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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 December 11, 2013

Subject **Approval of Amendments to Board Policy No. 5145.12 – Search and Seizure**

Action Requested **Approval of Amendments to Board Policy No. 5145.12 – Search and Seizure**

Background
A one paragraph explanation

The District's existing Board Policy 5145.12 – Search and Seizure was approved in 2004. The amendment clarifies and updates the policy.

Discussion

The amended Board Policy and new Administrative Regulations make it clear that 1) the legal standard justifying a search by school administrative staff is "reasonable suspicion" and the standard justifying a search by District employees who are police officers is "probable cause;" 2) searches of students by school officials must be conducted by a member of the same gender; 3) and during a search, the District employee conducting the search shall not remove or arrange any of a student's clothing for a visual inspection of underclothing or private parts. The limitations in the Board Policy apply only to District administrative employees and not to District employees who are police officers.

Recommendation **Approval of Amendments to Board Policy No. 5145.12 – Search and Seizure**

Fiscal Impact Funding resource name: N/A

Attachments Amended Board Policy No. 5145.12 – Search and Seizure
New Administrative Regulations 5145.12 – Search and Seizure

OAKLAND UNIFIED SCHOOL DISTRICT

Administrative Regulation

AR 5145.12

Students

SEARCH AND SEIZURE

Student Searches

School Administrators who are not law enforcement personnel may search individual students, their property and district property under their control, when there is a **reasonable suspicion** that the search will uncover evidence that the student is violating the law, Board policy, administrative regulation, or other rules of the district or the school. If the search is conducted by law enforcement personnel, generally, with a few exceptions, there must be **probable cause** to believe the search will uncover evidence that a crime has been committed by the student to be searched.

Individual Searches

In determining whether reasonable suspicion exists, school administrators should consider the following:

1. The student's age and previous behavior patterns;
2. The urgency requiring the search;
3. The validity and reliability of the information used as a justification for the search;
4. The location of the student at the time of the incident which gave rise to reasonable suspicion.
5. **NOTE:** A hunch is not reasonable suspicion

When reasonable suspicion is established, the staff member should immediately contact the administrator in charge and respectfully escort the suspected student to a private or confidential office or separate area from other students. The student should remain under supervision at all times until the search begins. At least two staff should be present. A metal detector scan may be used during the search. The staff member should express to the suspected student or students the rationale for the search & seizure. Staff should ask the student if the suspected contraband is in the students' possession. Students should be directed to empty their pockets, purses, or back packs onto a table and to pull the pockets inside out to demonstrate they are empty.

School employees should avoid physical contact with student if possible.

If pat down of the outer clothing is determined to be necessary, it should be done by staff of the same gender as the student and must be done quickly with minimal contact. The employee should check the areas around the belt and interior pockets, looking for concealed weapons, drugs, or other contraband.

During a search, employees shall not (a) remove or arrange any or all of a pupil's clothing to permit a visual inspection of underclothing or private body parts or (b) conduct strip searches or body cavity searches of any student. (Education Code 49050.)

Except where there is a life-threatening safety concern, a search of a student (1) shall be conducted by a member of the same sex and (2) shall be conducted in the presence of at least one other district employee.

If the student is combative and or refuses to cooperate, District trained personnel should discontinue the attempted search and, depending upon the circumstances, contact law enforcement for appropriate response.

After the search, the school administrator or designee shall notify the parent/guardian of a student subjected to an individualized search immediately.

Lockers and Desks Searches

The school administrator or designee may conduct a general inspection of school properties that are within the temporary control of students, such as lockers and desks, on a regular, announced basis, with students standing by their assigned lockers or desks. Any items contained in a locker or desk shall be considered to be the property of the student to whom the locker or desk was assigned.

Because lockers and desks are under the joint control of the student and the district, school officials shall have the right and ability to open and inspect any school locker or desk without student permission or prior notice when they have reasonable suspicion that the search will uncover evidence of illegal possessions or activities or when odors, smoke, fire and/or other threats to health, welfare or safety emanate from the locker or desk.

1. The search should be conducted by the principal, assistant principal, or dean of students;
2. The student(s), if possible, should be forewarned and asked to be present;
3. The administrator should be accompanied by a witness.

Vehicle Searches

All vehicles driven or parked on District premises shall be subject to a search by assigned District representatives or law enforcement personnel for any reason at any time. Any person driving or parking any vehicle on District property shall be deemed to have consented to a search of his/her vehicle and all of its compartments and contents. Notice of this regulation shall be given by placing appropriate signs at all access points on District parking lots. The administration shall also maintain a written statement of these conditions in the District Ombudsperson's Office and at all school sites.

Searches in Criminal Investigations

If a search of a student is initiated by a police officer to gather evidence for a criminal investigation, during the search District staff will defer to the judgment and direction of the police officer.

Discovery of Weapons (or Other Contraband)

1. When an individual is found to be in possession of contraband, the administrator in charge and/or police officer shall immediately be called to the scene.
2. If the contraband is not allowed by law, the police officer should take custody of the objects and the subject.
3. If the contraband is not illegal but is prohibited by Education Code or District policy, the site administrator should take custody of the objects and take appropriate disciplinary administrative action with the student as per Education Code.
4. All property removed from the individual or an individual's locker, desk, or vehicle which is not permitted by law or District policy will not be returned to the individual or his or her parent/guardian upon completion of the search.

Legal Reference: California Constitution, Article I, Section 28 (c)
Education Code, Sections 35294; 48900; 49050-49051; 49330-49334
Penal Code, Sections 626.6; 626.9; 626.10
Case Law: 75 Ops. Ca. Atty. Gen 155 (1992); Gordan J. v. Santa Ana Unified School District (1984) 164 C.A. 3d 530, 545; New Jersey v. T.L.O. (1985) 469 U.S. 325.

12/11/2013

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

BP 5145.12 - Search and Seizure Students

As necessary to protect the health, safety and welfare of students and staff, school officials may search students, their property and/or district property under their control, and may seize illegal, unsafe and prohibited items. The Governing Board requires that discretion, good judgment and common sense be exercised in all cases of search and seizure.

Individual Searches

School officials who are not law enforcement personnel may search individual students, their property and district property under their control, when there is a reasonable suspicion that the search will uncover evidence that the student is violating the law, Board policy, administrative regulation, or other rules of the district or the school. If the search is by law enforcement personnel, there must be probable cause to believe the search will uncover evidence that a crime has been committed by the student to be searched.

During a search, school officials shall not (a) remove or arrange any or all of a student's clothing for a visual inspection of underclothing or private body parts or (b) conduct strip searches or body cavity searches of any student. (Education Code 49050.)

Except where there is a serious safety concern, a search of a student (1) shall be conducted by a member of the same gender and (2) shall be conducted in the presence of at least one other district employee.

The principal or designee shall notify the parent/guardian of a student subjected to an individualized search as soon as possible after the search.

(cf. 5145.11 - Questioning and Apprehension)

Student Lockers/Desks

The principal or designee may conduct a general inspection of school properties that are within the control of students, such as lockers and desks, on a regular, announced basis, with students standing by their assigned lockers or desks. Any items contained in a locker or desk shall be considered to be the property of the student to whom the locker or desk was assigned.

Because lockers and desks are under the joint control of the student and the district, school officials shall have the right and ability to open and inspect any school locker or desk without student permission or prior notice when they have reasonable suspicion that the search will uncover evidence of illegal possessions or activities or when odors, smoke, fire and/or other threats to health, welfare or safety emanate from the locker or desk.

Use of Metal Detectors

The Superintendent or designee shall establish procedures that ensure that metal detector searches are conducted in a consistent manner that minimizes or eliminates arbitrary and capricious enforcement by school officials.

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 0450 - Comprehensive Safety Plan)
(cf. 5131.7 - Weapons and Dangerous Instruments)
(cf. 5144.1 - Suspension and Expulsion/Due Process)

Legal Reference:

EDUCATION CODE

35160 Authority of governing boards
35160.1 Broad authority of school districts
35294-35294.9 School safety plans
49050-49051 Searches by school employees
49330-49334 Injurious objects

PENAL CODE

626.9 Firearms
626.10 Dirks, daggers, knives or razor; bringing into or possession of upon or within public school ground; exception

COURT DECISIONS

B.C. v. Plumas, (9th Cir. 1999) 192 F.3d 1260
O'Connor v. Ortega, (1987) 107 S. Ct. 1492
New Jersey v. T.L.O., (1985) 469 U.S. 325
Horton v. Goose Creek Independent School District, (5th Cir. 1982) 690 F.2d 470
Zamora v. Pomeroy, (10th Cir. 1981) 639 F.2d 662

ATTORNEY GENERAL OPINIONS

83 Ops. Cal. Atty. Gen. 257 (2000)
75 Ops. Cal. Atty. Gen. 155 (1992)

Management Resources:

WEB SITES

California Attorney General's Office: <http://caag.state.ca.us>
CDE, Safe Schools and Violence Prevention Office: <http://www.cde.ca.gov/spbranch/safety>

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Policy Reference UPDATE Service

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~~Employees~~ During a search, school officials shall not (a) remove or arrange any or all of a student's clothing for a visual inspection of underclothing or private body parts or (b) conduct strip searches or body cavity searches of any student. (Education Code 49050.)

Except where there is a serious safety concern, a search of a student (1) shall be conducted by a member of the same gender and (2) Searches of individual students shall be conducted in the presence of at least ~~two~~ one other district employees.

The principal or designee shall notify the parent/guardian of a student subjected to an individualized search as soon as possible after the search.

(cf. 5145.11 - Questioning and Apprehension)

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