

BOARD OF EDUCATION

Attachment: Discussion 19

PALO ALTO UNIFIED SCHOOL DISTRICT

Date: 01.28.14

TO: Board of Education

FROM: Kevin Skelly, Ph.D., Superintendent

SUBJECT: Proposed Revisions to
Board Policy (BP) and Administrative Regulation (AR) 1312.3 – Uniform Complaint
Procedure,
Board Policy 5145.3 – Nondiscrimination/Harassment, and
Board Policy 5145.7 – Sexual Harassment

STRATEGIC PLAN INITIATIVE

Governance and Communications
Academic Excellence and Learning

RECOMMENDATION

It is recommended the Board of Education approve BP 1312.3, Uniform Complaint Procedures BP 5145.3, Nondiscrimination/Harassment, and BP 5145.7, Sexual Harassment. Taking these actions will complete this portion of our resolution agreement with the Office for Civil Rights (OCR).

BACKGROUND

In accordance with the District's resolution agreement with the Office for Civil Rights (OCR), District staff and legal counsel have worked with OCR officials to revise board policies and administrative regulations on Uniform Complaint Procedures (BP and AR 1312.3) and Nondiscrimination / Harassment (BP 5145.3). This work has implications for BP 5145.7 on Sexual Harassment and the Board is asked to approve changes to this policy as well.

In August 2013, following OCR's approval of proposed policies and regulations BP and AR 1312.3, and BP 5145.3, the District provided the documentation to the California Department of Education (CDE) and the California School Boards Association (CSBA) for review as they involve both federal and state law. The California Code of Regulations (CCRs) mandates the District's Uniform Complaint Procedures be consistent with procedures specified in the CCRs. Also, the District's usual course of action on policies and regulations is to adapt and adopt sample/template BPs and ARs developed by CSBA to account for changes to federal and state laws. CSBA provides sample BPs and ARs for consideration and use to school districts statewide.

On September 11, 2013, CSBA Executive Director Vernon Billy responded to the District's August letter and assured the District that CSBA had been working with CDE and OCR since late 2012 to resolve concerns regarding the policies and regulations expressed by both the state and federal governments. Mr. Billy's letter stated, "concerns raised by OCR and CDE about our sample complaint policies have raised different points of view that we are in the process of helping to resolve."

On November 22, 2013, CDE and CSBA wrote to the District in a joint letter and indicated each organization had reviewed the proposed modifications to BP and AR 1312.3, the Uniform Complaint Procedures, and had no objections. CDE indicated, "while these materials provide greater specificity in several areas when compared to the Uniform Complaint Procedure, as specified in Title 5, sections 4600-4687, of the California Code of Regulations, this does not make them inconsistent with the minimum requirements specified therein." CSBA indicated no concerns. Both CDE and CSBA indicated they had begun work with OCR to revisit and revise the UCP and model BPs and ARs related to complaint procedures, including sections 4600-4687 of Title 5 of the California Code of Regulations, BP and AR 1312.3, and BP and AR 5145.7. In the future, this may mean issuance of revisions similar or different to those proposed in the District's BP and AR 1312.3.

Board Policy and Administrative Regulation 1312.3 – Uniform Complaint Procedures

The District's proposed BP and AR 1312.3 have been approved by OCR and acknowledged without objection by CDE and CSBA. They provide additional specificity in several areas over minimal requirements reflected in the California regulations and the CSBA sample BP and AR 1312.3. OCR has not separately approved the CSBA sample BP and AR 1312.3.

Specifically, the modified AR 1312.3 significantly revises the "Procedures" section of the CSBA sample AR 1312.3, removing the references to the four-step complaint process and the corresponding internal timelines. The modified AR 1312.3 distinguishes between the two different types of complaints governed by the policy, namely, "Complaints Alleging Unlawful Discrimination, Including Discriminatory Harassment, Intimidation, and/or Bullying," and "Complaints Alleging Noncompliance with Other Federal or State Laws."

The modified AR 1312.3 also breaks down the "Procedures" section into more specific sub-sections, which include "Reports and Complaints," "Optional Informal Resolution at the Site-level," "Formal Complaints: Initiation of Investigation," "Initial Interview with the Subject of the Complaint," "Investigation Process," "Interim Measures," "Factors in Reaching a Determination," and "Written Report and Follow-up."

Board Policy 5145.3 – Nondiscrimination/Harassment

The District's proposed BP 5145.3 has been approved by OCR. It provides additional specificity in a few areas beyond what is provided in the CSBA sample BP 5145.3. It also adds a requirement that administrators and staff receive training on their responsibilities for responding to reports and complaints of discrimination under the Uniform Complaint Procedures.

Board Policy 5145.7 – Sexual Harassment

As the policies and regulations revised above address harassment and discrimination based on sex, sexual orientation, gender, gender identity, and gender expression, the District believes it is important to make conforming changes to the separately-required District BP 5145.7 on sexual harassment for consistency. The District notified OCR of its intent to make conforming changes to this policy. OCR stated appreciation for the District's notice and intent to make BP 5145.7 consistent with the revised Uniform Complaint Procedures, but OCR has not separately approved the District's BP 5145.7.

The District's BP 5145.7 incorporates changes from the latest CSBA sample BP and AR 5145.7 on sexual harassment. CSBA's AR 5145.7 details a separate, site-level complaint procedure for complaints of sexual harassment, but states districts may instead consider using the Uniform Complaint Procedures. As OCR has approved the District's proposed Uniform Complaint Procedures as meeting federal requirements for a prompt and equitable discrimination grievance process and as harassment and discrimination based on sex and related categories are also referenced under other policies and regulations above, the District has revised BP 5145.7 to incorporate the Uniform Complaint Procedures as the grievance process and proposes to eliminate AR 5145.7 that provides for a separate process.

Thoughts on a Board Policy specifically about Bullying

In 2012, CSBA created an **optional** Board Policy related to bullying for boards to adopt should they wish to have a Board Policy addressing Bullying. Some districts have adopted this policy; others have chosen not to do so. In PAUSD, staff formed a committee in fall 2012 to use the CSBA optional policy as a template that would be modified to craft a policy that captured district values and directed practices. Elements of that work included a definition of bullying, an attempt to capture board and community values regarding prevention and intervention expectations and strategies, definitions of bullying, expectations of conduct, and complaint and investigation procedures.

Over the past few months staff has received considerable input on the latest proposed policies. At the Board Policy Review Committee (BPRC) meeting on January 10, 2013, staff received additional input from the two board members on the BPRC committee as well as community members in attendance. Values identified during this discussion included simplicity, clear direction and processes for administrators, staff, and students and parents who would interface with this policy, a flowchart/timeline for responsiveness, protection for those accused of bullying, as well as consistency in practices between and among schools.

Staff believes the work to date is helpful in creating a Board policy on bullying. However, the work has not yielded a policy that adequately captures the values identified in the BPRC discussions. The clarity gained from our efforts and the input from staff and BPRC discussions will allow us to craft a quality product. Teachers have expressed concerns about a process that could result in every potential case of hurtful student interactions needing to be addressed through district level involvement. Administrators share this worry and have discussed the possibility that bullying should be woven into existing incident report forms used by schools for other disciplinary issues. In short, we have made considerable progress on this topic, but we are not ready to bring this to the Board for discussion and action. Staff should have a proposed policy that captures the values of the District for Board discussion in March.

In the meantime, fairly straightforward policies exist in terms of dealing with issues of bullying or harassment. Existing AR 5144.1 identifies suspendable and expellable offenses including bullying/harassment. Each site has disciplinary procedures to address harmful student interactions. In general, parents, students, teachers and administrators work cooperatively to identify, address, and resolve cases of bullying/harassment at the lowest level, where these situations can be opportunities for students to learn appropriate behavior. Board policies addressing issues of conflict consistently identify a desire to resolve problems by the adults at the

site who know the students and situation the best (as does the proposed Uniform Complaint Procedure, BP 1312.3).

In the few cases where parents or students are dissatisfied with how bullying/harassment incidents are handled, there needs to be a grievance process. For bullying or harassment that involves a protected class, BP 1312.3 offers a process for the complainant immediately upon learning of alleged bullying/harassment or after efforts to resolve the issue at the site level are not successful. If the bullying/harassment does not involve a protected class, parents can and do contact the district office do whenever they are dissatisfied by site level decisions. Should they wish to formalize their concerns, BP 1312.1 and in AR 1312.1, Complaints Against District Personnel, outlines the process. While this policy includes several topics, it provides a clear process for communicating concerns regarding how bullying/harassment was handled at the site level.

In summary, staff believes the following important steps need to be completed before a policy on bullying is ready for Board approval.

- Include values identified above and contained in previous drafts.
- Establish a clear process and communication outlining ways parents and other concerned parties can report cases of bullying/harassment.
- Establish a clear process and communication regarding grievance processes involving both protected and non-protected classes should parents or other concerned parties wish to bring their concerns beyond the site level.
- Review of bullying/harassment forms being tested by site administrators, Brenda Carrillo, and legal counsel.
- Present proposed Board Policy and any accompanying Administrative Regulation recommendation to the Board in March 2014.