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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 April 23, 2014

Subject **Approval of Amendments to Board Policy 4119.11 -- Sexual Harassment**

Action Requested **Approval of Amendments to Board Policy 4119.11 -- Sexual Harassment**

Background

A one paragraph explanation

The proposed amendments conform with State law and provide for explicit authority to Superintendent to discipline supervisory employees who do not comply with mandatory sexual harassment training.

Discussion

AB1825 amended the Fair Employment and Housing Act to require mandatory sexual harassment training once every two years for any employee who performs supervisory functions. The District through the Office of General Counsel provides the mandatory training. The amendments to the Board Policy reflect this State law requirement and direct the Superintendent to issue appropriate discipline to any supervisory employee, who after notice and opportunity to complete the mandatory training, does not complete the required training.

Recommendation Approval of Amendments to Board Policy 4119.11 -- Sexual Harassment

Fiscal Impact No Funding resource name: no additional funding is being authorized

Attachments Redline Approval of Amendments to Board Policy 4119.11 -- Sexual Harassment

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

BP 4119.11

Personnel

Sexual Harassment

The Governing Board prohibits sexual harassment of district employees and job applicants. The Board also prohibits retaliatory behavior or action against district employees or other persons who complain, testify or otherwise participate in the complaint process established pursuant to this policy and administrative regulation.

AB1825, which amended the Fair Employment and Housing Act, mandates sexual harassment training for any employee who performs supervisory functions. More specifically, the District must provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees once every two years, and to all new supervisory employees within six months of assuming a supervisory position. Effective May 1, 2014, in addition to the existing authority vested in the Superintendent to implement Board Policies, the Superintendent shall issue appropriate discipline to any supervisory employee, who after appropriate notice and opportunity to complete the mandatory training, does not complete the required training.

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

(cf. 4030 - Nondiscrimination in Employment)

The Superintendent or designee shall take actions necessary to prevent, ~~investige~~investigate, and remedy of sexual harassment, including but not limited to:

1. Providing training to employees in accordance with law and administrative regulation
2. Publicizing and disseminating the district's sexual harassment policy to staff

(cf. 4112.9 - Employee Notifications)

3. Ensuring prompt, thorough, and fair investigation of complaints
4. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments

Complaints and allegations of sexual harassment shall be kept confidential to the extent

necessary to carry out the investigation or to take other subsequent necessary actions. (5 CCR 4964)

Any district employee or job applicant who believes that he/she has been or is being sexually harassed shall file a complaint in accordance with AR 4031 – Complaints Concerning Discrimination in Employment. An employee may bypass his/her supervisor in filing a complaint where the supervisor is the subject of the complaint.

(cf. 4031 - Complaints Concerning Discrimination in Employment)

Any district employee who engages or participates in sexual harassment or who aids, abets, incites, compels, or coerces another to engage or attempt to engage in sexual harassment against a district employee, job applicant, or student is in violation of this policy and is subject to disciplinary action, up to and including dismissal.

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

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

Any district employee who observes or has knowledge of an incident of prohibited discrimination or harassment shall report the incident to his/her supervisor or Ombudsperson as soon as practical after the incident. Failure of a district employee to report discrimination or harassment may result in disciplinary action.

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act, especially:

12940 Prohibited discrimination

12950.1 Sexual harassment training

LABOR CODE

1101 Political activities of employees

1102.1 Discrimination: sexual orientation

CODE OF REGULATIONS, TITLE 2

7287.8 Retaliation

7288.0 Sexual harassment training and education

CODE OF REGULATIONS, TITLE 5

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

UNITED STATES CODE, TITLE 42

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

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

2000h-2-2000h-6 Title IX, 1972 Education Act Amendments

CODE OF FEDERAL REGULATIONS, TITLE 34

106.9 Dissemination of policy

COURT DECISIONS

Department of Health Services v. Superior Court of California, (2003) 31 Cal.4th 1026

Faragher v. City of Boca Raton, (1998) 118 S.Ct. 2275

Burlington Industries v. Ellreth, (1998) 118 S.Ct. 2257

Gebser v. Lago Vista Independent School District, (1998) 118 S.Ct. 1989

Oncale v. Sundowner Offshore Serv. Inc., (1998) 118 S.Ct. 998

Meritor Savings Bank, FSB v. Vinson et al., (1986) 447 U.S. 57

Management Resources:

OFFICE OF CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS

GENERAL

Protecting Students from Harassment and Hate Crime, January, 1999

WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

Equal Employment Opportunity Commission: <http://www.eeoc.gov>

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

<http://www.ed.gov/about/offices/list/ocr/index.html>

| 07/14/04; 10/26/11A; 04/23/14A