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**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools. Thriving Students.

Memo

To Board of Education

From Jacqueline Minor, General Counsel
Nancy Talavera Herrera, Student at Fremont High School

Board Meeting Date August 26, 2015

Subject Amendment to Board Policy – BP 5131.2 Bullying

Action Requested Approval of updates to the Oakland Unified School District Board Policy BP 5131.2 Bullying

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 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 5131.2 Bullying

Fiscal Impact No direct funding implications

Attachments Amendment to Board Policy BP 5131.2 Bullying

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

Bullying

BP 5131.2 ~~—Bullying~~ Students—

The Governing Board recognizes the harmful effects of bullying on student learning and school attendance and desires to provide safe school environments that protect students from physical and emotional harm. —District employees shall establish student safety as a high priority and shall not tolerate bullying of any student.

~~Education Code 234.1 requires the Board to adopt a policy prohibiting discrimination, harassment, intimidation, and bullying.~~

~~Bullying is defined in Education Code 48900(r) as any severe or pervasive physical or verbal act(s) or conduct, including electronic communications, committed by a pupil(s) that has, or can be reasonably predicted to have, the effect of one or more of the following:~~

- ~~(1) Reasonable fear of harm to person or property.~~
- ~~(2) Substantially detrimental effect on physical or mental health.~~
- ~~(3) Substantial interference with academic performance.~~
- ~~(4) Substantial interference with the ability to participate in or benefit from school services, activities, or privileges.~~

No ~~student~~individual or group ~~of students~~ shall, through physical, written, verbal, or other means, harass, sexually harass, threaten, intimidate, retaliate, cyberbully, cause bodily injury to, or commit hate violence against any ~~other~~ student or school personnel. ~~—Conduct rises to the level of bullying only if it is severe or pervasive.—~~

- (cf. 5131 - Conduct)
- (cf. 5136 - Gangs)
- (cf. 5145.3 - Nondiscrimination/Harassment)
- (cf. 5145.7 - Sexual Harassment)
- (cf. 5145.9 - Hate-Motivated Behavior)

Cyberbullying includes the creation or transmission of harassing communications, direct threats, or other harmful texts, sounds, or images on the Internet, social media, or other technologies using a telephone, computer, or any wireless communication device. Cyberbullying also includes breaking into another ~~person's~~person's electronic account and assuming that person's identity in order to damage that ~~person's~~person's reputation.

(cf. 5145.2 - Freedom of Speech/Expression)

Strategies for addressing bullying ~~prevention and intervention~~in district schools shall be developed with involvement of key stakeholders ~~in accordance with law, Board policy,~~ including students, parents/guardians, and staff, and ~~administrative regulation governing~~ may be incorporated into the development of comprehensive safety ~~plans~~plan, the local control and ~~shall be incorporated into such~~accountability plan, and other applicable district and school plans.

(cf. 0420 - School Plans/Site Councils)

(cf. 0450 - Comprehensive Safety Plan)

(cf. 0460 - Local Control and Accountability Plan)

(cf. 1220 - Citizen Advisory Committees)

(cf. 1400 - Relations Between Other Governmental Agencies and the Schools)

(cf. 6020 - Parent Involvement)

As appropriate, the Superintendent or designee may collaborate with law enforcement, courts, social services, mental health services, other agencies, and community organizations in the development and implementation of joint strategies to promote safety in schools and the community and to provide services for alleged victims and perpetrators of bullying.

(cf. 1020 - Youth Services)

Bullying Prevention

To the extent possible, ~~District and school strategies~~district schools shall focus on the prevention of bullying by establishing clear rules for student conduct and implementing strategies to ~~establish~~promote a positive, collaborative school climate. —Students shall be informed, through student handbooks and other appropriate means, of ~~District~~district and school rules related to bullying, mechanisms available for reporting incidents or threats, and the consequences for ~~perpetrators of~~engaging in bullying.

(cf. 5137 - Positive School Climate)

As appropriate, the district shall~~(cf. 6164.2 — Guidance/Counseling Services)~~

~~The District may~~ provide students with instruction, in the classroom or other educational settings, that promotes effective communication and conflict resolution skills, social skills, character/values education, respect for cultural and individual differences, self-esteem development, assertiveness skills, and appropriate online behavior.

~~(cf. 6163.4 - Student Use of Technology)~~
(cf. 6142.8 - Comprehensive Health Education)
(cf. 6142.94 - History-Social Science Instruction)

~~School staff~~(cf. 6163.4 - Student Use of Technology)

Staff shall receive related professional development, including information about early warning signs of harassing/intimidating behaviors and effective ~~prevention and intervention strategies~~response.

(cf. 4131 - Staff Development)
(cf. 4231 - Staff Development)
(cf. 4331 - Staff Development)

Based on an assessment of bullying incidents at school, the Superintendent or designee may increase supervision and security in areas where bullying most often occurs, such as classrooms, playgrounds, hallways, restrooms, and cafeterias.

Intervention

Students are encouraged to notify school staff when they are being bullied or suspect that another student is being victimized. –In addition, the Superintendent or designee shall develop means for students to report threats or incidents confidentially and anonymously.

School staff who witness an act of bullying shall immediately intervene to stop the incident when it is safe to do so. (Education Code 234.1)

~~As~~When appropriate based on the severity or pervasiveness of the bullying, the Superintendent or designee shall notify the parents/guardians of victims and perpetrators. ~~He/she also and may involve school counselors, mental health counselors, and/or contact~~ law enforcement.

The Superintendent, principal, or principal's designee may refer a victim, witness, perpetrator, or other student affected by an act of bullying to a school counselor, school psychologist, social worker, child welfare attendance personnel, school nurse, or other school support service personnel for case management, counseling, and/or participation in a restorative justice program as appropriate. (Education Code 48900.9)

(cf. 6164.2 - Guidance/Counseling Services)

Reporting and Filing of Complaints and Investigation

~~Students may submit to a teacher or administrator a verbal or written complaint of conduct they consider to be bullying. Complaints of bullying shall be investigated and resolved in accordance with AR 5131.2 Bullying.~~

~~When a student is reported to be engaging in bullying off campus, the Superintendent or designee shall investigate and document the activity and shall identify specific facts or circumstances that explain the impact or potential impact on school activity, school attendance, or the targeted student's educational performance.~~

Any student, parent/guardian, or other individual who believes that a student has been subjected to bullying or who has witnessed bullying may report the incident to a teacher, the principal, a compliance officer, or any other available school employee. Within one business day of receiving such a report, a staff member shall notify the principal of the report, whether or not a uniform complaint is filed. In addition, any school employee who observes an incident of bullying involving a student shall, within one business day, report his/her observation to the principal or a district compliance officer, whether or not the alleged victim files a complaint.

Within two business days of receiving a report of bullying, the principal shall notify the district compliance officer identified in AR 1312.3 - Uniform Complaint Procedures.

(cf. 1312.3 - Uniform Complaint Procedures)

When the circumstances involve cyberbullying, individuals with information about the activity shall be encouraged to save and print any electronic or digital messages ~~sent to them~~ that they feel constitute cyberbullying and to notify a teacher, the principal, or other employee so that the matter may be investigated. When a student uses a social networking site or service to bully or harass another student, the Superintendent or designee may file a request with the networking site or service to suspend the privileges of the student and to have the material removed.

~~If the student is using a social networking site or service that has terms of use that prohibit posting of harmful material, the Superintendent or designee also may file a complaint with the Internet site or service to have the material removed.~~

When a report of bullying is submitted, the principal or a district compliance officer shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with AR 1312.3. The student who is the alleged victim of the bullying shall be given an opportunity to

describe the incident, identify witnesses who may have relevant information, and provide other evidence of bullying.

Investigation and Resolution of Complaints

Any complaint of bullying shall be investigated and, if determined to be discriminatory, resolved in accordance with law and the district's uniform complaint procedures specified in AR 1312.3.

If, during the investigation, it is determined that a complaint is about nondiscriminatory bullying, the principal or designee shall inform the complainant and shall take all necessary actions to resolve the complaint.

Discipline

~~School administrators will respond to bullying with appropriate interventions and/or progressive discipline (including alternatives to suspension) to restore safety and repair the harm caused by bullying. Suspension shall be imposed only when other means of correction fail to bring about proper conduct except for cases involving violation of Education Code Section 48900 (a), (b), (c), (d), (e), (m), or (n).— Education Code 48900.5.~~

Corrective actions for a student who commits an act of bullying of any type may include counseling, behavioral intervention and education, and, if the behavior is severe or pervasive as defined in Education Code 48900, may include suspension or expulsion in accordance with district policies and regulations.

(cf. 5138 - Conflict Resolution/Peer Mediation)

(cf. 5144 - Discipline)

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

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

(cf. 6159.4 - Behavioral Interventions for Special Education Students)

Any employee who permits or engages in bullying or retaliation related to bullying shall be subject to disciplinary action, up to and including dismissal.

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)

(cf. 4119.21/4219.21/4319.21 - Professional Standards)

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

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

32282 Comprehensive safety plan

32283.5 Bullying; online training

35181 Governing board policy on responsibilities of students

35291-35291.5 Rules

48900-48925 Suspension or expulsion

48985 Translation of notices

52060-52077 Local control and accountability plan

PENAL CODE

422.55 Definition of hate crime

647 Use of camera or other instrument to invade ~~person's~~ person's privacy; misdemeanor

647.7 Use of camera or other instrument to invade person's privacy; punishment

653.2 Electronic communication devices, threats to safety

CODE OF REGULATIONS, TITLE 5

4600-4687 Uniform complaint procedures

UNITED STATES CODE, TITLE 47

254 Universal service discounts (e-rate)

CODE OF FEDERAL REGULATIONS, TITLE 28

35.107 Nondiscrimination on basis of disability; complaints

CODE OF FEDERAL REGULATIONS, TITLE 34

104.7 Designation of responsible employee for Section 504

106.8 Designation of responsible employee for Title IX

110.25 Notification of nondiscrimination on the basis of age

COURT DECISIONS

Wynar v. Douglas County School District, (2013) 728 F.3d 1062

J.C. v. Beverly Hills Unified School District, (2010) 711 F.Supp.2d 1094

Lavine v. Blaine School District, (2002) 279 F.3d 719

Management Resources:

CSBA PUBLICATIONS

Final Guidance: AB 1266, Transgender and Gender Nonconforming Students, Privacy, Programs, Activities & Facilities, Legal Guidance, March 2014

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014
Addressing the Conditions of Children: Focus on Bullying, Governance Brief, December 2012

Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011

~~Providing a Safe, Nondiscriminatory School Environment for All Students, Policy Brief, April 2010~~

Building Healthy Communities: A School Leaders Guide to Collaboration and Community Engagement, 2009

Cyberbullying: Policy Considerations for Boards, Policy Brief, July 2007

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Health Education Content Standards for California Public Schools: Kindergarten Through Grade Twelve, 2008

Bullying at School, 2003

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

Dear Colleague Letter: Bullying of Students with Disabilities, August 2013

Dear Colleague Letter: Harassment and Bullying, October 2010

WEB SITES

CSBA: <http://www.csba.org>

~~California Cybersafety for Children:~~ <http://www.cybersafety.ca.gov>

California Department of Education, Safe Schools Office: <http://www.cde.ca.gov/ls/ss>

~~Center for Safe and Responsible Internet Use:~~ <http://cyberbully.org>

~~National School Boards Association~~ Common Sense Media: <http://www.nsbacommonsensemedia.org>

National School Safety Center: <http://www.schoolsafety.us>

ON[the]LINE, digital citizenship resources: <http://www.onthelineca.org>

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

[8/29/12; 9/12/12A; 3/13/13A](#)

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

Students

BP 5131.2

Bullying

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(cf. 0420 - School Plans/Site Councils)

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 WEB SITES
 CSBA: <http://www.csba.org>

California Department of Education, Safe Schools Office: <http://www.cde.ca.gov/ls/ss>
Common Sense Media: <http://www.common sense media.org>
National School Safety Center: <http://www.schoolsafety.us>
ON[the]LINE, digital citizenship resources: <http://www.onthelineca.org>
U.S. Department of Education: <http://www.ed.gov>

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