

Board Office Use: Legislative File Info.	
File ID Number	11-2779
Introduction Date	10/17/11
Enactment Number	11-2271
Enactment Date	10-26-11 <i>JS</i>



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 5145.7

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

Fiscal Impact Funding resource: no direct funding implications

Attachments

- Amendment to Board Policies BP 5145.7 Sexual Harassment

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

BP 5145.7

Students

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 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 who complain, testify, assist, or otherwise participate in ~~the district~~ complaint ~~process established pursuant to this policy and the administrative regulation~~processes.

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.~~

Instruction/Information

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

- ~~1. What acts and behavior constitute sexual harassment, including the fact that sexual harassment could occur between people of the same gender;~~
- ~~2. A clear message that students are not expected to endure sexual harassment;~~
- ~~3. Encouragement to report observed instances of sexual harassment, even where the victim of the harassment has not complained; and,~~
- ~~4. Information about 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. 5145.30410 - Nondiscrimination/Harassment) in District Programs and Activities~~

~~(cf. 6142.1 – Family Life/Sex Education)~~

1312.3 - Uniform Complaint Process Procedures)

~~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)

Instruction/Information

The Superintendent or designee shall ensure that district students receive age-appropriate instruction and information on sexual harassment. Such instruction and information shall include:

1. What acts and behavior constitute sexual harassment, including the fact that sexual harassment could occur between people of the same sex
2. A clear message that students do not have to endure sexual harassment
3. Encouragement to report observed instances of sexual harassment, even where the victim of the harassment has not complained
4. Information about the district's procedure for investigating complaints and the person(s) to whom a report of sexual harassment should be made

(cf. ~~5141.4 - Child Abuse Reporting Procedures~~5131.5 - Vandalism and Graffiti)

(cf. 5137 - Positive School Climate)

(cf. 5145.3 - Nondiscrimination/Harassment)

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

~~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.~~

Complaint Process

Any student who feels that he/she is being or has been sexually harassed by a school employee, another student, or a non-employee on school grounds or at a school-related activity (e.g., a visiting athlete or coach) 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.

(cf. 1312.1 - Complaints Concerning District Employees)
(cf. 5141.4 - Child Abuse Prevention and Reporting)

When the Superintendent or designee has determined that harassment has occurred, he/she shall take prompt, appropriate action to end the harassment and to address its effects on the victim.

Disciplinary ~~Measures~~ Actions

Any student who engages in sexual harassment of anyone 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~~

(cf. 5131 - Conduct)
(cf. 5144.1 - Suspension and Expulsion/Due Process)

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

Confidentiality and Record-Keeping

~~The Superintendent or designee shall maintain a record of all reported cases of sexual harassment to enable the District to monitor, address and prevent repetitive harassing behavior in its 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. 5125 - Student Records)

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

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

1681-1688 Title IX, ~~Discrimination~~discrimination

UNITED STATES CODE, TITLE 42

1983 Civil action for deprivation of rights

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

~~UNITED STATES CODE, TITLE 42~~

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

CODE OF FEDERAL REGULATIONS, TITLE 34

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) ~~418-524 U.S.Ct.~~1989 274

~~Nabozny~~Oona by Kate S. v. Podlesny, (1996, 7th Cir.) 92~~McCaffrey, (1998, 9th Cir.) 143~~ F.3d ~~446~~473

Doe v. Petaluma City School District, (1995, 9th Cir.) 54 F.3d 1447

~~Oona R. S. ete. 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:

OFFICE ~~OF~~FOR CIVIL RIGHTS ~~AND NATIONAL ASSOCIATION OF ATTORNEYS-~~
~~GENERAL~~

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

~~OFFICE OF CIVIL RIGHTS'~~ PUBLICATIONS

Sexual Harassment: It's Not Academic, September 2008

Revised Sexual Harassment Guidance, January 2001

~~Sexual Harassment Guidance, March 1997~~

WEB SITES

~~OCR~~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/index.html>

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

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

(cf. 1312.3 - Uniform Complaint Procedures)

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

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(cf. 5131.5 - Vandalism and Graffiti)

(cf. 5137 - Positive School Climate)

(cf. 5145.3 - Nondiscrimination/Harassment)

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

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visiting athlete or coach) 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.

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