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OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

**To** Finance and Human Resources Committee of Board of Education

**From** Brigitte Marshall, Assistant Superintendent of Human Resources  
Jacqueline Minor, General Counsel

**Safety Committee Board Meeting Date** October 17, 2011

**Subject** Amendment to Board Policy BP 4030

**Action Requested** Approval of updates to the Oakland Unified School District Board Policy BP 4030 Nondiscrimination in Employment

**Background** The District maintains certain board policies to inform its employees and the public of its commitment to an equal employment opportunity workplace. Periodically, modifications to policies are recommended to align with changes in law or recommended best practices. In addition, the Strategic Plan passed by the Board emphasizes the development and maintenance of equitable systems within the District to help achieve the goals of the Strategic Plan, including safe, healthy and supportive schools and high quality and effective instruction. As a result, the proposed modifications to the board policies reflect the District's high standards toward anti-discrimination and re-emphasize to employees the District's standards and complaint procedures.

**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 modifications to the Oakland Unified School District Board Policy BP 4030 Nondiscrimination in Employment

**Fiscal Impact** Funding resource: no direct funding implications

**Attachments**

- Amendment to Board Policy BP 4030 Nondiscrimination in Employment

# OAKLAND UNIFIED SCHOOL DISTRICT

## Board Policy

BP 4030  
Personnel

### Nondiscrimination In Employment

The Governing Board prohibits ~~unlawful~~ discrimination against and/or harassment of district employees and job applicants at any district site or activity on the basis of actual or perceived race, religion, color, national origin, ancestry, ~~religion~~, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran status, gender, sex, or sexual orientation ~~at any district site and/or activity. The Board also prohibits retaliation against any district employee or job applicant who complains, testifies or in any way participates in the district's complaint procedures instituted pursuant to this policy.~~

(cf. ~~4031 - Complaints Concerning Discrimination in Employment~~ 0410 - Nondiscrimination in District Programs and Activities)

(cf. 4032 - Reasonable Accommodation)

(cf. 4119.11/~~4219.11/4319.11~~ - Sexual Harassment)

(cf. 4119.41/~~4219.41/4319.41~~ - Employees with Infectious Disease)

(cf. 4154 - Health and Welfare Benefits)

(cf. 5145.7 - Sexual Harassment)

Prohibited discrimination or harassment consists of unwelcome conduct, whether verbal, physical, or visual, based on any of the prohibited categories of discrimination listed above that it is so severe and pervasive that it adversely affects an individual's employment opportunities or has the purpose or effect of unreasonably interfering with his/her work performance or creating an intimidating, hostile, or offensive work environment.

The Board also prohibits retaliation against any district employee or job applicant who complains, testifies, assists, or in any way participates in the district's complaint procedures instituted pursuant to this policy.

Any district employee who engages or participates in ~~unlawful~~ prohibited discrimination or harassment, or who aids, abets, incites, compels, or coerces another to ~~discriminate, is engage or attempt to engage in such behavior, shall be~~ in violation of this policy and ~~is~~ shall be subject to disciplinary action, up to and including dismissal.

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

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

The Board designates the position(s) to intake and/or handle complaints by employees regarding

discrimination and harassment in employment and inquiries regarding the district's nondiscrimination in employment policies as set forth in AR 1312.3 – Uniform Complaint Procedures.

Any employee or job applicant who believes that he/she has been or is being discriminated against or harassed in violation of district policy or regulation should file a complaint in accordance with AR 4031 – Complaints Concerning Discrimination in Employment. An employee may bypass his/her supervisor in filing a complaint where the supervisor is the subject of the complaint.

(cf. 4031 - Complaints Concerning Discrimination in Employment)

Any district employee who observes or has knowledge of an incident of ~~unlawful prohibited~~ discrimination or harassment shall report the incident to ~~the principal, district administrator or Superintendent~~ his/her supervisor or Ombudsperson as soon as practical after the incident. Failure of a district employee to report discrimination or harassment may result in disciplinary action.

### Training and Notifications

The Superintendent or designee shall provide training to employees about how to recognize harassment and discrimination, how to respond appropriately, and components of the district's policies and regulations regarding discrimination.

(cf. 4131- Staff Development)

The Superintendent or designee shall regularly publicize, within the district and in the community, the district's nondiscrimination policy and the availability of complaint procedures. Such publication shall be included in each announcement, bulletin, or application form that is used in employee recruitment. (34 CFR 100.6, 106.9)

The district's policy ~~and administrative regulation~~ shall be posted in all schools and offices including staff lounges and student government meeting rooms. (5 CCR 4960)

~~The Board designates the following position(s) as Coordinator(s) for Nondiscrimination in Employment:~~

\_\_\_\_\_  
~~(position title or name)~~ \_\_\_\_\_

\_\_\_\_\_  
~~(address)~~

\_\_\_\_\_  
~~(telephone number)~~

### ~~Other Remedies~~

An employee may, in addition to filing a discrimination complaint with the district, file a complaint with either the California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:

1. To file a valid complaint with DFEH, the employee must file his/her complaint within one year of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960. (Government Code 12960)
2. To file a valid complaint directly with EEOC, the employee must file his/her complaint within 180 days of the alleged discriminatory act(s). To file a valid complaint with EEOC after filing a complaint with DFEH, the employee must file the complaint within 300 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by DFEH, whichever is earlier. (42 USC 2000e-5)

Employees wishing to file complaints with the DFEH and EEOC should contact the nondiscrimination coordinator for more information.

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

CIVIL CODE

51.7 Freedom from violence or intimidation

GOVERNMENT CODE

11135 Unlawful discrimination

12900-12996 Fair Employment and Housing Act

PENAL CODE

422.7656 Definitions, hate crimes

CODE OF REGULATIONS, TITLE 2

7287.6 Terms, conditions and privileges of employment

CODE OF REGULATIONS, TITLE 5

4900-4965 Nondiscrimination in elementary and secondary education ~~programs receiving state financial assistance~~

UNITED STATES CODE, TITLE 20

~~1681-1688 Discrimination based on sex or blindness, Title IX~~

1681-1688 Title IX of the Education Amendments of 1972

UNITED STATES CODE, TITLE 29

621-634 Age Discrimination in Employment Act

794 Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

2000d-2000d-7 Title VI, Civil Rights Act of 1964, as amended

2000e-2000e-17 Title VII, Civil Rights Act of 1964, as amended

2000ff-2000ff-11 Genetic Information Nondiscrimination Act of 2008

2000h-2-2000h-6 Title IX, ~~1972 Education Act Amendments~~ of the Civil Rights Act of 1964

12101-12213 Americans with Disabilities Act  
CODE OF FEDERAL REGULATIONS, TITLE 28  
35.101-35.190 Americans with Disabilities Act  
CODE OF FEDERAL REGULATIONS, TITLE 34  
100.6 Compliance information  
[104.7 Designation of responsible employee for Section 504](#)  
104.8 Notice  
106.8 Designation of responsible employee and adoption of grievance procedures  
106.9 Dissemination of policy  
COURT DECISIONS  
~~[Carter v. California Department of Veterans Affairs \(2003\) 2003 Cal.LEXIS 5694](#)~~  
[Shephard v. Loyola Marymount](#), (2002) 102 CalApp.4th 837

Management Resources:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION [PUBLICATIONS](#)

[Questions and Answers: Religious Discrimination in the Workplace, 2008](#)

[Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002](#)

Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 1999

~~[Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, March, 1999](#)~~

U.S. DEPARTMENT OF EDUCATION, OFFICE ~~OF~~[FOR](#) CIVIL RIGHTS

Notice of Non-Discrimination, January, 1999

WEB SITES

EEOC: <http://www.eeoc.gov>

OCR: <http://www.ed.gov/offices/OCR>

~~DFEH~~[California Department of Fair Employment and Housing](#): <http://www.dfeh.ca.gov>

[U.S. Department of Education, Office for Civil Rights](#): <http://www.ed.gov/about/offices/list/ocr>

[U.S. Equal Employment Opportunity Commission](#): <http://www.eeoc.gov>

8/25/04; [10/26/11A](#)

# **OAKLAND UNIFIED SCHOOL DISTRICT**

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BP 4030

### **Personnel**

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UNITED STATES CODE, TITLE 29

621-634 Age Discrimination in Employment Act

794 Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

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2000e-2000e-17 Title VII, Civil Rights Act of 1964, as amended

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2000h-2-2000h-6 Title IX of the Civil Rights Act of 1964

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 34

100.6 Compliance information

104.7 Designation of responsible employee for Section 504

104.8 Notice

106.8 Designation of responsible employee and adoption of grievance procedures

106.9 Dissemination of policy

COURT DECISIONS

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U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS

Notice of Non-Discrimination, January 1999

WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

U.S. Equal Employment Opportunity Commission: <http://www.eeoc.gov>

8/25/04; 10/26/11A