

Hate Speech

For discussion of a potential “hate speech” policy, we should discuss whether prohibition on the commission of “hate speech” are adequately addressed in our existing policies; whether, if so, we need to clarify them in any way; and whether, if not, we should amend our existing policies in any way. As background for the discussion, below are existing BUSD policies that appear to cover behavior that might be characterized as “hate speech” with relevant language highlighted, as well as the Ed Code provision dealing with freedom of speech.

Nondiscrimination/Harassment

5145.3

Philosophy and Beliefs

District programs and activities shall be free from discrimination and harassment of students with respect to their actual or perceived sex, gender, transgender or gender-identity non conforming, socio-economic status, their race, color, religion, ancestry, national origin, ethnic group identification, physical or mental disability, age, sexual orientation, marital or parental status.

Members of the school community are expected to treat each other with dignity and mutual respect and to honor the rich diversity that makes up the community. Disrespect among members of the school community is disruptive to the learning environment and potentially damaging to students' well-being, self-esteem and academic achievement. ***Students should therefore treat all persons equally and respectfully and refrain from the willful or negligent use of slurs against any person based on actual or perceived sex, gender identity, race, color, religion, ancestry, national origin, ethnic group identification, marital or parental status, physical or mental disability, age, or sexual orientation. Discrimination or harassment can take many forms, formal or informal, verbal, visual, written or physical, and as such, is prohibited at all times.***

The Governing Board desires to provide a safe school environment that allows all students equal access and opportunities in the district's academic and other educational support programs, services, and activities. ***The Board prohibits, at any district school or school activity, unlawful discrimination, harassment, intimidation, and bullying of any student based on the student's actual race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, or gender expression;***

the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.

The Governing Board shall ensure equal opportunities for all students in admission and access to the educational program, guidance and counseling programs, athletic programs, testing procedures, and other activities curricular or co-curricular. School staff and volunteers shall carefully guard against segregation, bias and stereotyping in the delivery of all services and programs and respond appropriately to ensure schools are free from discrimination and harassment.

The Board recognizes that students' respect for, and understanding of, the various, diverse and wide variety of family structures within our community can help to eliminate discrimination and harassment within the school. As such, curriculum, instruction and activities that promote the inclusion of all types of students and families should be encouraged and welcomed.

Procedures and Process

Students who harass other students shall be subject to appropriate discipline, up to and including counseling, suspension and/or expulsion. An employee who permits or engages in harassment may be subject to disciplinary action, up to and including dismissal.

The Board prohibits intimidation or harassment of any student by any employee, student or other person in the district. Staff shall be alert and immediately responsive to student conduct which may interfere with another student's ability to participate in or benefit from school services, activities or privileges and to bring to the attention of school personnel the instances of discrimination.

Harassment complaint forms and complaint procedures will be available at every school site.

The Board also prohibits any form of retaliation against any student who files a complaint or report regarding an incident of discrimination, harassment, intimidation, or bullying.

Any student who feels that he/she is being harassed should immediately contact either the nondiscrimination coordinator or the principal or designee. If a situation involving harassment is not promptly remedied by the nondiscrimination coordinator, principal or designee, a complaint may be filed with the Superintendent or designee who shall determine which complaint procedure is appropriate.

The Board hereby designates the following position as Coordinator for Nondiscrimination:

Director of Student Services
2020 Bonar Street
Berkeley, CA 94702
(510) 883-5224

Facilities and Accommodations

The schools shall provide male and female students with separate shower rooms in order to protect student modesty. In physical education, when objective standards have an adverse effect on students because of any of the factors listed in the first part above, other standards shall be used to measure achievement and create comparable educational opportunities. Steps should be taken by all staff to recognize the consistently asserted gender differences of students who are transgender and non-conforming, and protect and ensure their safety while in school.

Anti-Bullying

5131.2

The Governing Board of the Berkeley Unified School District affirms that every student and staff member has the right to a safe and secure school environment, free of humiliation, intimidation, fear, harassment, or any form of bullying behavior. Furthermore, the Board believes that a healthy, positive psychosocial school environment enhances and increases academic achievement and pro-social development (BP 5030.2), and therefore the prevention, [reduction/elimination], and effective disposition of bullying are fundamental to Berkeley's educational goals. The District, students, families, and staff have an obligation to create an environment that celebrates and respects diversity and human dignity and admonishes bullying behavior. ***To this end, the District has in place policies, procedures, and practices that are designed to reduce and eliminate bullying and harassment as well as address incidents of bullying and harassment when they occur.***

The District will not tolerate bullying - as defined in this policy - or any behavior that infringes on the safety or well-being of students, staff, or any other persons within the District's jurisdiction whether directed at an individual or group.

To address incidents of bullying and the potential culture that supports such behavior, this policy has the following objectives:

1. Cultivation of a culture of empathy, kindness, respect, and mutual trust among students and between students and staff
2. Creation of a school climate which encourages students to disclose and discuss incidents of bullying, both in their roles as victims, perpetrators and bystanders
3. Demonstration of a commitment to address incidents of bullying by outlining the school response to any such behaviors

The District will communicate its objectives, programs, and procedures to eliminate bullying in its annual parent/student handbook.

Definition:

Bullying means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, that inflicts physical hurt or psychological distress on one or more students or employees. It is further defined as: unwanted purposeful written, verbal, nonverbal, or physical behavior, including but not limited to any threatening, insulting, or dehumanizing gesture, by an adult or student, that has the potential to create an intimidating, hostile, or offensive educational environment or cause long term damage; cause discomfort or humiliation; or unreasonably interfere with the victim's school performance or participation. Bullying is often characterized by an imbalance of power.

Indicators of Bullying Behavior

Bullying behaviors may include, but are not limited to, the following:

1. Verbal: ***Hurtful name-calling, teasing, gossiping, making threats, making slurs or epithets, making rude noises, or spreading hurtful rumors. This policy excludes constitutionally protected speech (Education Code 48950). Speech that poses a threat or danger to the safety of students, employees or District property, or that materially and substantially disrupts the school environment, is not constitutionally protected.***
2. Nonverbal: Posturing, making gang signs, leering, staring, stalking, destroying property, insulting or threatening notes, using graffiti or graphic images, or exhibiting inappropriate and/or threatening gestures or actions.

3. Physical: Hitting, punching, pushing, shoving, poking, kicking, tripping, strangling, hair pulling, fighting, beating, "pantsing", pinching, slapping, biting, spitting, or destroying property.

4. Emotional (Psychological): Rejecting, terrorizing, extorting, defaming, intimidating, humiliating, blackmailing, manipulating friendships, isolating, shunning, ostracizing, using peer pressure, or rating or ranking personal characteristics.

5. Cyberbullying: Bullying committed by means of an electronic act, the transmission of a communication, including but not limited to, a message, text, sound, or image by means of an electronic device, including but not limited to, a computer phone, wireless telephone, or other wireless communication device, computer, or pager.

6. Cyberbullying is characterized by deliberately threatening, harassing, intimidating, or in any way, ridiculing an individual or group of individuals; placing an individual in reasonable fear of harm;; posting sensitive, private information about another person without his/her permission; breaking into another person's account and/or assuming another individual's identity in order to damage that person's reputation or friendships.

7. Hazing: ritualistic behavior that subjects persons to intentionally mean-spirited, physically or psychologically abusive, or humiliating tasks as a rite of passage or initiation.

Jurisdiction

This policy applies to students and staff on school grounds, while traveling to and from school or a school sponsored activity, during the lunch period, whether on or off campus, and during a school-sponsored activity. It also includes acts of bullying that take place at any time when the acts have a nexus to school attendance/activities by posing a threat or danger to the safety of students, District property, or materially and substantially disrupting the school environment.

This policy pertains to cyberbullying that is related to school activity or attendance that occurs at any time, including, but not limited to, while on school grounds, while going to or coming from school, during the lunch period whether on or off campus, during, or while going to or coming from, a school sponsored activity, that is directed specifically toward a pupil or school personnel. If the cyberbullying occurs outside of the scope of the District but the school has knowledge of its occurrence, the school will inform the parents/guardians of the students involved.

Bullying and Harassment

Bullying, cyberbullying, and intimidation, may, from time to time, be part of a continuum of student misconduct such as sexual harassment, hate-motivated behavior, assault or child abuse, and, as such, the action of the student or the nature of the incident could be considered a violation of other aspects of student conduct policies and state and federal law.

Bullying based on a person's or group's actual or perceived sex, gender, transgender or gender-identity non-conforming, socio-economic status, their race, color, religion, ancestry, national origin, ethnic group identification, physical or mental disability, age, sexual orientation, marital or parental status, which constitutes discriminatory harassment, shall be dealt with in accordance with the Nondiscrimination/Harassment Policy (BP 5145.3) as well as with this policy.

Reporting

Students who are the targets of bullying, staff, or any community member who has witnessed bullying, should report the abuse to the principal, the principal's designee, or a trusted school staff member. Staff members, upon receiving a complaint or witnessing bullying, are required to make a report to the principal or principal's designee. While submission of a Bullying Incident Form is not required, the reporting party is encouraged to use the Form which will be made available from the principal of each school and the District office. Oral reports shall also be considered official reports. Reports may be made anonymously, but formal disciplinary action may not be based solely on an anonymous report. Both oral and anonymous reports should be documented and reported by the receiving administrator

If a student/or staff member feels that he/she is the target of cyberbullying, the student or staff member is encouraged to save and print any messages or other posts sent to them that they feel constitutes cyberbullying and to notify a teacher, principal or other employee so that the matter may be investigated.

Investigation

Investigation: Upon receiving a report either directly from the target of bullying, a witness of bullying, or from a teacher or staff member, the principal or principal's designee (or Superintendent/designee) must initiate the Investigation Procedures.

The investigation must be prompt and diligent. All interviews of witnesses, the victim, and the accused shall be conducted separately. During an investigation, all individuals involved must to the extent reasonably possible maintain the confidentiality of the proceedings and the names of the complainant and students involved.

Victim's Rights

The victim of bullying has the right to immediate support, including physical and psychological support. During and after the investigation, a school counselor or other appropriate school personnel should follow-up with the victim and provide the appropriate and necessary support.

Intervention/Discipline

The Principal or designee shall decide the appropriate way to deal with bullying behavior if the investigation has proven that the student who engaged in the bullying behavior has violated this policy. Interventions and consequences must be age-appropriate and equal to the severity of the violation. In dealing with bullying behavior, the designee should regard the bullying behavior and the situation as unique and create an intervention/discipline plan based on the particular characteristics of the situation to ensure that the plan remedies the bullying, decreases chances of retaliation, and helps rehabilitate the student who has engaged in bullying behavior (if appropriate).

Some acts of bullying may be part of a larger pattern of bullying that requires a response either at the classroom, school site, or District levels or by law enforcement officials. Consequences and appropriate remedial actions for a student who commits an act of bullying may range from behavioral interventions and education up to and including suspension/expulsion, or referral to law enforcement (Suspension and Expulsion/Due Process Policy BP 5144.1)

In addition to the grounds specified in Education Code sections 48900, 48900.2, 48900.3, and 48900.4 provide additional authority to discipline a pupil in any of grades 4 to 12, inclusive for conduct that amounts to bullying. (Education Code [48900](#), [48900.2](#), [48900.3](#) and [48900.4](#))

Education

To prevent bullying, each school site has the obligation to educate students about what bullying is and why it is unacceptable. When possible, teachers should use existing curriculum and materials to emphasize the negative, hurtful effects of bullying. Each school site should prioritize its existing anti-bullying curriculum and seek to

enhance anti-bullying education. Furthermore, each school site should educate students in an age-appropriate manner about appropriate use of electronic devices and social media. The District has the obligation to provide materials and curriculum to each school site that requests support.

False Reports and Statements

Intentionally false reports, use of the complaint process, or statement to defame a fellow student or staff member or any illegitimate reason, will result in disciplinary consequences.

Retaliation

Retaliation against a complainant or any individual involved in the investigation of a bullying situation, either by the student who has allegedly engaged in bullying behavior, the friends of the student who allegedly engaged in bullying behavior, or any other individual, is strictly prohibited or is grounds for discipline.

Annual Report to the Board

Each school site will make an annual report to the Director of Student Services in June detailing bullying incidents at the school. At a fall Board meeting, the Director of Student Services will report to the Board on bullying within the District and make recommendations as to how this policy can be more effectively implemented.

CA Ed Code section 48950

(a) A school district operating one or more high schools, a charter school, or a private secondary school shall not make or enforce a rule subjecting a high school pupil to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside of the campus, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution.

(d) This section does not prohibit the imposition of discipline for harassment, threats, or intimidation, unless constitutionally protected.