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Enactment Date	11/14/18



# Memo

**To** Board of Education

**From** Marion McWilliams, General Counsel

**Board Meeting Date** November 14, 2018

**Subject** Amendment to Board Policy – Business and Noninstructional Operations – BP 3513.3 Tobacco-Free Schools

**Action Requested and Recommendation** Approval of updates to the Oakland Unified School District Board Policy BP 3513.3 Tobacco-Free Schools

**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** Policy updated to reflect a new law which requires all districts, not just those receiving state Tobacco-Use Prevention Education funds, to prohibit tobacco use on school campuses. Policy also reflects new definitions of "smoking" and "tobacco" pursuant to law.

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**.

**Fiscal Impact** No direct funding implications

**Attachments** Amendment to Board Policy BP 3513.3 Tobacco-Free Schools

# OAKLAND UNIFIED SCHOOL DISTRICT

## Board Policy

### Business and Noninstructional Operations

BP 3513.3

#### Tobacco-Free Schools

The Governing Board recognizes that smoking and other uses of tobacco and nicotine products constitute a serious public health hazard and are inconsistent with district goals to provide a healthy environment for students and staff.

*(cf. 3514 - Environmental Safety)*  
*(cf. 4159/4259/4359 - Employee Assistance Programs)*  
*(cf. 5030 - Student Wellness)*  
*(cf. 5131.62 - Tobacco)*  
*(cf. 5141.23 - Asthma Management)*  
*(cf. 6142.8 - Comprehensive Health Education)*  
*(cf. 6143 - Courses of Study)*

The Board prohibits smoking and/or the use of tobacco products at any time in district-owned or leased buildings, on district property, and in district vehicles. (Health and Safety Code 104420; ~~Labor Code 6404.5; 20 USC 6083, 104559~~)

~~This prohibition applies~~ These prohibitions apply to all employees, students, and visitors at any school-sponsored instructional program, activity, or athletic event held on or off district property. Any written joint use agreement governing community use of district facilities or grounds shall include notice of the district's tobacco-free schools policy and consequences for violations of the policy.

*(cf. 1330 - Use of School Facilities)*  
*(cf. 1330.1 - Joint Use Agreements)*

The

Smoking means inhaling, exhaling, burning, or carrying of any lighted or heated cigar, cigarette, pipe, tobacco, or plant product intended for inhalation, whether natural or synthetic, in any manner or form, and includes the use of an electronic smoking device that creates aerosol or vapor or of any oral smoking device for the purpose of circumventing the prohibition of smoking. (Business and Professions Code 22950.5; Education Code 48901)

Tobacco products ~~prohibited~~ include ~~any~~; (Business and Professions Code 22950.5; Education Code 48901)

1. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted,

~~sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, miniature little cigars, smokeless chewing tobacco, pipe tobacco, or snuff, chew, and clove cigarettes, on district owned or leased property, and in district vehicles at all times. This prohibition also applies to electronic nicotine delivery systems, such as~~

2. An electronic cigarettes, device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic hookahs, and other vapor emitting devices, with or without nicotine content, that mimic the use of tobacco products any time, cigarette, cigar, pipe, or hookah

3. Any component, part, or accessory of a tobacco product, whether or not sold separately

This policy does not prohibit the use or possession of prescription products, ~~or and~~ other ~~FDA-approved~~ cessation aids that have been approved by the U.S. Department of Health and Human Services, Food and Drug Administration, such as nicotine ~~patches or nicotine gum. Student use or possession of such products must conform to laws governing student use and possession of medications on school property~~ patch or gum.

Smoking or use of any tobacco-related product or disposal of any tobacco-related waste is prohibited within 25 feet of any playground, except on a public sidewalk located within 25 feet of the playground. In addition, any form of intimidation, threat, or retaliation against a person for attempting to enforce this policy is prohibited. (Health and Safety Code 104495)

*Legal Reference:*

*EDUCATION CODE*

*48900 Grounds for suspension/expulsion*

*48901 Prohibition against tobacco use by students*

*BUSINESS AND PROFESSIONS CODE*

*22950.5 Stop Tobacco Access to Kids Enforcement Act; definitions*

*HEALTH AND SAFETY CODE*

*39002 Control of air pollution from nonvehicular sources*

*104350-104495 Tobacco use prevention, especially:*

*104495 Prohibition of smoking and tobacco waste on playgrounds*

*104559 Tobacco use prohibition*

*119405 Unlawful to sell or furnish electronic cigarettes to minors*

*LABOR CODE*

*3300 Employer, definition*

*6304 Safe and healthful workplace*

*6404.5 Occupational safety and health; use of tobacco products*

*UNITED STATES CODE, TITLE 20*

*6083 Nonsmoking policy for children's services*

~~*7100-7117 Safe and Drug-Free Schools and Communities Act*~~

~~*7111-7122 Student Support and Academic Enrichment Grants*~~

*CODE OF FEDERAL REGULATIONS, TITLE 21*

*1140.1-1140.34 Unlawful sale of cigarettes and smokeless tobacco to minors*

*PERB PUBLIC EMPLOYMENT AND RELATIONS BOARD RULINGS*

*Eureka Teachers Assn. v. Eureka City School District (1992) PERB Order #955 (16 PERC 23168)*

*CSEA #506 and Associated Teachers of Metropolitan Riverside v. Riverside Unified School District (1989) PERB Order #750 (13 PERC 20147)*

*Management Resources:*

**WEB SITES**

*California Department of Education, Alcohol, Tobacco and Other Drug Prevention:* <http://www.cde.ca.gov/ls/he/at>

*California Department of Education, Tobacco-Free School District Certification:*

<http://www.cde.ca.gov/ls/he/at/tobaccofreecert.asp>

*California Department of Public Health, Tobacco Control:* <http://www.cdph.ca.gov/programs/tobacco>

*Occupational Safety and Health Standards Board:* <http://www.dir.ca.gov/OSHSB/oshsb.html>

*U.S. Environmental Protection Agency:* <http://www.epa.gov>

7/14/04; 2/25/15A; 5/13/15A; 11/14/18A (if adopted)



11/15/18

Aimee Eng  
President, Board of Education



11/15/18

Kyla Johnson-Trammell  
Secretary, Board of Education

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*(cf. 1330 - Use of School Facilities)*  
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Tobacco products include: (Business and Professions Code 22950.5; Education Code 48901)

1. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff
2. An electronic device that delivers nicotine or other vaporized liquids to the person

inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah

3. Any component, part, or accessory of a tobacco product, whether or not sold separately

This policy does not prohibit the use or possession of prescription products and other cessation aids that have been approved by the U.S. Department of Health and Human Services, Food and Drug Administration, such as nicotine patch or gum.

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*U.S. Environmental Protection Agency: <http://www.epa.gov>*

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