; 41 USC 8103)

Employees are prohibited from being under the influence of controlled substances or alcohol while on duty. For purposes of this policy, on duty means while an employee is on duty during both instructional and noninstructional time in the classroom or workplace, at extracurricular or cocurricular activities, or while transporting students or otherwise supervising them. Under the influence means that the employee's capabilities are adversely or negatively affected, impaired, or diminished to an extent that impacts the employee's ability to safely or effectively perform his/her job.

(cf. 4032 - Reasonable Accommodation)

The Superintendent or designee shall notify employees of ~~these prohibitions~~ the district's prohibition against drug use and the actions that will be taken for violation of such prohibition. (Government Code 8355; 41 USC ~~7028~~ 8103)

An employee shall abide by the terms of this policy and shall notify the district, within five days, of his/her conviction for violation in the workplace of any criminal drug ~~or alcohol statute-~~ conviction which he/she receives for a violation occurring in the workplace. (41 USC 702. (Government

Code 8355; 41 USC 8103)

The Superintendent or designee shall notify the appropriate federal granting or contracting agencies within 10 days after receiving notification, from an employee or otherwise, of any conviction for a violation occurring in the workplace. (41 USC ~~701~~8103)

~~The Board may not employ or retain in employment persons convicted of a controlled substance offense as defined in Education Code 44011. If any such conviction is reversed~~In accordance with law and the person acquitted in a new trial or ~~district's collective bargaining agreements,~~ the charges dismissed, his/her employment is no longer prohibited. A plea or verdict of guilty, a finding of guilt by a court in a trial without a jury, or a conviction following a plea of nolo contendere shall be deemed to be a conviction. (Education Code ~~44836, 45123~~)

~~(cf. 4112 - Appointment and Conditions of Employment)~~

~~(cf. 4212 - Appointment and Conditions of Employment)~~

~~A classified employee may be reemployed after conviction of such an offense if the Board determines, from the evidence presented, that the person has been rehabilitated for at least five years. (Education Code 45123)~~

~~The Board may~~Superintendent or designee shall take appropriate disciplinary action, up to and including termination, ~~or~~against an employee for violating the terms of this policy and/or shall require the employee to satisfactorily participate in and complete a drug assistance or rehabilitation program approved by a federal, state, or local public health, or law enforcement agency or other appropriate agency.

(cf. 4112 - Appointment and Conditions of Employment)

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

(cf. 4212 - Appointment and Conditions of Employment)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

~~A newly hired employee will be provided a copy of Board Policy 4020. This Board Policy is to be provided the new employee at the New Hire Orientation and the new employee will sign an acknowledgement that the information has been received and that s/he will abide by the terms of the policy.~~Drug-Free Awareness Program

The Superintendent or designee shall establish a drug-free awareness program to inform

employees about: (Government Code 8355; 41 USC 8103)

1. The dangers of drug abuse in the workplace
2. The district's policy of maintaining a drug-free workplace
3. Available drug counseling, rehabilitation, and employee assistance programs
(cf. 4159/4259/4359 - Employee Assistance Programs)
4. The penalties that may be imposed on employees for drug abuse violations occurring in the workplace

Legal Reference:

EDUCATION CODE

- 44011 Controlled substance offense
- 44425 Conviction of controlled substance offenses as grounds for revocation of credential
- 44836 Employment of certificated persons convicted of controlled substance offenses
- 44940 Compulsory leave of absence for certificated persons
- 44940.5 Procedures when employees are placed on compulsory leave of absence
- 45123 Employment after conviction of controlled substance offense
- 45304 Compulsory leave of absence for classified persons

GOVERNMENT CODE

8350-8357 Drug-free workplace

UNITED STATES CODE, TITLE 20

7111-7117 Safe and Drug Free Schools and Communities Act

UNITED STATES CODE, TITLE 21

812 Schedule of controlled substances

UNITED STATES CODE, TITLE 41

8101-8106 Drug-Free Workplace Act

CODE OF FEDERAL REGULATIONS, TITLE 21

1308.01-1308.49 Schedule of controlled substances

COURT DECISIONS

Cahoon v. Governing Board of Ventura USD, (2009) 171 Cal.App.4th 381

Ross v. RagingWire Telecommunications, Inc., (2008) 42 Cal.4th 920

Management Resources:

WEB SITES

California Department of Alcohol and Drug Programs: <http://www.adp.ca.gov>

California Department of Education: <http://www.cde.ca.gov>

U.S. Department of Labor: <http://www.dol.gov>

7/14/04; 3/9/05A; 2/25/15A (pending Board approval)

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

Personnel

BP 4020

Drug and Alcohol-Free Workplace

The Governing Board believes that the maintenance of a drug- and alcohol-free workplace is essential to staff and student safety and to help ensure a productive and safe work and learning environment.

(cf. 4112.41/4212.41/4312.41 - Employee Drug Testing)

(cf. 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers)

An employee shall not unlawfully manufacture, distribute, dispense, possess, or use any controlled substance in the workplace. (Government Code 8355; 41 USC 8103)

Employees are prohibited from being under the influence of controlled substances or alcohol while on duty. For purposes of this policy, on duty means while an employee is on duty during both instructional and noninstructional time in the classroom or workplace, at extracurricular or cocurricular activities, or while transporting students or otherwise supervising them. Under the influence means that the employee's capabilities are adversely or negatively affected, impaired, or diminished to an extent that impacts the employee's ability to safely or effectively perform his/her job.

(cf. 4032 - Reasonable Accommodation)

The Superintendent or designee shall notify employees of the district's prohibition against drug use and the actions that will be taken for violation of such prohibition. (Government Code 8355; 41 USC 8103)

An employee shall abide by the terms of this policy and shall notify the district, within five days, of his/her conviction for violation in the workplace of any criminal drug statute. (Government Code 8355; 41 USC 8103)

The Superintendent or designee shall notify the appropriate federal granting or contracting agency within 10 days after receiving notification, from an employee or otherwise, of any conviction for a violation occurring in the workplace. (41 USC 8103)

In accordance with law and the district's collective bargaining agreements, the Superintendent or designee shall take appropriate disciplinary action, up to and including termination, against an employee for violating the terms of this policy and/or shall require the employee to satisfactorily participate in and complete a drug assistance or rehabilitation program approved by a federal, state, or local public health or law enforcement agency or other appropriate agency.

(cf. 4112 - Appointment and Conditions of Employment)
(cf. 4117.4 - Dismissal)
(cf. 4118 - Suspension/Disciplinary Action)
(cf. 4212 - Appointment and Conditions of Employment)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

Drug-Free Awareness Program

The Superintendent or designee shall establish a drug-free awareness program to inform employees about: (Government Code 8355; 41 USC 8103)

1. The dangers of drug abuse in the workplace
2. The district's policy of maintaining a drug-free workplace
3. Available drug counseling, rehabilitation, and employee assistance programs

(cf. 4159/4259/4359 - Employee Assistance Programs)

4. The penalties that may be imposed on employees for drug abuse violations occurring in the workplace

Legal Reference:

EDUCATION CODE

44011 Controlled substance offense
44425 Conviction of controlled substance offenses as grounds for revocation of credential
44836 Employment of certificated persons convicted of controlled substance offenses
44940 Compulsory leave of absence for certificated persons
44940.5 Procedures when employees are placed on compulsory leave of absence
45123 Employment after conviction of controlled substance offense
45304 Compulsory leave of absence for classified persons

GOVERNMENT CODE

8350-8357 Drug-free workplace

UNITED STATES CODE, TITLE 20

7111-7117 Safe and Drug Free Schools and Communities Act

UNITED STATES CODE, TITLE 21

812 Schedule of controlled substances

UNITED STATES CODE, TITLE 41

8101-8106 Drug-Free Workplace Act

CODE OF FEDERAL REGULATIONS, TITLE 21

1308.01-1308.49 Schedule of controlled substances

COURT DECISIONS

Cahoon v. Governing Board of Ventura USD, (2009) 171 Cal.App.4th 381

Ross v. RagingWire Telecommunications, Inc., (2008) 42 Cal.4th 920

Management Resources:

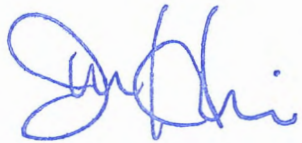
WEB SITES

California Department of Alcohol and Drug Programs: <http://www.adp.ca.gov>

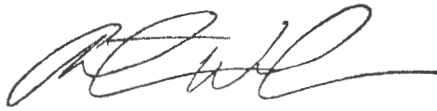
California Department of Education: <http://www.cde.ca.gov>

U.S. Department of Labor: <http://www.dol.gov>

7/14/04; 3/9/05A; 2/25/15A (pending Board approval)



James Harris
President, Board of Education



Antwan Wilson
Secretary, Board of Education