

<b>Board Office Use: Legislative File Info.</b>	
File ID Number	11-2778
Introduction Date	10/17/11
Enactment Number	11-2270
Enactment Date	10-26-11



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

**To** Teaching and Learning Committee of Board of Education

**From** Maria Santos, Deputy Superintendent of Human Resources  
Jacqueline Minor, General Counsel

**Safety Committee Board Meeting Date** October 26, 2011

**Subject** Amendment to Board Policies BP 5145.3

**Action Requested** Approval of updates to the Oakland Unified School District Board Policies BP 5145.3 Nondiscrimination/Harassment

**Background** The District maintains certain board policies to inform its students and the public of its commitment to provide learning environments that are free from inappropriate discrimination or harassment. 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 students, employees and the public, 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 Policies BP 5145.3 Nondiscrimination/Harassment

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

**Attachments**

- Amendment to Board Policies BP 5145.3 Nondiscrimination/Harassment

# OAKLAND UNIFIED SCHOOL DISTRICT

## Board Policy

### BP 5145.3 – Nondiscrimination/Harassment Students

~~The Oakland Unified School District prohibits unlawful discrimination against or harassment of any student in any District program or activity on the basis of race, color, national origin, ancestry, ethnic group identification, citizenship, sex, gender, gender identity, sexual orientation, marital status, physical or mental disability, medical condition (cancer-related), religion, age or status as a Vietnam-era Veteran or special disabled veteran.~~

The Governing Board ~~recognizes that the District is responsible for ensuring that it complies with state and federal laws and regulations governing educational programs. Further, the Board shall~~ desires to ensure equal opportunities for all students in admission and access to ~~academic courses~~ the district's educational programs, guidance and counseling programs, athletic programs, testing procedures, ~~vocational education~~ and other activities. District programs and activities shall be free from discrimination, including harassment, with respect to a student's actual or perceived sex, gender, ethnic group identification, race, national origin, religion, color, physical or mental disability, age, or sexual orientation.

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

(cf. 5145.9 - Hate-Motivated Behavior)

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

(cf. 6164.6 - Identification and Education Under Section 504)

The Board prohibits discrimination, intimidation, or harassment of any student by any employee, student, or other person in the district. Prohibited harassment includes physical, verbal, nonverbal, or written conduct based on one of the categories listed above that is so severe and pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the purpose or effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects the student's educational opportunities.

School staff and volunteers shall carefully guard against segregation, bias, and stereotyping in the delivery of services, including, but not limited to, instruction, guidance, and supervision.

(cf. 5145.2 - Freedom of Speech/Expression)

(cf. 6145 - Extracurricular and Cocurricular Activities)

(cf. 6145.2 - Athletic Competition)

(cf. 6164.2 - Guidance/Counseling Services)

The principal or designee shall develop a plan to provide students with appropriate accommodations when necessary for their protection from threatened or potentially harassing or

discriminatory behavior.

Any student who engages in discrimination or harassment of anyone at school or at a school-sponsored or school-related activity is in violation of this policy and shall be subject to disciplinary action. For students in grades 4-12, 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.

(cf. 4118 - Suspension/Disciplinary Action)

(cf. 4119.21/4219.21/4319.21- Professional Standards)

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

(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))

### Complaint Procedures

The Board hereby designates the following position(s) as Ombudsperson(s) for Nondiscrimination to handle complaints on behalf of students regarding discrimination and harassment and inquiries regarding the district's nondiscrimination policies:

Office of the Ombudsperson

1025 Second Avenue, Room 316

Oakland, CA 94606

Telephone: (510) 879-8685

Fax: (510) 879-8035

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 1312.3 - Uniform Complaint Procedures)

Any student who feels that he/she is being or has been subjected to discrimination or harassment should immediately contact the Ombudsperson, the principal, or any other district employee. Any student who observes an incident of discrimination or harassment should report the incident to the Ombudsperson, principal, or any other district employee whether or not the victim files a complaint. An employee who receives such a complaint shall report it to the Ombudsperson or principal within two school days. The investigation of such complaint shall be conducted in accordance with AR 1312.3 – Uniform Complaint Procedures.

The Superintendent or designee shall ensure that the student handbook clearly describes the district's nondiscrimination policy, procedures for filing a complaint regarding discrimination or harassment, and the resources that are available to students who feel that they have been the victim of discrimination or harassment. The district's policy may also be posted on the district website or any other location that is easily accessible to students.

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

48900.3 Suspension or expulsion for act of hate violence

48900.4 Suspension or expulsion for threats or harassment

48904 Liability of parent/guardian for willful student misconduct

48907 Student exercise of free expression

48950 Freedom of speech

49020-49023 Athletic programs

51500 Prohibited instruction or activity

51501 Prohibited means of instruction

60044 Prohibited instructional materials

CIVIL CODE

1714.1 Liability of parents/guardians for willful misconduct of minor

PENAL CODE

422.55 Definition of hate crime

422.6 Crimes, harassment

CODE OF REGULATIONS, TITLE 5

4600-4687 Uniform Complaint Procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1681-1688 Title IX of the Education Amendments of 1972

UNITED STATES CODE, TITLE 42

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

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

CODE OF FEDERAL REGULATIONS, TITLE 34

100.3 Prohibition of discrimination on basis of race, color or national origin

104.7 Designation of responsible employee for Section 504

106.8 Designation of responsible employee for Title IX

106.9 Notification of nondiscrimination on basis of sex

COURT DECISIONS

Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567

Flores v. Morgan Hill Unified School District, (2003) 324 F.3d 1130

Management Resources:

CSBA PUBLICATIONS

Providing a Safe, Nondiscriminatory School Environment for All Students, Policy Brief, April 2010

CALIFORNIA DEPARTMENT OF EDUCATION LEGAL ADVISORIES

California Student Safety and Violence Prevention - Laws and Regulations, April 2004

FIRST AMENDMENT CENTER PUBLICATIONS

Public Schools and Sexual Orientation: A First Amendment Framework for Finding Common Ground, 2006

NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Dealing with Legal Matters Surrounding Students' Sexual Orientation and Gender Identity, 2004  
U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS  
Notice of Non-Discrimination, January 1999

WEB SITES

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

California Safe Schools Coalition: <http://www.casafeschools.org>

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

First Amendment Center: <http://www.firstamendment.org>

National School Boards Association: <http://www.nsba.org>

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

7/14/04; 10/26/11A

# OAKLAND UNIFIED SCHOOL DISTRICT

## Board Policy

### BP 5145.3 – Nondiscrimination/Harassment Students

The Governing Board desires to ensure equal opportunities for all students in admission and access to the district's educational programs, guidance and counseling programs, athletic programs, testing procedures, and other activities. District programs and activities shall be free from discrimination, including harassment, with respect to a student's actual or perceived sex, gender, ethnic group identification, race, national origin, religion, color, physical or mental disability, age, or sexual orientation.

(cf. 0410 - Nondiscrimination in District Programs and Activities)  
(cf. 5145.9 - Hate-Motivated Behavior)  
(cf. 5146 - Married/Pregnant/Parenting Students)  
(cf. 6164.6 - Identification and Education Under Section 504)

The Board prohibits discrimination, intimidation, or harassment of any student by any employee, student, or other person in the district. Prohibited harassment includes physical, verbal, nonverbal, or written conduct based on one of the categories listed above that is so severe and pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the purpose or effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects the student's educational opportunities.

School staff and volunteers shall carefully guard against segregation, bias, and stereotyping in the delivery of services, including, but not limited to, instruction, guidance, and supervision.

(cf. 5145.2 - Freedom of Speech/Expression)  
(cf. 6145 - Extracurricular and Cocurricular Activities)  
(cf. 6145.2 - Athletic Competition)  
(cf. 6164.2 - Guidance/Counseling Services)

The principal or designee shall develop a plan to provide students with appropriate accommodations when necessary for their protection from threatened or potentially harassing or discriminatory behavior.

Any student who engages in discrimination or harassment of anyone at school or at a school-sponsored or school-related activity is in violation of this policy and shall be subject to disciplinary action. For students in grades 4-12, 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.

(cf. 4118 - Suspension/Disciplinary Action)  
(cf. 4119.21/4219.21/4319.21- Professional Standards)  
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)  
(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))

## Complaint Procedures

The Board hereby designates the following position(s) as Ombudsperson(s) for Nondiscrimination to handle complaints on behalf of students regarding discrimination and harassment and inquiries regarding the district's nondiscrimination policies:

Office of the Ombudsperson  
1025 Second Avenue, Room 316  
Oakland, CA 94606  
Telephone: (510) 879-8685  
Fax: (510) 879-8035

(cf. 1312.1 - Complaints Concerning District Employees)  
(cf. 1312.3 - Uniform Complaint Procedures)

Any student who feels that he/she is being or has been subjected to discrimination or harassment should immediately contact the Ombudsperson, the principal, or any other district employee. Any student who observes an incident of discrimination or harassment should report the incident to the Ombudsperson, principal, or any other district employee whether or not the victim files a complaint. An employee who receives such a complaint shall report it to the Ombudsperson or principal within two school days. The investigation of such complaint shall be conducted in accordance with AR 1312.3 – Uniform Complaint Procedures.

The Superintendent or designee shall ensure that the student handbook clearly describes the district's nondiscrimination policy, procedures for filing a complaint regarding discrimination or harassment, and the resources that are available to students who feel that they have been the victim of discrimination or harassment. The district's policy may also be posted on the district website or any other location that is easily accessible to students.

Legal Reference:  
EDUCATION CODE  
200-262.4 Prohibition of discrimination  
48900.3 Suspension or expulsion for act of hate violence  
48900.4 Suspension or expulsion for threats or harassment

48904 Liability of parent/guardian for willful student misconduct  
48907 Student exercise of free expression  
48950 Freedom of speech  
49020-49023 Athletic programs  
51500 Prohibited instruction or activity  
51501 Prohibited means of instruction  
60044 Prohibited instructional materials  
CIVIL CODE  
1714.1 Liability of parents/guardians for willful misconduct of minor  
PENAL CODE  
422.55 Definition of hate crime  
422.6 Crimes, harassment  
CODE OF REGULATIONS, TITLE 5  
4600-4687 Uniform Complaint Procedures  
4900-4965 Nondiscrimination in elementary and secondary education programs  
UNITED STATES CODE, TITLE 20  
1681-1688 Title IX of the Education Amendments of 1972  
UNITED STATES CODE, TITLE 42  
2000d-2000e-17 Title VI and Title VII Civil Rights Act of 1964, as amended  
2000h-2-2000h-6 Title IX of the Civil Rights Act of 1964  
CODE OF FEDERAL REGULATIONS, TITLE 34  
100.3 Prohibition of discrimination on basis of race, color or national origin  
104.7 Designation of responsible employee for Section 504  
106.8 Designation of responsible employee for Title IX  
106.9 Notification of nondiscrimination on basis of sex  
COURT DECISIONS  
Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567  
Flores v. Morgan Hill Unified School District, (2003) 324 F.3d 1130

Management Resources:

CSBA PUBLICATIONS

Providing a Safe, Nondiscriminatory School Environment for All Students, Policy Brief, April 2010

CALIFORNIA DEPARTMENT OF EDUCATION LEGAL ADVISORIES

California Student Safety and Violence Prevention - Laws and Regulations, April 2004

FIRST AMENDMENT CENTER PUBLICATIONS

Public Schools and Sexual Orientation: A First Amendment Framework for Finding Common Ground, 2006

NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Dealing with Legal Matters Surrounding Students' Sexual Orientation and Gender Identity, 2004

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

Notice of Non-Discrimination, January 1999

WEB SITES

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

California Safe Schools Coalition: <http://www.casafeschools.org>

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



First Amendment Center: <http://www.firstamendment.org>  
National School Boards Association: <http://www.nsba.org>  
U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

7/14/04; 10/26/11A