

**Santa Monica-Malibu Unified School District  
Board of Education Meeting  
UPDATE TO THE AGENDA**

**September 9, 2011**

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- A.20 Consider Adopting BP and AR 5145.10 – Disability Harassment  
**EDIT**: Changes to language in BP and AR (pages 2-13 of this update)

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SW

TO: BOARD OF EDUCATION

ACTION/MAJOR

FROM: SANDRA LYON / CHIUNG-SALLY CHOU /  
MAROLYN FREEDMAN

09/08/11

**UPDATE**

RE: ADOPT BP AND AR 5145.10 – DISABILITY HARASSMENT

RECOMMENDATION NO. A.20

It is recommended that the Board of Education adopt a new Board Policy and Administrative Regulation 5145.10 – Disability Harassment.

COMMENTS: This new policy and regulation have been developed in response to an Office of Civil Rights request and clarify what constitutes an act of harassment against students with disabilities as well as the process for reporting such an incident, disciplining those who have violated the policy, and educating staff, students, and parents about this topic. District staff worked with an ad hoc committee of the Special Education District Advisory Committee to develop this BP and AR.

This item came forward for board discussion on August 24, 2011.

Attached:

- Board Policy 5145.10 – Disability Harassment
- Administrative Regulations 5145.10 – Disability Harassment

MOTION MADE BY:

SECONDED BY:

STUDENT ADVISORY VOTE:

AYES:

NOES:

**DISABILITY HARASSMENT**

The Board of Education is committed to maintaining an educational environment that is free from harassment. The Board prohibits disability harassment of students by other students, employees or other persons, at school or at school-sponsored or school-related activities. The Board also prohibits retaliatory behavior or action against any person who complains, testifies, assists, or otherwise participates in the complaint process established pursuant to this policy and the administrative regulation.

**Definition**

Disability harassment is intimidation or abusive behavior toward a student based on disability or being regarded as having such an impairment that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the District's programs or activities. A hostile environment is created when harassing conduct is sufficiently severe, persistent or pervasive. Disability harassment includes any unwelcome verbal, written or physical conduct, directed at the characteristics of a person's disabling or regarded as having such a disabling condition, such as imitating manner of speech or movement, or interference with necessary equipment, or exclusion from activities available to peers. Harassment of a student based on disability may decrease the student's ability to benefit from his or her education and amount to a denial of Free and Appropriate Public Education (FAPE). **Failure to respond adequately to disability harassment constitutes discrimination, in violation of Section 504 of Rehabilitation Act of 1974 and Title II of Americans with Disabilities Act of 1990.**

**Instruction/Information**

The Superintendent or designee shall ensure that all staff receive training about, and district students receive age-appropriate instruction and information on, disability harassment. Such training, instruction, and information shall include:

1. Acts and behavior which constitute disability harassment;
2. Disability harassment can occur any time and at any location at school, school-sponsored or related activities;
3. A clear message that students do not have to endure disability harassment;
4. Encouragement for persons subject to, and witnesses of, disability harassment to report incidents immediately, and assurance that they will be protected from retaliation; and
5. Name(s) or title(s) of the person(s) to whom a report of disability harassment should be given.

**Complaint and Investigation Process**

Any student who feels that he/she is being or has been harassed by a school/district employee, another student, or a non-employee on any location at school, school-sponsored or related activities should immediately contact his/her teacher or any other school employee. A school/district employee to whom a report is made shall, as soon as possible, but no later than 24 hours of receiving the report, notify the principal or designee. The principal or designee shall immediately notify the parents/guardians of the alleged victim that a report has been made.

Any school employee who observes any incident of disability harassment involving a student shall immediately report this observation to the principal or designee, whether or not the victim files a report of the incident. The principal or designee shall immediately notify the parents/guardians of the alleged victim that a report has been made.

The principal or designee shall investigate the report and should he/she find that disability harassment occurred, he/she shall take prompt, appropriate action to end the harassment and address its effects on the victim. The principal or designee shall also advise the victim and/or victim's parents/guardians of support and other resources that are available. The principal or designee shall submit all documentations to the Director of Student Services, **who, in turn reports to the Assistant Superintendent of Human Resources (Non-Discrimination Coordinator).**

In any case of disability harassment involving the principal or any other district employee to whom the report would ordinarily be made, the school employee who receives the student's report or who observes the incident shall report to the Superintendent or designee. The Superintendent or designee shall immediately notify the parents/guardians that a complaint has been made and investigate the incident.

The Principal or designee to whom a report of disability harassment by a school/district employee is made, shall immediately file the Confidential Incident Report form with the Assistant Superintendent of Human Resources (Non-discrimination Coordinator). The Assistant Superintendent shall determine who will investigate the incident in accordance with administrative regulation. When the Assistant Superintendent or designee finds that disability harassment occurred, he/she shall take prompt, appropriate action to end the harassment and address its effects on the victim. The principal or designee shall also advise the victim and/or victim's parents/guardians of any other resources that may be available. ~~If the principal or designee determines that this harassment is a hate-motivated behavior, the principal or designee may~~ **shall** notify law enforcement as appropriate.

The Uniform Complaint Procedure can be used as an alternative path for the reporting of disability harassment.

### **Disciplinary Measures**

Any student who engages in disability harassment of anyone at school or at a school-sponsored or school-related activity is in violation of this policy and shall be subject to disciplinary action. **For students in grades K-3, disciplinary action shall be age appropriate.** For students in grades 4-12, disciplinary action may include loss of privileges or participation in activities, **community service**, suspension, opportunity transfer, and/or expulsion, provided that in imposing such discipline the entire circumstances of the incident(s) shall be taken into account.

Any school/district employee who engages in disability harassment is in violation of this policy and shall be subject to disciplinary measures in accordance with district policy.

### **Record-Keeping**

The Director of Student Services shall maintain a record of all reported cases of disability harassment to enable the district to monitor, address, and prevent repetitive harassing behavior in its schools.

All reports of disability harassment shall be kept confidential except as necessary to carry out the investigation or take other subsequent necessary action. (5 CCR [4964](#))

Subject to confidentiality laws, parents/guardians shall be notified of the actions taken by the District to resolve the complaint.

Each quarter (October, January, and April), the Superintendent shall inform the public via an Information Item in the Board Agenda regarding the number of reported student and employee disability harassment complaints for the previous quarter with total number of reported cases **by site** with those found to be violations of the policy and their respective resolutions.

Legal Reference:

EDUCATION CODE

233 Education Equity; Hate and Violence Prevention Act

48900.3 Additional grounds for suspension or expulsion; hate crime

48904 Liability of parent/guardian for willful student misconduct

48980 Notice at beginning of term

PENAL CODE

422.55 Hate Crime

CIVIL CODE

51.7 Right to be Free from Violence or Threat of Violence

51.13 Personal Rights; Discrimination

52.1 - 52.4 Personal Rights; Discrimination Liability

54 Blind and Other Physical Disabled Persons; Rights of an Individual

54.1 Blind and Other Physical Disabled Persons; Full and equal Access

54.3 Liability for Acts of Discrimination

1714.1 Liability of parents/guardians for willful misconduct of minor

CODE OF REGULATIONS, TITLE 5

4900-4965 Nondiscrimination in elementary and secondary education programs receiving state financial assistance

UNITED STATES CODE, TITLE 42

§ 12132, et seq., The Americans with Disabilities Act (ADA), Title II

UNITED STATES CODE, TITLE 29

§ 794, et seq., Section 504 of the Rehabilitation Act of 1973

CODE OF FEDERAL REGULATIONS, TITLE 28

Part 35, Regulations Implementing Title II of the ADA

CODE OF FEDERAL REGULATIONS, TITLE 34

Part 104, Regulations Implementing Section 504

Management Resources:

OFFICE FOR CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Protecting Students from Harassment and Hate Crime: A Guide for Schools, January 1999

Reminder of Responsibilities under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Acts, July 2000

WEB SITES

OCR: <http://www.ed.gov/offices/OCR>

**Policy: SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT  
Adopted:**

DISABILITY HARASSMENT

Definition

Disability harassment is intimidation or abusive behavior toward a student based on disability or regarded as having such an impairment that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the District's programs or activities. A hostile environment is created when harassing conduct is sufficiently severe, persistent, or pervasive. Disability harassment includes any unwelcome verbal, written, or physical conduct, directed at the characteristics of a person's disabling condition or regarded as having such a disabling condition, such as imitating manner of speech or movement, or interference with necessary equipment, or exclusion from activities available to peers. Harassment of a student based on disability may decrease the student's ability to benefit from his or her education and amount to a denial of Free and Appropriate Public Education (FAPE). **Failure to respond adequately to disability harassment constitutes discrimination, in violation of Section 504 of Rehabilitation Act of 1974 and Title II of Americans with Disabilities Act of 1990.**

Types of conduct which are prohibited in the district and which may constitute disability harassment include, but are not limited to:

1. Graffiti containing offensive language which is derogatory to another because of an individual's physical or mental disability;
2. Threatening or intimidating conduct directed at another because of the other's physical or mental disability;
3. Jokes, rumors, **imitated behavior**, or name calling based upon an individual's physical or mental disability;
4. Slurs, negative stereotypes, and hostile acts which are based upon another's physical or mental disability;
5. Graphic material containing comments or stereotypes which is posted, ~~or~~ circulated, **and/or electronically circulated** and which is aimed at degrading individuals or members of protected classes;
6. A physical act of aggression or assault upon another because of, or in a manner reasonably related to, an individual's physical or mental disability;
7. Other kinds of aggressive conduct such as theft or damage to property which is motivated by an individual's physical or mental disability.

Notifications

A copy of the district's disability harassment policy shall:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year (Education Code [48980](#); 5 CCR [4917](#));

2. Be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester or summer session (Education Code 231.5)
3. Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures and standards of conduct (Education Code 231.5);
4. Be provided to employees and employee organizations.

### **Complaint and Investigation Process**

Any student who feels that he/she is being or has been harassed by a school/district employee, another student, or a non-employee on school grounds or at a school sponsored or school-related activity shall immediately contact his/her teacher or any other school/district employee. A school/district employee to whom a report is made shall, as soon as possible, but no later than within 24 hours of receiving the report, notify the principal or designee. The principal or designee shall immediately notify the parent/guardian of the alleged victim that a report has been made.

Any school/district employee who observes any incident of disability harassment involving a student shall report this observation as soon as possible, but no later than within 24 hours to the principal or designee, whether or not the victim files a complaint or reports the incident.

Where the principal or designee finds that disability harassment occurred, he/she shall take prompt, appropriate action to end the harassment and address its effects on the student(s). The principal or designee shall also advise the him/her (them) and the parent/guardian of any other resources and supports that may be available.

**Any student who engages in disability harassment of anyone at school or at a school-sponsored or school-related activity is in violation of this policy and shall be subject to disciplinary action. For students in grades K-3, disciplinary action shall be age appropriate.** Students in grades 4-12 who engage in disability harassment shall be subject to discipline including, but not limited to, **loss of privileges or participation in activities, community service**, suspension, expulsion, transfer to alternative programs, or denial of participation in extracurricular or co-curricular activities in accordance with Board Policy and administrative regulation. The Superintendent or designee shall notify local law enforcement as appropriate.

Any employee who engages in disability harassment is in violation of this policy and shall be subject to disciplinary measures including but not limited to suspension, transfer to alternative job location, participation in counseling program, loss of employment.

#### Investigation of Complaints regarding Disability Harassment by Another Student

1. Notice and Receipt of Complaint: Any student, or parent/guardian, who believes a student has been subjected to disability harassment or who has witnessed disability harassment shall report **the incident** to the school principal immediately. ~~The school shall assist the student in the writing of the report if necessary and initiate an investigation of the report. The school shall notify the parents/guardians of the student who made the report of the incident of disability harassment.~~ **A student's or parent's verbal report of an incident of disability harassment is sufficient to initiate the principal/designee's obligation to file the report.**

- 2. When a student makes a verbal or written report of disability harassment, the Principal must inform the student's parents immediately.**
- 3. The school shall offer the parents assistance for the student to prepare a written report, and provide such assistance, if the parents wish.**
- 24. Upon receipt of information about an incident of disability harassment, the Principal or designee shall file the Reporting Form of Harassment to be submitted to the Director of Student Services.**
- 35. Initiation of Investigation: Principal or designee shall initiate an investigation of an allegation of disability harassment within five school days of receiving notice of the harassing behavior, regardless of whether a report has been filed. The principal or designee shall notify the parents/guardians of the student accused of harassment. The district shall be considered to have "notice" of the need for an investigation upon receipt of information from school/district employee, a student, or a parent/guardian who believes a student has been subjected to disability harassment.**
- 6. The investigation at the school site shall include interviewing:**
- The student who is complaining
  - The student accused of harassment
  - Anyone who witnessed the conduct complained of
  - Anyone mentioned as having related information
- 47. The complainant or the alleged subject of the harassment shall not be required or asked to meet with the alleged harasser or person suspected of disability harassment.**
- 58. The principal or designee shall take into account:**
- a. Statements made by the persons identified above
  - b. The details and consistency of each person's account
  - c. Evidence of how the complaining student reacted to the incident
  - d. Evidence of any past instances of harassment by the alleged harasser
  - e. Evidence of any past harassment complaints that were found to be untrue
  - f. How the misconduct affected one or more students' education
  - g. The type, frequency, and duration of the misconduct
  - h. The number of persons involved
  - i. The subject(s) of harassment
  - j. The place and situation where the incident occurred
  - k. Other incidents at the school, including incidents of harassment that were not related to disability



- I. Any other findings that may be pertinent to the investigation

69. The principal or designee shall give the Director of Student Services all documentation of the incident. If the school verifies that disability harassment occurred, this report shall describe the actions taken to end the harassment including appropriate disciplinary action, address the effects of the harassment on the student harassed, and prevent retaliation or further harassment. The school shall provide a notification of the findings to the complainant and the opportunity to appeal unsatisfactory result to the Director of Student Services.

### **Investigation of Complaints against a School/District Employee at School (Site-Level Grievance Procedure)**

1. Notice and Receipt of Complaint: Any student, or parent/guardian, who believes a student has been subjected to disability harassment or who has witnessed disability harassment by a school/district employee may file a Reporting Form of Harassment with the principal. The school/district shall assist the parent/guardian in the writing of the Reporting Form of Harassment. The principal or designee shall file the Confidential Incident Report Form with the Assistant Superintendent of Human Resources within 24 hours. **A student's or parent's verbal report of an incident of disability harassment is sufficient to initiate the principal/designee's obligation to file the report. When a student makes a verbal or written report of disability harassment, the principal must inform the student's parents immediately.**

2. **The Principal or designee shall file the Confidential Incident Report Form with the Assistant Superintendent of Human Resources within 24 hours of receiving information about an incident of disability harassment by a school/district employee.**

23. Alternatively, the Uniform Complaint Procedure may be used and filed with the principal.

34. In addition, any school employee who observes or has knowledge of an employee incident of disability harassment ~~involving a student or staff~~ **perpetrated by a school/district employee and directed at a student** shall, as soon as possible, but no later than within 24 hours, report this observation to the Principal or designee, whether or not the victim or parent/guardian reports the incident or files a report. In any case of disability harassment involving the Principal/designee to whom the complaint would ordinarily be made, the employee who receives the student's report or who observes the incident shall instead report to the Assistant Superintendent of Human Resources or designee.

#### 45. Informal Resolution

The Assistant Superintendent of Human Resources ~~principal~~ may offer the complainant the opportunity **within 5 days of the reported incident** ~~to resolve the complaint through an informal process or mediation.~~ If successful, resolution without further investigation shall be recommended to the Assistant Superintendent of Human Resources. **Parents and students are not obligated to agree to or participate in mediation.**

56. Initiation of Investigation: If the informal resolution is unsuccessful, the Principal or designee shall initiate an impartial investigation of an allegation of disability harassment within five school days of receiving notice of the harassing behavior, regardless of whether a formal complaint has been filed. The district shall be considered to have "notice" of the need for an investigation upon receipt of information from school/district employee, a student, or a parent/guardian who believes a student has been subjected to

disability harassment. Complaints filed at the school level will be investigated by the Principal or designee. Complaints filed at the District Office level will be investigated by the Assistant Superintendent of Human Resources or designee.

7. The investigation will occur promptly. The investigator shall talk individually with:

- The student who is complaining
- The employee accused of harassment
- Anyone who witnessed the conduct complained of
- Anyone mentioned as having related information

**In any circumstance where a student is interviewed, questioned or asked to be part of the reporting process or investigation, the parent shall be notified in advance and shall be given the opportunity to be present and participate.**

8. The complainant shall have an opportunity to, **but shall not be required to**, describe the incident, present witnesses, and other evidence of the harassment, and put his/her complaint in writing. If the complainant requires assistance with communication or in providing a written statement, such assistance will be provided by a qualified staff member (i.e., students with learning disabilities in reading or writing may choose to dictate their complaint statement). **If the complainant is a student, before any assistance is provided, the parent shall be notified and shall decide (a) whether a written report will be made and (b) whether school/district personnel will assist with the process.**

9. The investigation is subject to district confidentiality policies (BP 4119.23). If the complaint regards occurrences for which the investigator has a reasonable suspicion of child abuse, the investigator is mandated to report to law enforcement and child protective agencies as per Board Policy and Administrative Regulation 5141.4. When necessary to carry out his/her investigation or for other good reasons that apply to the particular situation, the investigator may also discuss the complaint with the following persons:

- a. The Superintendent or designee
- b. The parent/guardian of the student who complained
- c. A teacher or staff member whose knowledge of the students involved may help in determining who is telling the truth
- d. Child protective agencies responsible for investigating child abuse reports
- e. Legal counsel for the district

10. The complainant or the alleged subject of the harassment shall not be required or asked to meet with the alleged harasser or person suspected of disability harassment.

11. The investigator shall take into account:

- a. Statements made by the persons identified above
- b. The details and consistency of each person's account
- c. Evidence of how the complaining student reacted to the incident
- d. Evidence of any past instances of harassment by the alleged harasser

- e. Evidence of any past harassment complaints that were found to be untrue
- f. How the misconduct affected one or more students' education
- g. The type, frequency, and duration of the misconduct
- h. The number of persons involved
- i. The subject(s) of harassment
- j. The place and situation where the incident occurred
- k. Other incidents at the school, including incidents of harassment that were not related to disability
- l. Any other findings that might be pertinent to the investigation

1012. The investigator shall give the Superintendent or designee a written report of the complaint and investigation. If investigator verifies that disability harassment occurred, this report shall describe the actions taken to end the harassment, address the effects of the harassment on the student harassed, and prevent retaliation or further harassment. The District shall provide a notification of the findings to the complainant and the opportunity to appeal unsatisfactory result to the Assistant Superintendent of Human Resources.

### **Enforcement**

The Superintendent or designee shall take appropriate actions to reinforce the district's disability harassment policy. As needed, these actions may include any of the following:

1. Immediately remove any offending graffiti.
2. Provide training to students, staff, and parents/guardians about how to recognize disability harassment and how to respond.
3. Notify child protective services and law enforcement if necessary.
4. Take appropriate disciplinary action. In addition, the Principal or designee may take disciplinary measures against any person who is found to have made a complaint of disability harassment which he/she knew was not true.
5. If an employee is found to be in violation of this policy, disciplinary action shall include, at a minimum, a letter of reprimand, which shall be placed in the employee's personnel file. That letter shall not be expunged under any circumstances.

### **Support for Students**

The Superintendent or designee shall take appropriate actions to provide support for students who have been subjected to disability harassment and/or misconduct by a district employee or volunteer.

1. The Principal or designee will make it clear to the affected student(s) and the parents/guardians that any form of retaliation or mistreatment of a student who complained will not be tolerated. **The principal/designee will inform parents about how to report any retaliation.**
2. In instances where there were substantiated findings that a student was subjected to disability harassment by a district employee or volunteer, the district will offer, and upon

the request of the parent/guardian, will assist the student in receiving therapeutic intervention.

### **Notifications**

A copy of the district's disability harassment policy and regulation shall:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year (Education Code 48980; 5 CCR 4917)
2. Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures, and standards of conduct (Education Code 231.5)
3. Be included in the student handbook
4. Be provided to employees and employee organizations

### **Record Keeping**

All reports will be forwarded to the Director of Student Services for record keeping.

**Each quarter (October, January, and April), the Superintendent shall inform the public via an Information Item in the Board Agenda regarding the number of reported student and employee disability harassment complaints for the prior quarter, with total number of reported cases by sites with those found to be violations of the policy and their respective resolutions.**

**Regulation: SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT  
Approved: August 24, 2011**

DISABILITY HARASSMENT

Santa Monica-Malibu Unified School District  
Reporting Form of Harassment:

Sexual Harassment, and Harassment because of Race, National Origin, and Disability\*

Complainant \_\_\_\_\_  
Home Address \_\_\_\_\_  
Work Address \_\_\_\_\_  
Home Phone \_\_\_\_\_ Work Phone \_\_\_\_\_

Date and Time of Alleged Incident(s) \_\_\_\_\_  
Did the incidents involve: \_\_\_ sexual harassment, \_\_\_ racial harassment, \_\_\_ harassment because of national origin, \_\_\_ harassment because of disability (check all that apply)  
Name of person(s) you believe harassed you or another person: \_\_\_\_\_

Describe the incident as clearly as possible, including such things as what force, if any, was used, any verbal statements (i.e. threats, requests, demands, etc.), what if any physical contact was involved. Attach additional pages as necessary.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Where did the incident occur? \_\_\_\_\_

List any witnesses who were present  
\_\_\_\_\_

This complaint is based upon my honest belief that \_\_\_\_\_ has harassed me or another person. I hereby certify that the information I have provided in this complaint is true, correct, and complete to the best of my knowledge.

\_\_\_\_\_  
(complainant's signature) (date)

\_\_\_\_\_  
(received by) (date)

\* If a person making a complaint requires assistance in providing a written statement, such assistance will be provided by a staff member (i.e., students with learning disabilities in reading or writing may choose to dictate their complaint statement).