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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 September 14, 2011

Subject Board By-law 9327 - - Modification to Board Policy: Communications to the Board

Action Requested Approval of modifications in Board By-law 9327

Background The Brown Act and Board policies encourage public comment about the District's operations, including comment about the performance of public officials and employees, at Board meetings. But District policies and federal, state and local laws, prohibit discrimination against or harassment of District employees. Discriminatory or harassing comments about or in the presence of District employees may create a hostile work environment, if severe or pervasive. The modifications to BB 9327 acknowledge the public's right to comment on District operations at public meetings, while taking reasonable steps to protect District employees from discrimination and harassment.

Discussion The modifications to BB 9327 provide the procedure for responding to discriminatory or harassing remarks or comments made by a member of the public during public comment at meetings of the Board of Education. The procedures are:

If any person makes discriminatory or harassing remarks at a public meeting that violate federal or state law or District policies, the Board President shall immediately take the following actions: a) read the Board's policy against discrimination and harassment and state that comments in violation of District policy will not be condoned and will play no role in District decisions; and b) state that any District employee in the room who is offended by the discriminatory or harassing remarks is excused from attendance at the meeting, and that no District employee is compelled to remain in attendance where it appears likely that speakers will make further discriminatory or harassing comments.

If that person or others continue to make discriminatory or harassing remarks that violate District policy, the Board President shall remind the speaker of District policy, and then may recess the meeting temporarily. After this temporary interruption, speakers engaged in public comment shall be permitted to finish their allotted time.

Recommendation Approval by the modifications to BB 9327

Fiscal Impact N/A

Attachments • Redlined Copy of BB 9327

OAKLAND UNIFIED SCHOOL DISTRICT
Board Bylaw

BB 9327
Board Bylaws

Communications To The Board

Written Communications

Written communications to the Board involving policy matters which are properly the first concern of the Board shall be referred to appropriate committee or staff for development of a written response or other action by the Board. Written communications to the Board involving administrative matters which are properly the first concern of the Administration shall be referred to the Superintendent of Schools for a written response or other action by the Administration.

Public Requested Items on the Agenda

Members of the public may have matters directly related to school District business placed on the agenda of any regular meeting of the Board, provided a written request including supporting documentation for such item is received in the Board Office, addressed to the President of the Board no later than the 12 Noon the Wednesday preceding the next regularly scheduled meeting. Such request after introduction shall be referred to the appropriate Board committee for disposition.

Any item placed on the Board agenda by a member of the public will be for presentation and discussion only. The Board retains discretion whether or not to include such item for Board action on the agenda of any subsequent Board meeting. In making such determination, the Board may permit adequate time for study, analysis and response by its committees and/or the Superintendent. The Board may also remove any such item from the agenda when it appears that no member of the public present at the Board meeting wishes to discuss the matter.

If the request to place a matter on the Board's agenda pertains to a topic more appropriately discussed in Closed Session, the President or the Board may so advise the person requesting inclusion of such matter on the public meeting agenda. The Board retains discretion to determine those subjects, which it will consider in Closed Session pursuant to the requirements of law.

Verbal Communications to the Board

Oral presentations may be made before the Board or a committee thereof as follows:

(a) Procedure. Requests to address the Board or committee must be made by completing a card available at the entrance to the meeting room and personally filing it with the Board Office or the District's Public Information Office. Speaker cards must be submitted to the President or the Committee Chair prior to Board or Committee action on Modifications to the Agenda. The card should indicate the agenda item or items, the name of the speaker and/or topic, which the speaker seeks to address.

(b) Time Limit and Topic. Speakers shall limit their remarks to three minutes. A speaker or scheduled speaker may not yield his/her time to another person. If a speaker yields his or her time to ask or seek an answer to question, the time shall be charged to the speaker. The President or chair of a committee, however, is privileged to extend a time limit for any speaker, subject matter, or topic. The President or chair of a committee, however, is also privileged to restrict any speaker to the topic or subject under consideration.

(c) Out of Order Remarks. Each speaker, under law, is responsible for his or her remarks made in a meeting of the Board of Education or a committee. While the Board will not censure any person's speech, speakers are responsible for their remarks and should present all remarks courteously within the time permitted for such comments. At the same time, Board members are free to express criticism of remarks they believe are prejudicial or biased against other groups. They are free to remind speakers that prejudicial speech is antithetical to the aims of the educational endeavor.

If any member of the public uses obscenities or offensive language that could immediately provoke a violent reaction, the presiding officer, or any member of the board, upon recognition by the presiding officer, is free to calmly and politely advise the speaker to communicate civilly. This policy promotes mutual respect, civility, and orderly conduct among District employees, parents, students and the public. It shall be the Board's practice to maintain, to the extent feasible and reasonable, an atmosphere in which the public, the Board and District staff treat each other with respect. The Board is committed to maintaining the educational process and meetings free from disruptions that prevent learning and the free exchange of ideas.

(d) Order of Speaking/Time. The President or chair of a committee or the body is privileged to arrange requests by agenda, subject, or topic. Speakers wishing to address an agenda item will be called when that item is under discussion and before a vote is taken. Items posted on the agenda, which have been subsequently canceled or continued, are not subject to discussion by a member of the Board or of the public at that session of the committee or Board. Speakers on an agenda topic, other than public presentations, shall be called in the order of speakers card received alternating between proponent, opponent, alternative position on the issue. The Board, the committee or its chair shall announce the amount of time allocated for public comments on an agenda topic. Generally such amount of time shall not exceed one hour or unless the body consents to additional time. The amount of time allocation for public comment shall be announced in advance of consideration of the agenda item.

(e) Written Questions. Speakers are encouraged to present substantive questions in writing so that answers, as appropriate, may be made after due consideration.

(f) Oral Request. Members of the public may make an oral request at any Board of Committee meeting that a matter directly related to School District business be placed on the agenda pursuant to Rule 2074.

(g) Charges or Complaints Against Personnel. Charges or complaints against District personnel are urged to be addressed and resolved through the Uniform Complaint Procedure before addressing such issue to the Board.

(h) Disruptions.

- (1) Any individual who disrupts or threatens to disrupt Board operations; threaten the health and safety of Board Members, students, staff, or members of the public, or uses loud and/or offensive language which could provoke a violent reaction, the Chair will direct the individual to leave the meeting of the Board of Education, or its committee.
- (2) When an individual is directed to leave a Board meeting, the Chair shall inform the person that he/she will be guilty of a misdemeanor in accordance with California Education Code Section 44811 and Penal Code 415.5 and 626.7, if he/she reenters any District facility within 30 days after being directed to leave, or within seven days if the person is a parent/guardian of a student attending the school. If an individual refuses to leave upon request or returns before the applicable period of time, the Chair or designee may notify law enforcement officials.
- (3) If any speaker uses obscenities or speaks in a demanding, loud, insulting and/or demeaning manner, the Chair shall calmly and politely admonish the speaker to communicate civilly.

(i) Discriminatory or Harassing Comments

The District invites public comment about its operations, including comment about the performance of its public officials and employees, at the public meetings of the Board. But District policies, along with federal, state and local laws, prohibit discrimination against or harassment of District employees. Discriminatory or harassing comments about or in the presence of District employees, may create a hostile work environment, if severe or pervasive. **District policy prohibits discrimination or harassment of its employees on the basis of: Race, color, ancestry, national origin, ethnicity, place of birth, sex, age, religion, creed, disability or medical condition, HIV/AIDS status, sexual orientation, marital or domestic partner status, gender identity, pregnancy, or any other characteristic protected by state or federal employment discrimination laws.**

In order to acknowledge the public's right to comment on District operations at public meetings, while taking reasonable steps to protect District employees from discrimination and harassment, Governing Board shall adhere to the following procedures.

**HOW TO RESPOND TO DISCRIMINATORY OR HARASSING REMARKS
MADE AT A PUBLIC MEETING.**

If any person makes discriminatory or harassing remarks at a public meeting that violate federal or state law the Board President shall immediately take the following actions:

- a. The Board President shall read the Board's policy against discrimination and harassment, set forth above in bold type, into the record. The President shall state that comments in violation of District policy will not be condoned and will play no role in District decisions.
- b. ~~The President shall further state that any District employee in the room who is offended by the discriminatory or harassing remarks is excused from attendance at the meeting, and that no District employee is compelled to~~

~~remain in attendance where it appears likely that speakers will make further discriminatory or harassing comments.~~

If that person or others continue to make discriminatory or harassing remarks that violate District policy, the Board President shall remind the speaker of District policy, and then may recess the meeting temporarily. After this temporary interruption, speakers engaged in public comment shall be permitted to finish their allotted time.

10/27/04: 9/14/11