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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 February 25, 2015

Subject Amendment to Board Policy – BP 4030 Non Discrimination in Employment

Action Requested Approval of updates to the Oakland Unified School District Board Policy BP 4030 Non Discrimination in Employment

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 for employee use of technology.

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 modification to the Oakland Unified School District Board Policy BP 4030 Non Discrimination in Employment

Fiscal Impact No direct funding implications

Attachments Amendment to Board Policy BP 4030 Non Discrimination in Employment

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

Personnel

BP 4030

Nondiscrimination In Employment

The Governing Board ~~prohibits discrimination against and/or~~ desires to provide a positive work environment where employees and job applicants are assured of equal access and opportunities and are free from harassment ~~of~~ in accordance with law. The Board ~~prohibits~~ district employees ~~and job applicants at~~ from discriminating against or harassing any ~~other~~ district ~~site~~ employee or activity job applicant on the basis of the person's actual or perceived race, ~~religion~~ religious creed, color, national origin, ancestry, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran status, gender, gender identity, gender expression, sex, or sexual orientation.

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

(cf. 4032 - Reasonable Accommodation)

(cf. ~~4119.11 - Sexual Harassment~~ 4033 - Lactation Accommodation)

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

(cf. ~~4119.41/4219.41/4319.41~~ - Employees with Infectious Disease)

(cf. ~~4154/4254/4354~~ - Health and Welfare Benefits)

(cf. 5145.7 - Sexual Harassment)

Prohibited discrimination ~~or harassment~~ consists of ~~unwelcome conduct, whether verbal, physical, or visual, the taking of any adverse employment action against a person, including termination or denial of promotion, job assignment, or training, or in discriminating against the person in compensation, terms, conditions, or other privileges of employment~~ based on any of the prohibited categories of discrimination listed above.

The prohibition against discrimination based on the religious creed of an employee or job applicant includes any discrimination based on the person's religious dress or grooming practices or any conflict between the person's religious belief, observance, or practice and an employment requirement. The prohibition against discrimination based on the sex of an employee or job applicant shall include any discrimination based on the person's pregnancy, childbirth, breastfeeding, or any related medical conditions. (Government Code 12926, 12940)

Harassment consists of any unwelcome verbal, physical, or visual conduct that ~~it is~~ based on any of the prohibited categories of discrimination listed above and that is so severe ~~and/or~~ pervasive that it adversely affects an individual's employment opportunities ~~or~~, has the purpose or effect of unreasonably interfering with ~~his/her~~ the individual's work performance, ~~or creating~~ an intimidating, hostile, or offensive work environment.

The Board also prohibits retaliation against any district employee or job applicant who complains, testifies, assists, or in any way participates in the district's complaint procedures instituted pursuant to this policy.

Any district employee who engages ~~or participates in~~ prohibited discrimination ~~or~~ harassment, or retaliation or who aids, abets, incites, compels, or coerces another to engage or attempt to engage in such behavior, ~~shall be~~ in violation of this policy ~~and~~ shall be subject to disciplinary action, up to and including dismissal.

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

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

~~The Board designates the position(s) to intake and/or handle complaints by employees regarding discrimination and harassment in employment and inquiries regarding the district's nondiscrimination in employment policies as set forth in AR 1312.3 — Uniform Complaint Procedures.~~

Any employee or job applicant who believes that he/she has been or is being discriminated against or harassed in violation of district policy ~~or regulation~~ should ~~file a complaint in accordance with AR 4031 — Complaints Concerning Discrimination in Employment.~~ ~~An employee may bypass, as appropriate, immediately contact~~ his/her supervisor ~~in filing a complaint where, the supervisor is District Ombudsperson, or the subject of~~ Chief Talent Officer who shall advise the employee or applicant about the district's procedures for filing, investigating, and resolving any such complaint.

Complaints regarding employment discrimination or harassment shall immediately be investigated in accordance with AR 4031 - Complaints Concerning Discrimination in Employment.

(cf. 4031 - Complaints Concerning Discrimination in Employment)

Any ~~district~~ supervisory or management employee who observes or has knowledge of an incident of prohibited discrimination or harassment shall report the incident to ~~his/her supervisor or the~~ Ombudsperson or the Chief Talent Officer as soon as practical after the incident. ~~Failure of a district employee~~ All other employees are encouraged to report discrimination or harassment may result in disciplinary action such incidents to their supervisor immediately.

Training and Notifications

The Superintendent or designee shall provide training to employees about how to recognize harassment and discrimination, how to respond appropriately, and components of the district's policies and regulations regarding discrimination.

(cf. 4131- Staff Development)

(cf. 4231- Staff Development)

(cf. 4331- Staff Development)

The Superintendent or designee shall regularly publicize, within the district and in the community, the district's nondiscrimination policy and the availability of complaint procedures. Such publication shall be included in each announcement, bulletin, or application form that is used in employee recruitment. (34 CFR 100.6, 106.9)

The district's policy shall be posted in all district schools and offices including staff lounges and student government meeting rooms. (5 CCR 4960)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

CIVIL CODE

51.7 Freedom from violence or intimidation

GOVERNMENT CODE

11135 Unlawful discrimination

12900-12996 Fair Employment and Housing Act

PENAL CODE

422.56 Definitions, hate crimes

CODE OF REGULATIONS, TITLE 2

7287.6 Terms, conditions and privileges of employment

CODE OF REGULATIONS, TITLE 5

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 29

621-634 Age Discrimination in Employment Act

794 Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

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

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

2000ff-2000ff-11 Genetic Information Nondiscrimination Act of 2008

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

6101-6107 Age discrimination in federally assisted programs

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 34

100.6 Compliance information

104.7 Designation of responsible employee for Section 504

104.8 Notice

106.8 Designation of responsible employee and adoption of grievance procedures

106.9 Dissemination of policy

110.1-110.39 Nondiscrimination on the basis of age

COURT DECISIONS

Thompson v. North American Stainless LP, (2011) 131 S.Ct. 863

Shephard v. Loyola Marymount, (2002) 102 ~~CalApp~~Cal.App.4th 837

Management Resources:

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

Notice of Non-Discrimination, August 2010

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

Questions and Answers: Religious Discrimination in the Workplace, 2008

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002

Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 1999

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

~~Notice of Non-Discrimination, January 1999~~

WEB SITES

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

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

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

| 8/25/04; 10/26/11A; 2/25/15A (pending Board approval)

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

Personnel

BP 4030

Nondiscrimination In Employment

The Governing Board desires to provide a positive work environment where employees and job applicants are assured of equal access and opportunities and are free from harassment in accordance with law. The Board prohibits district employees from discriminating against or harassing any other district employee or job applicant on the basis of the person's actual or perceived race, religious creed, color, national origin, ancestry, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran status, gender, gender identity, gender expression, sex, or sexual orientation.

(cf. 0410 - Nondiscrimination in District Programs and Activities)
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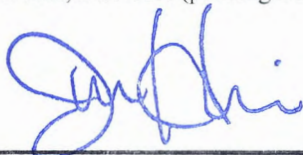
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California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

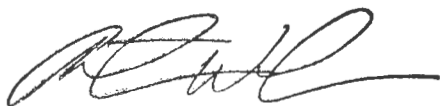
U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

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

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James Harris
President, Board of Education



Antwan Wilson
Secretary, Board of Education