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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 4119.11

Action Requested Approval of updates to the Oakland Unified School District Board Policy BP 4119.11 Sexual Harassment

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 4119.11 Sexual Harassment

Fiscal Impact Funding resource: no direct funding implications

Attachments

- Amendment to Board Policy BP 4119.11 Sexual Harassment

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

BP 4119.11, ~~4219.11, 4319.11~~

Personnel

-Sexual Harassment

The Governing Board prohibits sexual harassment of district employees and job applicants. The Board also prohibits retaliatory behavior or action against district employees or other persons who complain, testify or otherwise participate in the complaint process established pursuant to this policy and ~~the~~ administrative regulation.

(cf. 0410 - Nondiscrimination in District Programs and Activities)

(cf. 4030 - Nondiscrimination in Employment)

The Superintendent or designee shall take ~~all~~ actions necessary to ~~ensure the prevention, investigation, prevent, investige,~~ and ~~correction~~ remedy of sexual harassment, including but not limited to:

1. ~~Providing periodic training to all staff regarding the district's sexual harassment policy, particularly the procedures for filing complaints and employees' duty to use the district's complaint procedures in order to avoid harm.~~ Providing training to employees in accordance with law and administrative regulation

~~(cf. 4131 - Staff Development)~~

~~(cf. 4231 - Staff Development)~~

~~(cf. 4331 - Staff Development)~~

2. Publicizing and disseminating the district's sexual harassment policy to staff-

(cf. 4112.9/~~4212.9/4312.9~~ - Employee Notifications)

3. Ensuring prompt, thorough, and fair investigation of complaints-

4. Taking timely and appropriate corrective/remedial actions ~~after completion of investigation.~~ This(s), which may require interim separation of the complainant and the alleged harasser; and subsequent monitoring of developments-

Complaints and allegations of sexual harassment shall be kept confidential to the extent necessary to carry out the investigation or to take other subsequent necessary actions. (5 CCR 4964)

Any district employee or job applicant who ~~feels~~believes that he/she has been or is being sexually harassed, ~~or who has knowledge of any incident of sexual harassment by or against another employee,~~ shall file a job applicant or a student, shall immediately contact his/her supervisor, the principal, district administrator or Superintendent to obtain procedures for filing a complaint. ~~Complaints of sexual harassment shall be filed~~ 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)

~~An employee may bypass his/her supervisor in filing a complaint where the supervisor is the subject of the complaint.—~~

~~A supervisor, principal or other district administrator who receives a harassment complaint shall promptly notify the Superintendent or designee.~~

~~All complaints and allegations of sexual harassment shall be kept confidential to the extent necessary to carry out the investigation or take other subsequent necessary action. (5 CCR 4964)~~

Any district employee who engages or participates in sexual harassment; or who aids, abets, incites, compels, or coerces another to ~~commit~~engage or attempt to engage in sexual harassment against a district employee, job applicant, or student; is in violation of this policy and is subject to disciplinary action, up to and including dismissal.

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

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

Any district employee who observes or has knowledge of an incident of prohibited discrimination or harassment shall report the incident to 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.

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act, especially:

12940 Prohibited discrimination

12950.1 Sexual harassment training

LABOR CODE

1101 Political activities of employees

1102.1 Discrimination: sexual orientation

CODE OF REGULATIONS, TITLE 2

7287.8 Retaliation

7288.0 Sexual harassment training and education

CODE OF REGULATIONS, TITLE 5

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

UNITED STATES CODE, TITLE 42

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

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

2000h-2-2000h-6 Title IX, 1972 Education Act Amendments

CODE OF FEDERAL REGULATIONS, TITLE 34

106.9 Dissemination of policy

COURT DECISIONS

Department of Health Services v. Superior Court of California, (2003) 31 Cal.4th 1026

Faragher v. City of Boca Raton, (1998) 118 S.Ct. 2275

Burlington Industries v. Ellreth, (1998) 118 S.Ct. 2257

Gebser v. Lago Vista Independent School District, (1998) 118 S.Ct. 1989

Oncale v. Sundowner Offshore Serv. Inc., (1998) 118 S.Ct. 998

~~Juarez v. Ameritech Mobile Systems, (N.D. Ill.) 746 F.Supp. 798~~

~~Domhecker v. Malibu Grand Prix Corp., (5th Cir. 1987) 828 F.2d. 307~~

Meritor Savings Bank, FSB v. Vinson et al., (1986) 447 U.S. 57

Management Resources:

—OFFICE OF CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS
GENERAL

—Protecting Students from Harassment and Hate Crime, January, 1999

—WEB SITES

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

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

~~OCR~~ U.S. Department of Education, Office for Civil Rights:

<http://www.ed.gov/about/offices/OCRlist/ocr/index.html>

07/14/04; 10/26/11A

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

BP 4119.11
Personnel

Sexual Harassment

The Governing Board prohibits sexual harassment of district employees and job applicants. The Board also prohibits retaliatory behavior or action against district employees or other persons who complain, testify or otherwise participate in the complaint process established pursuant to this policy and administrative regulation.

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 4030 - Nondiscrimination in Employment)

The Superintendent or designee shall take actions necessary to prevent, investigate, and remedy of sexual harassment, including but not limited to:

1. Providing training to employees in accordance with law and administrative regulation
2. Publicizing and disseminating the district's sexual harassment policy to staff

(cf. 4112.9 - Employee Notifications)

3. Ensuring prompt, thorough, and fair investigation of complaints
4. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments

Complaints and allegations of sexual harassment shall be kept confidential to the extent necessary to carry out the investigation or to take other subsequent necessary actions. (5 CCR 4964)

Any district employee or job applicant who believes that he/she has been or is being sexually harassed shall 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 engages or participates in sexual harassment or who aids, abets,

incites, compels, or coerces another to engage or attempt to engage in sexual harassment against a district employee, job applicant, or student is in violation of this policy and is subject to disciplinary action, up to and including dismissal.

(cf. 4117.4 - Dismissal)
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U.S. Department of Education, Office for Civil Rights:

<http://www.ed.gov/about/offices/list/ocr/index.html>

07/14/04; 10/26/11A