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## Board Cover Memorandum

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Sondra Aguilera, CAO  
Jenn Blake, Executive Director, Special Education

**Meeting Date** April 24, 2024

**Subject** Amendment to Board Policy 5144.1: Suspension and Expulsion Due Process

**Ask of the Board** Approval by the Board of Education of the amendment to Board Policy 5144.1: Suspension and Expulsion-Due Process related to the 2024-2027 Oakland Unified SELPA Part B Special Education Local Plan

**Background** The California Department of Education requires that each Special Education Local Plan Area (SELPA) create, adopt and implement a Local Plan, Annual Budget Plan, and Annual Service plan. The Local Plan must be revised every three years, and it contains detailed information about the operations, procedures and governance structures of the SELPA. Part B of the Local Plan requires review of board policies related to serving students with disabilities to assure conformity with Title 20 *United States Code (USC)* and in accordance with Title 34 *Code of Federal Regulations (CFR)* Section 300.201.

**Discussion** We ask that the Board approve the amendment to Board Policy 5144.1: Suspension and Expulsion-Due Process to assure that Oakland Unified Board Policies align with language required by the California Department of Education (CDE) related to the Special Education Local Plan.

**Fiscal Impact** No Fiscal Impact. Will use existing Special Education funds. Funds can be withheld by the California Department of Education (CDE) if the plan is not adopted in a timely manner.

**Attachment(s)**

- BP 5144.1: Suspension and Expulsion-Due Process (Redline)
- BP 5144.1: Suspension and Expulsion-Due Process (Clean)

# OAKLAND UNIFIED SCHOOL DISTRICT

## Board Policy

Students

BP 5144.1

### **Suspension and Expulsion / Due Process**

The Governing Board has established policies and standards of behavior in order to promote learning and protect the safety and well-being of all students. In response to serious or repeated violations of established policies and standards, it may be necessary to suspend or expel a student from regular classroom instruction.

(cf. 5144 - Discipline)

The Board does not support a zero tolerance approach to discipline. The Board recognizes the importance of providing school-wide positive supports, using discipline strategies that keep students in school and in the classroom, and supporting students in learning to behave appropriately and solve conflicts peacefully.

Before subjecting a student to disciplinary sanctions that result in a loss of instructional time, the Superintendent or designee shall, to the extent allowed by law, first use alternative strategies as described in AR 5144 - Discipline. Except where suspension for a first offense is permitted by 48900.5, as further described in AR 5144.1, in-school and out-of-school suspension shall be imposed only when other means of correction fail to bring about proper conduct or the student's presence causes a danger to persons. (Education Code 48900.5) Expulsion is an action taken by the Board only for severe breaches of discipline by a student.

(cf. 1020 - Youth Services)

(cf. 5138 - Conflict Resolution/Peer Mediation)

(cf. 5144 - Discipline)

(cf. 6142.4 - Service Learning/Community Service Classes)

(cf. 6164.2 - Guidance/Counseling Services)

(cf. 6164.5 - Student Success Teams)

The teacher of any class from which a student is suspended pursuant to Section 48910 shall require the student to complete any assignments and tests missed during the suspension. The school will monitor and address the educational needs of the student that arise due to the loss of instructional time. (Education Code 48913).

Suspension and expulsion may not be imposed for truancy, tardiness, or absence. Alternatives to suspension or expulsion shall be used with students who are truant, tardy, or otherwise absent from assigned school activities.

(cf. 5113 - Absences and Excuses)

(cf. 5113.1 - Chronic Absence and Truancy)

Effective January 1, 2015, as provided in California Education Code section 48900(k), no student enrolled in grades T-Kindergarten through third grade may be suspended for disrupting school activities or willfully defying the authority of school personnel ("disruption and willful defiance") and no student enrolled in grades TK through twelve (TK-12) shall be expelled for the same.

Effective July 1, 2016, no student enrolled in grades T-Kindergarten through twelve (TK-12) grades may be suspended or expelled for disrupting school activities or willfully defying the authority of school personnel. The Board will review data regarding suspensions for defiance in Grades 4 through 12 in August 2015 and January 2016. If based on review of the data, it appears further steps should be undertaken to meet the goal of eliminating suspensions for disruption and willful defiance by July 1, 2016, the Board will direct the Superintendent to implement such additional measures to achieve the goal of no suspensions for disruption and willful defiance by July 1, 2016.

The LEA assures that data on suspension and expulsion rates will be provided in a manner prescribed by the CDE. When indicated by data analysis, the LEA further assures that policies, procedures, and practices related to the development and implementation of the IEPs will be revised.

The grounds for suspension and expulsion and the procedures for considering, recommending, and/or implementing suspension and expulsion shall be specified by administrative regulation and must be consistent with the requirements set forth here.

Effective January 1, 2015, the District may not involuntarily transfer a student in grades TK- 3rd grade to another school based on a finding of disruption of school activities or willful defiance of the authority of school personnel (California Education Code section 48900(k)).

Effective July 1, 2016, the District may not involuntarily transfer a student to another school based on a finding of disruption of school activities or willful defiance of the authority of school personnel (California Education Code section 48900(k)).

Involuntary transfers may only occur following a recommendation for expulsion and after a hearing before the District's Disciplinary Hearing Panel (DHP) consistent with the requirements in Education Code section 48918 and the notice and hearing procedures for expulsions. DHP shall recognize the use of a positive approach to student behavior and maximize instructional time for every student. An involuntary transfer to a continuation school must be made pursuant to Education Code section 48432.5.

District staff shall enforce the rules concerning suspension and expulsion of students fairly, consistently, and in accordance with the district's nondiscrimination policies.

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

### **Due Process**

The Board shall provide for the fair and equitable treatment of students facing suspension and expulsion by affording them their due process rights under the law. The Superintendent or designee shall comply with procedures for notices, hearings, and appeals as specified in law and administrative regulation. (Education Code 48911, 48915, 48915.5)

(cf. 5119 - Students Expelled from Other Districts)

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

### **Expansion of Restorative Justice, the Manhood Development Program, PBIS and other restorative and youth development approaches**

The Board recognizes that the District has made progress toward creating a positive school culture through various means, including through the use of Restorative Justice (RJ), Positive Behavioral Interventions and Supports, and the Manhood Development Program. The Board believes that the continued expansion of such programs is central to the creation of safe, healthy and supportive school environments for all students in the District. The Board supports and will prioritize funding for RJ, Manhood Development Program and PBIS programs and coordinators at school sites and professional development, coaching and support for teachers and administrators to successfully implement these programs.

### **Supervised Suspension Classroom**

Supervised suspension shall be imposed only when other means of correction have failed to bring about proper conduct. (Education Code 48900.5)

The Board recognizes that students who are suspended from school often have no supervision or guidance during the school hours when they are off campus and may fall behind in the coursework. The Board believes that, in many cases, it would be better to manage the student's behavior by keeping the student at school and providing him/her with supervision that is separated from the regular classroom.

To ensure the proper supervision and ongoing learning of students who are suspended for any of the reasons enumerated in Education Code 48900 and 48900.2, but who pose no imminent danger or threat to anyone at school and for whom expulsion proceedings have not been initiated, the Superintendent or designee shall establish a supervised suspension classroom program which meets the requirements of law.

### **Decision Not to Enforce Expulsion Order**

On a case-by-case basis, the enforcement of an expulsion order may be suspended by the Board pursuant to the requirements of law and administrative regulation. (Education Code 48917)

### **Expungement of Student Disciplinary Records**

As provided in Board Policy 5144.3, effective January 15, 2014, a student, parent, guardian, appointed advocate on behalf of the student, or Superintendent on behalf of a student, may apply for expungement of student disciplines record which meet the criteria set forth in BP 5144.3.

### **Monitoring the Use of Suspension and Expulsion**

By July 1, 2015, the Superintendent shall promulgate Administrative Regulations that establish the procedures for regular, accurate, and public data reporting on disciplinary measures and interventions. The procedures will include at least a requirement that the District make available on the District's public website twice annually, within 60 days after the completion of each semester, data on school discipline, behavioral interventions, and student outcomes.

The data will include at least the following:

1. The aggregate number and rates of office referrals, teacher suspensions, supervised in-school and out-of-school suspensions, involuntary transfers, expulsion referrals, expulsions, on-campus citations, and school-based arrests (from both OPD and OSPD), and four-year graduation and drop-out rates, disaggregated by all subgroups, including race, gender, ethnicity, English Language Learner status, socio-economic status, foster youth, homeless youth, and disability and by offense for the district and by school-site.

2. The number of instructional days and ADA funding lost to suspensions, transfers, and expulsions disaggregated by the aforementioned subgroups.
3. The school sites to which students were transferred after the Disciplinary Review Hearing procedure or through any involuntary transfer process, whether they enrolled subsequently, and the outcomes for such students, including, but not limited to, graduation and drop-out rates.
4. In reporting such data, the privacy of individual students and teachers shall be protected. Data will not be disaggregated in any manner that could reveal student identity to the public or to knowledgeable members of the school community. The data shall be reported for the district as a whole and for each school-site.
5. The procedures shall also include requirements that appropriate district and school officials regularly review this data and take action to address disparities or disproportionate use of punitive discipline measures for particular subgroups.

### **Convene Safe And Strong Schools Sub-Committee**

The Superintendent shall convene a Safe and Strong Schools sub-committee as part of the Pathway to Excellence Strategic Plan Quality Community Schools Committee that will include parents, students, representatives from community organizations, teachers, administrators and partner organizations. The sub-committee will meet at least twice a year, one meeting to occur in January to review the annual report to OCR that is submitted in the fall of the prior year and review the District's progress in successful implementation of RJ, PBIS and Manhood Development programs and the Three Year Plan ("Transforming School Culture" Three Year Plan, OCR Compliance Review No. 09125001); and one meeting in October to review 1) the discipline data from the prior school year, 2) the District's progress in successful implementation of RJ, PBIS and Manhood Development programs and the Three Year Plan ("Transforming School Culture" Three Year Plan, OCR Compliance Review No. 09125001), and 3) through June 30, 2016, data regarding suspensions for defiance in Grades 4 through 12. In reviewing the suspension for defiance data, the sub-committee shall consider whether to recommend that the Superintendent undertake additional measures if it appears the District is not on target for the successful elimination of willful defiance as a basis for suspension or expulsion for all grade levels TK-12 effective July 1, 2016.

### **Annual Community Forum**

The Superintendent will convene a community forum in the Spring of 2016 and 2017 to update the community on transforming school climate and disparities in school discipline, including but

not limited to the implementation of the VRP and the Three Year Plan and to establish a dialogue with the community about the types of non-policing resources and interventions needed to keep schools strong and safe and students out of the juvenile justice system. The Superintendent will report the results of the Community Forum to the Board during the Superintendent's report as a part of a regularly scheduled Board meeting. The need to continue an annual forum will be considered as part of the districts exit plan from the VRP with the OCR in 2017.

## **Complaint Process**

The Superintendent shall develop a complaint form to allow members of the school community and public to raise concerns if restorative justice or another restorative approach is not available at a school site as an alternative to suspension. The complaint form will be available on the District's website, the District Discipline Office and the District Ombudsperson's Office. The Ombudsperson shall investigate such complaints and within 90 days of complaint submission develop a plan with the school site for addressing the complaint and provide a written response to the complaining party.

(cf. 9320 - Meetings and Notices)

### Legal Reference:

#### EDUCATION CODE

212.5 Sexual harassment

233 Hate violence

1981 Enrollment of students in community school

17292.5 Program for expelled students

32261 Interagency School Safety Demonstration Act of 1985

35145 Open board meetings

35146 Closed sessions (regarding suspensions)

35291 Rules (for government and discipline of schools)

35291.5 Rules and procedures on school discipline

48645.5 Readmission; contact with juvenile justice system

48660-48667 Community day schools

48853.5 Foster youth

48900-48927 Suspension and expulsion

48950 Speech and other communication

48980 Parental notifications

49073-49079 Privacy of student records

#### CIVIL CODE

47 Privileged communication

48.8 Defamation liability  
CODE OF CIVIL PROCEDURE  
1985-1997 Subpoenas; means of production  
GOVERNMENT CODE  
11455.20 Contempt  
54950-54963 Ralph M. Brown Act  
HEALTH AND SAFETY CODE  
11014.5 Drug paraphernalia  
11053-11058 Standards and schedules  
LABOR CODE  
230.7 Discharge or discrimination against employee for taking time off to appear in school on behalf of a child  
PENAL CODE  
31 Principal of a crime, defined  
240 Assault defined  
241.2 Assault fines  
242 Battery defined  
243.2 Battery on school property  
243.4 Sexual battery  
245 Assault with deadly weapon  
245.6 Hazing  
261 Rape defined  
266c Unlawful sexual intercourse  
286 Sodomy defined  
288 Lewd or lascivious acts with child under age 14  
288a Oral copulation  
289 Penetration of genital or anal openings  
417.27 Laser pointers  
422.55 Hate crime defined  
422.6 Interference with exercise of civil rights  
422.7 Aggravating factors for punishment  
422.75 Enhanced penalties for hate crimes  
626.2 Entry upon campus after written notice of suspension or dismissal without permission  
626.9 Gun-Free School Zone Act of 1995  
626.10 Dirks, daggers, knives, razors, or stun guns  
868.5 Supporting person; attendance during testimony of witness  
WELFARE AND INSTITUTIONS CODE  
729.6 Counseling  
UNITED STATES CODE, TITLE 18  
921 Definitions, firearm



UNITED STATES CODE, TITLE 20

1415(K) Placement in alternative educational setting

7151 Gun-free schools

COURT DECISIONS

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Management Resources:

CSBA PUBLICATIONS

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U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

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Civil Rights Data Collection Summary, March 2012

WEB SITES

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

California Attorney General's Office: <http://www.oag.ca.gov>

California Department of Education: <http://www.cde.ca.gov>

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

<http://www.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>

U.S. Department of Education, Office of Safe and Drug-Free Schools:

<http://www.ed.gov/about/offices/list/osdfs>

7/14/04; 4/23/14A; 4/1/15A; 5/13/15A; [4/24/24A](#)

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

<http://www.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>

U.S. Department of Education, Office of Safe and Drug-Free Schools:

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