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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education
From Jacqueline Minor, General Counsel
Board Meeting Date April 22, 2015
Subject Amendments to Board Policy BP 3513.3 and 5131.62

Action Requested **Approval by the Board of Education of modifications in Board Policies 3513.3 and 5131.62**

Background Staff is recommending approval of changes in Board Policy 3513.3 and 5131.62 to conform to recommended changes by the California Department of Education and changes in state law relating to electronic cigarettes. It defines prohibited tobacco products to include products containing tobacco or nicotine, including, but not limited to, cigarettes, cigars, miniature cigars, smokeless tobacco, snuff, chew, clove cigarettes, betel, electronic cigarettes, electronic hookahs, and other vapor-emitting devices, with or without nicotine content that mimic the use of tobacco products.

Discussion The changes in the Board Policy conform to changes in State law and CDE's recommended definition of "tobacco products." The proposed changes are based upon the California School Board Association's recommended model and have been reviewed by the Office of the General Counsel.

Recommendation **Approval by the Board of Education of modifications in Board Policy 3513.3 and 5131.62**

Fiscal Impact N/A

Attachments

- Redline of Board Policy 3513.3
- Redline of Board Policy 5131.62

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

Business and Noninstructional Operations

BP 3513.3 - Tobacco-Free Schools

The Governing Board recognizes that smoking and other uses of tobacco and nicotine products constitute a serious public health hazard and are inconsistent with district goals to provide a healthy environment for students and staff.

(cf. 3514 - Environmental Safety)
(cf. 4159/4259/4359 - Employee Assistance Programs)
(cf. 5030 - Student Wellness)
(cf. 5131.62 - Tobacco)
(cf. 5141.23 - Asthma Management)
(cf. 6142.8 - Comprehensive Health Education)
(cf. 6143 - Courses of Study)

The Board prohibits the use of tobacco products at any time in district-owned or leased buildings, on district property, and in district vehicles. (Health and Safety Code 104420; Labor Code 6404.5; 20 USC 6083)

This prohibition applies to all employees, students, and visitors at any school-sponsored instructional program, activity, or athletic event held on or off district property. Any written joint use agreement governing community use of district facilities or grounds shall include notice of the district's tobacco-free schools policy and consequences for violations of the policy.

(cf. 1330 - Use of School Facilities)
(cf. 1330.1 - Joint Use Agreements)

The products prohibited include any product containing tobacco or nicotine, including, but not limited to, cigarettes, cigars, miniature cigars, smokeless tobacco, snuff, chew, and clove cigarettes, on district-owned or leased property, and in district vehicles at all times. This prohibition also applies to electronic nicotine delivery systems, such as electronic cigarettes, electronic hookahs, and other vapor emitting devices, with or without nicotine content, that mimic the use of tobacco products any time.

This policy does not prohibit the use or possession of prescription products, or other FDA-approved cessation aids that have been approved by the U.S. Department of Health and Human Services, Food and Drug Administration, such as nicotine patches or nicotine gum. Student use or possession of such products must conform to laws governing student use and possession of medications on school property.

Smoking or use of any tobacco-related product or disposal of any tobacco-related waste is prohibited within 25 feet of any playground, except on a public sidewalk located within 25 feet of the playground. In addition, any form of intimidation, threat, or retaliation against a person for attempting to enforce this policy is prohibited. (Health and Safety Code 104495)

Legal Reference:

EDUCATION CODE

48900 Grounds for suspension/expulsion

48901 Prohibition against tobacco use by students

HEALTH AND SAFETY CODE

39002 Control of air pollution from nonvehicular sources

104350-104495 Tobacco use prevention, especially:

104495 Prohibition of smoking and tobacco waste on playgrounds

119405 Unlawful to sell or furnish electronic cigarettes to minors

LABOR CODE

3300 Employer, definition

6304 Safe and healthful workplace

6404.5 Occupational safety and health; use of tobacco products

UNITED STATES CODE, TITLE 20

6083 Nonsmoking policy for children's services

7100-7117 Safe and Drug Free Schools and Communities Act

CODE OF FEDERAL REGULATIONS, TITLE 21

1140.1-1140.34 Unlawful sale of cigarettes and smokeless tobacco to minors

PERB RULINGS

Eureka Teachers Assn. v. Eureka City School District (1992) PERB Order #955 (16 PERC 23168)

CSEA #506 and Associated Teachers of Metropolitan Riverside v. Riverside Unified School District (1989) PERB Order #750 (13 PERC 20147)

Management Resources:

WEB SITES

California Department of Education, Alcohol, Tobacco and Other Drug Prevention:

<http://www.cde.ca.gov/ls/he/at>

California Department of Education, Tobacco-Free School District Certification:

<http://www.cde.ca.gov/ls/he/at/tobaccofreecert.asp>

California Department of Public Health, Tobacco Control: <http://www.cdph.ca.gov/programs/tobacco>

Occupational Safety and Health Standards Board: <http://www.dir.ca.gov/OSHSB/oshsb.html>

U.S. Environmental Protection Agency: <http://www.epa.gov>

| 7/14/04; 2/25/15A; 4/22/15

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy Students

BP 5131.62 - Tobacco

~~The Governing Board recognizes that tobacco use presents serious health risks and desires to provide support and assistance in the prevention and intervention of tobacco use among youth.~~

~~(cf. 5131.6 - Alcohol and Other Drugs)~~

The Governing Board recognizes the serious health risks presented by tobacco use and desires to ensure that, through adoption of consistent policies, district students are made aware of those risks and, to the extent possible, protected from them. The Superintendent or designee shall establish a coordinated school health system which includes a comprehensive behavioral health education component that teaches students the knowledge, skills, and attitudes they need in order to lead healthy lives and avoid high-risk behaviors, such as tobacco use.

(cf. 5141.23 - Asthma Management)

The Superintendent or designee shall provide prevention, intervention, and cessation education, information, activities, and/or referrals to district students and shall ensure consistent enforcement of district policies prohibiting student possession and use of tobacco products.

Prohibition Against Tobacco Use

Students shall not possess, smoke, or use tobacco, or any product containing tobacco or nicotine, or have in their possession, while on campus, while attending school-sponsored activities, or while under the supervision and control of district employees The products prohibited include any product containing tobacco or nicotine, including, but not limited to, cigarettes, cigars, miniature cigars, smokeless tobacco, snuff, chew, and clove cigarettes, on district-owned or leased property, and in district vehicles at all times. This prohibition also applies to electronic nicotine delivery systems, such as electronic cigarettes, electronic hookahs, and other vapor emitting devices, with or without nicotine content, that mimic the use of tobacco products any time,

This policy does not prohibit the use or possession of prescription products, or other FDA-approved cessation aids that have been approved by the U.S. Department of Health and Human Services, Food and Drug Administration, such as nicotine patches or nicotine gum. Student use or possession of such products must conform to laws governing student use and possession of medications on school property.

(Education Code 48900, 48901)

(cf. 3513.3 -- Tobacco-Free Schools)

(cf. 5131 - Conduct)

(cf. 5144 - Discipline)

(cf. 5144.1 - Suspension and Expulsion/Due Process)

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))

The district's comprehensive prevention / intervention program shall be based on an ongoing assessment of objective data regarding tobacco use in the schools, including but not limited to the California Healthy Kids Survey, and community and ongoing research identifying strategies that have proved effective in prevention or reducing tobacco use among youth. The program shall be designed to meet a set of measurable goals and objectives and shall be periodically evaluated to assess progress.

~~(cf. 0500 - Accountability)~~

(cf. 5141.21 - Administering Medication and Monitoring Health Conditions)

Prevention Instruction

The district shall provide developmentally appropriate, ~~scientifically researched~~ tobacco-use prevention ~~curriculum from the Local Educational Agency Plan list~~ instruction for students ~~in grades kindergarten through 12~~ at selected grade levels from K-12 pursuant to Education Code 51202. Such instruction shall be aligned with state content standards and the state curriculum framework for health education and with any requirements of state and/or federal grant programs in which the district participates.

(cf. 6142.8 - Comprehensive Health Education)

(cf. 6143 - Courses of Study)

~~The Superintendent or designee also may provide students with counseling and other support services to assist in the prevention or reduction of tobacco use.~~

~~(cf. 6164.2 - Guidance/Counseling~~ Intervention/Cessation ~~Services)~~

~~Because of the additional health risks of tobacco use for prenatal development, the district shall provide outreach, motivational and other support services to prevent or reduce tobacco use among pregnant and parenting minors.~~

~~(cf. 5146 - Married/Pregnant/Parenting Students)~~

~~Information about smoking cessation programs shall be made available and encouraged for students and staff. (Health and Safety Code 104420)~~

~~The Superintendent or designee shall coordinate prevention and~~

The district may provide or refer students to counseling, intensive education, and other intervention services to assist in the cessation of tobacco use. Such intervention services shall be provided as an alternative to suspension for tobacco possession. See, also, District Administrative Regulation 5131.62 Tobacco Referral Policy and Intervention Protocol.

(cf. 1020 - Youth Services)

(cf. 5141.6 - School Health Services)

(cf. 5146 - Married/Pregnant/Parenting Students)

(cf. 6164.2 - Guidance/Counseling Services)

Program Planning

The district's tobacco-use prevention and intervention program shall be based on an assessment of tobacco-use problems in district schools and the community, an examination of existing services and activities in the community, and a determination of high-risk student populations that are most in need of district services. The district's comprehensive prevention / intervention program shall be based on an ongoing assessment of objective data regarding tobacco use in the schools, including but not limited to the California Healthy Kids Survey, and community and ongoing research identifying strategies that have proved effective in prevention or reducing tobacco use among youth. The program shall be designed to meet a set of measurable goals and objectives and shall be periodically evaluated to assess progress.

The Superintendent or designee shall coordinate with the local health department and county office of education in program planning and implementation. He/she may establish an advisory council including students, parents/guardians, district staff, representatives of the local health department and community organizations ~~and~~, law enforcement professionals, and/or others with demonstrated expertise in tobacco prevention and cessation.

(cf. 1220 - Citizen Advisory Councils)

(cf. 1400 - Relations Between Other Governmental Agencies and the Schools)

The Superintendent or designee also shall coordinate the district's tobacco-use prevention and intervention program with other district efforts to reduce students' use of illegal substances and to promote student wellness.

(cf. 5030 - Student Wellness)

(cf. 5131.6 - Alcohol and Other Drugs)

(cf. 5131.63 - Steroids)

~~The Superintendent or designee shall involve students, parents/guardians, families and the community in support of school~~ select tobacco-use prevention programs based ~~programs on the model program designs identified by the California Department of Education (CDE) and may adapt the model to meet district needs. (Health and Safety Code 104420)~~

The Superintendent or designee shall not accept for distribution any materials or advertisements that promote the use or sale of tobacco products. He/she also shall not accept tobacco-use prevention or intervention funds or materials from the tobacco industry or from any entity which is known to have received funding from the tobacco industry.

(cf. 1325 - Advertising and Promotion)

(cf. 3290 - Gifts, Grants and Bequests)

(cf. 6161.1 - Selection and Evaluation of Instructional Materials)

Program Evaluation

To evaluate the effectiveness of the district's program and ensure accountability, the Superintendent or designee shall biennially administer the California Healthy Kids Survey or other appropriate student survey at selected grade levels in order to assess student attitudes toward tobacco and student use of tobacco. He/she also shall annually report to the Board, and to the CDE if required, the data specified in Health and Safety Code 104450.

(cf. 0500 - Accountability)

(cf. 5022 - Student and Family Privacy Rights)

(cf. 6162.8 - Research)

The results of program evaluations shall be used to refine program goals and objectives and make changes as needed to strengthen program implementation.

Legal Reference:

EDUCATION CODE

48900 Suspension or expulsion (grounds)

48900.5 Suspension, limitation on imposition; exception

48901 Smoking or use of tobacco prohibited

51202 Instruction in personal and public health and safety

60041 Instructional materials, portrayal of effects of tobacco use

HEALTH AND SAFETY CODE

104350-104495 Tobacco-use prevention education

119405 Unlawful to sell or furnish electronic cigarettes to minors

PENAL CODE

308 Minimum age for tobacco possession

CODE OF REGULATIONS, TITLE 17

6800 Definition, health assessment

6844-6847 Child Health and Disability Prevention program; health assessments

UNITED STATES CODE, TITLE 20

7111-7117 Safe and Drug-Free Schools and Communities Act

CODE OF FEDERAL REGULATIONS, TITLE 21

1140.1-1140.34 Unlawful sale of cigarettes and smokeless tobacco to minors

ATTORNEY GENERAL OPINIONS

88 Ops.Cal.Atty.Gen. 8 (2005)

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

TUPE Acceptance of Funds Guidance

Health Education Content Standards for California Public Schools: Kindergarten Through Grade Twelve, 2008

Health Framework for California Public Schools: Kindergarten Through Grade Twelve, 2003

Getting Results: Part II California Action Guide to Tobacco Use Prevention Education, 2000

WEST ED PUBLICATIONS

Guidebook for the California Healthy Kids Survey

WEB SITES

CSBA: <http://www.csba.org>

California Department of Education, Tobacco-Use Prevention Education:

<http://www.cde.ca.gov/ls/he/at/tupe.asp>

California Department of Public Health, Tobacco Control:

<http://www.cdph.ca.gov/programs/tobacco>

California Healthy Kids Resource Center: <http://www.californiahealthykids.org>

California Healthy Kids Survey: <http://www.wested.org/hks>

Centers for Disease Control and Prevention, Smoking and Tobacco Use:

<http://www.cdc.gov/tobacco>

U.S. Surgeon General: <http://www.surgeongeneral.gov>

7/14/04

4/22/15

James Harris
President, Board of Education

Antwan Wilson
Secretary, Board of Education

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