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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** March 25, 2015

**Subject** Amendment to Board Policy – BP 5145.7 Sexual Harassment

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**Action Requested** Approval of updates to the Oakland Unified School District Board Policy BP 5145.7 Sexual Harassment

**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.

**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 5145.7 Sexual Harassment

**Fiscal Impact** No direct funding implications

**Attachments** Amendment to Board Policy BP 5145.7 Sexual Harassment

# OAKLAND UNIFIED SCHOOL DISTRICT

## Board Policy

### Students

BP 5145.7

#### Sexual Harassment

~~The following policy addresses harassment of and/or by students. For the policy addressing the sexual harassment of employees, see BP/AR 4119.11/4219.11/4319.11— Sexual Harassment.~~

The Governing Board is committed to maintaining ~~an educational~~ a safe school environment that is free from harassment ~~and discrimination~~. The Board prohibits sexual harassment of students ~~by other students, employees or other persons,~~ at school, or at school-sponsored or ~~during~~ school-related activities. The Board also prohibits retaliatory behavior or action against ~~persons~~ any person who ~~complain, testify, assist~~ reports, files a complaint or testifies about, or otherwise ~~participate~~ supports a complainant in ~~the complaint process established pursuant to this policy and the administrative regulation~~ alleging sexual harassment.

#### Definition

~~Sexual harassment is unwelcome conduct of a sexual nature that deprives students of access to educational benefits or opportunities provided by the District and/or that has the purpose or effect of creating a hostile academic environment.~~

The district strongly encourages any student who feels that he/she is being or has been sexually harassed on school grounds or at a school-sponsored or school-related activity by another student or an adult to immediately contact his/her teacher, the principal, or any other available school employee. Any employee who receives a report or observes an incident of sexual harassment shall notify the principal or a district compliance officer.

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

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 5131 - Conduct)

(cf. 5131.2 - Bullying)

(cf. 5137 - Positive School Climate)

(cf. 5141.4 - Child Abuse Prevention and Reporting)

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction)

Complaints regarding sexual harassment shall be investigated and resolved in accordance with law and district procedures specified in AR 1312.3 - Uniform Complaint Procedures. Principals are responsible for notifying students and parents/guardians that complaints of sexual harassment can be filed under AR 1312.3 and where to obtain a copy of the procedures.

(cf. 1312.3 - Uniform Complaint Procedures)

The Superintendent or designee shall take appropriate actions to reinforce the district's sexual harassment policy.

#### Instruction/Information

The Superintendent or designee ~~will endeavor to provide~~ shall ensure that all district students ~~with~~ receive age-appropriate ~~instruction and~~ information on sexual harassment. Such instruction and information ~~will~~ shall include:

1. What acts and behavior constitute sexual harassment, including the fact that sexual harassment could occur between people of the same ~~gender;~~ sex and could involve sexual violence
2. A clear message that students ~~are do~~ not ~~expected~~ have to endure sexual harassment; ~~under any circumstance~~
3. Encouragement to report observed ~~instances~~ incidents of sexual harassment; even where the alleged victim of the harassment has not complained; ~~and;~~
4. A clear message that student safety is the district's primary concern, and that any separate rule violation involving an alleged victim or any other person reporting a sexual harassment incident will be addressed separately and will not affect the manner in which the sexual harassment complaint will be received, investigated, or resolved
5. Information about the district's procedure for investigating complaints and the person(s) to whom a report of sexual harassment should be made.

~~(cf. 5137—Positive School Climate)  
(cf. 5141.41—Child Abuse Prevention)  
(cf. 5145.3—Nondiscrimination/Harassment)  
(cf. 6142.1—Family Life/Sex Education)~~

#### Complaint Process

~~Any student who feels that he/she is being or has been subjected to sexual harassment shall immediately contact his/her teacher, principal, counselor, or any other employee. A school employee to whom a complaint is made shall, within 24 hours of receiving the complaint, report it to the principal or designee.~~

~~Any school employee who observes any incident of sexual harassment involving a student shall immediately report this observation to the principal or designee, whether or not the victim files a complaint.~~

~~In any case of sexual harassment involving the principal or any other district employee to whom~~

~~the complaint would ordinarily be made, the employee who receives the student's report or who observes the incident shall immediately report it to the nondiscrimination coordinator or the Superintendent or designee.~~

~~(cf. 4119.11/4219.11/4319.11— Sexual Harassment)  
(cf. 5141.4— Child Abuse Reporting Procedures)  
(cf. 5145.3— Nondiscrimination/Harassment)~~

~~The principal or designee to whom a complaint of sexual harassment is reported shall immediately investigate the complaint in accordance with Administrative Regulation 5145.7. Where the principal or designee finds that sexual harassment occurred, he/she shall take prompt, appropriate action to end the harassment and address its effects on the victim. The principal or designee shall also advise the victim of any other remedies that may be available. The principal or designee shall file a report with the Superintendent or designee and refer the matter to law enforcement authorities, where required.~~

~~(cf. 1312.1— Complaints Concerning District Employees)~~

#### 6. Information about the rights of students and parents/guardians to file a civil or criminal complaint, as applicable

#### Disciplinary ~~Measures~~ Actions

Any student who engages in sexual harassment ~~of anyone~~ or sexual violence at school, ~~or~~ at a school-sponsored, or ~~during a~~ school-related activity is in violation of this policy and shall be subject to disciplinary action. For students in grades 4 ~~through~~ 12, disciplinary action may include suspension and/or expulsion, provided that, in imposing such discipline, the entire circumstances of the incident(s) shall be taken into account. ~~Pursuant to Education Code 48915(e), the Superintendent or designee shall recommend expulsion for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code. See AR 5144.1.~~

(cf. 5144 - Discipline)  
(cf. 5144.1 - Suspension and Expulsion/Due Process)  
(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))

Any staff member found to have engaged in sexual harassment or sexual violence toward any student shall be subject to discipline up to and including dismissal in accordance with applicable policies, laws, and/or collective bargaining agreements.

(cf. 4117.4 - Dismissal)  
(cf. 4117.7 - Employment Status Report)  
(cf. 4118 - Suspension/Disciplinary Action)  
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)  
(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

## Record-Keeping

The Superintendent or designee shall maintain a record of all reported cases of sexual harassment to enable the ~~D~~district to monitor, address, and prevent repetitive harassing behavior in ~~its~~district schools.

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

~~(cf. 4119.23/4219.23/4319.23—Unauthorized Release of Confidential/Privileged Information)~~

~~(cf. 3580 - District Records)~~

## Legal Reference:

### EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

#### 48900 Grounds for suspension or expulsion

48900.2 Additional grounds for suspension or expulsion; sexual harassment

48904 Liability of parent/guardian for willful student misconduct

48980 Notice at beginning of term

### CIVIL CODE

51.9 Liability for sexual harassment; business, service and professional relationships

1714.1 Liability of parents/guardians for willful misconduct of minor

### GOVERNMENT CODE

#### 12950.1 Sexual harassment training

### CODE OF REGULATIONS, TITLE 5

#### 4600-4687 Uniform complaint procedures

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

### UNITED STATES CODE, TITLE 20

#### 1221 Application of laws

#### 1232g Family Educational Rights and Privacy Act

1681-1688 Title IX, ~~D~~iscrimination

### ~~UNITED STATES CODE, TITLE 42~~

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

### UNITED STATES CODE, TITLE 42

#### 1983 Civil action for deprivation of rights

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

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

### CODE OF FEDERAL REGULATIONS, TITLE 34

#### 99.1-99.67 Family Educational Rights and Privacy

106.1-106.71 Nondiscrimination on the basis of sex in education programs

### COURT DECISIONS

Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567  
Flores v. Morgan Hill Unified School District, (2003, 9th Cir.) 324 F.3d 1130  
Reese v. Jefferson School District, (2001), 9th Cir. 208 F.3d 736  
Davis v. Monroe County Board of Education, (1999) 526 U.S. 629  
Gebser v. Lago Vista Independent School District, (1998) ~~118~~ 524 U.S.Ct. 1989 274  
~~Nabozny~~ Oona by Kate S. v. Podlesny, (1996, 7th ~~McCaffrey, (1998, 9th Cir.) 92~~ 143 F.3d 446 ~~473~~  
Doe v. Petaluma City School District, (1995, 9th Cir.) 54 F.3d 1447  
~~Oona R. S. etc. v. Santa Rosa City Schools et al, (1995) 890 F.Supp. 1452~~  
~~Rosa H. v. San Elizario Ind. School District, (W.D. Tex. 1995) 887 F. Supp. 140, 143~~  
~~Clyde K. v. Puyallup School District #3, (1994) 35 F.3d 1396~~  
~~Patricia H. v. Berkeley Unified School District, (1993) 830 F.Supp. 1288~~  
~~Franklin v. Gwinnet County Schools, (1992) 112 S. Ct. 1028~~  
~~Kelson v. City of Springfield, Oregon, (1985, 9th Cir.) 767 F.2d 651~~

Management Resources:

CSBA PUBLICATIONS

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014

Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011

U.S. DEPARTMENT OF EDUCATION, OFFICE OF FOR CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS GENERAL PUBLICATIONS

Protecting Students from Harassment and Hate Crime: A Guide for Schools, January 1999

OFFICE OF CIVIL RIGHTS' PUBLICATIONS

Questions and Answers on Title IX and Sexual Violence, April 2014

Dear Colleague Letter: Sexual Violence, April 4, 2011

Sexual Harassment: It's Not Academic, September 2008

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001

Sexual Harassment Guidance, March 1997

WEB SITES

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

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

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

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

8/25/04; 2/25/15A (pending Board approval)

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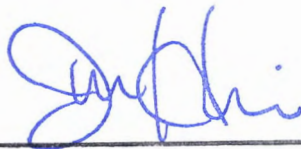
WEB SITES

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

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

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

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**James Harris**  
President, Board of Education



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**Antwan Wilson**  
Secretary, Board of Education

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