



UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

TOPICS Second Reading of Policy DGBA (LOCAL)-Personnel-Management Relations – Employee

Complaints/Grievances

SUBMITTED BY: Juan J. Cruz OF School Attorney

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: _____

DATE ASSIGNED FOR BOARD CONSIDERATION: July 23, 2014

RECOMMENDATION:

It is recommended that the United ISD Board of Trustees approve Second Reading of Policy DGBA (LOCAL)-Personnel-Management Relations – Employee Complaints/Grievances

RATIONALE:

BUDGETARY INFORMATION:

BOARD POLICY REFERENCE AND COMPLIANCE:

PERSONNEL-MANAGEMENT RELATIONS
EMPLOYEE COMPLAINTS/GRIEVANCES

DGBA
(LOCAL)

COMPLAINTS	In this policy, the terms "complaint" and "grievance" shall have the same meaning.
OTHER COMPLAINT PROCESSES	Employee complaints shall be filed in accordance with this policy, except as provided below: <ol style="list-style-type: none">1. Complaints alleging discrimination, including violations of Title IX (gender), Title VII (sex, race, color, religion, national origin), ADEA (age), or Section 504 (disability), shall be submitted in accordance with DIA.2. Complaints alleging certain forms of harassment, including harassment by a supervisor and violation of Title VII, shall be submitted in accordance with DIA.3. Complaints concerning retaliation relating to discrimination and harassment shall be submitted in accordance with DIA.4. Complaints concerning instructional materials shall be submitted in accordance with EFA.5. Complaints concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with CKE.6. Complaints concerning the proposed nonrenewal of a term contract issued under Chapter 21 of the Education Code shall be submitted in accordance with DFBB.7. Complaints concerning the proposed termination or suspension without pay of an employee on a probationary, term, or continuing contract issued under Chapter 21 of the Education Code during the contract term shall be submitted in accordance with DFAA, DFBA, or DFCA.
NOTICE TO EMPLOYEES	The District shall inform employees of this policy, <u>as authorized by the Superintendent of Schools.</u>
GUIDING PRINCIPLES INFORMAL PROCESS	The Board encourages employees to discuss their concerns and complaints through informal conferences with their supervisor, principal, or other appropriate administrator. Concerns should be expressed as soon as possible to allow early resolution at the lowest possible administrative level.
DIRECT COMMUNICATION WITH BOARD MEMBERS	Employees shall not be prohibited from communicating with a member of the Board regarding District operations except when communication between an employee and a Board member would be inappropriate because of a pending hearing or appeal related to the employee.

PERSONNEL-MANAGEMENT RELATIONS
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FORMAL PROCESS If an informal mediation conference regarding a complaint fails to reach the outcome requested by the employee, he or she may initiate the formal process described below by timely filing a written complaint form.

Even after initiating the formal complaint process, employees are encouraged to seek informal resolution of their concerns. An employee whose concerns are resolved may withdraw a formal complaint at any time.

The process described in this policy shall not be construed to create new or additional rights beyond those granted by law or Board policy, nor to require a full evidentiary hearing or "mini-trial" at any level.

FREEDOM FROM
RETALIATION

Neither the Board nor any District employee shall unlawfully retaliate against an employee for bringing a concern or complaint.

WHISTLEBLOWER
COMPLAINTS

Whistleblower complaints shall be filed within the time specified by law and may be made to the Superintendent or designee beginning at Level Two. Time lines for the employee and the District set out in this policy may be shortened to allow the Board to make a final decision within 60 calendar days of the initiation of the complaint.
[See DG]

As per state law, Sec. 554.002 of the Texas Government Code, (Retaliation Prohibited for Reporting Violation of Law) (a) A state or local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who in good faith reports a violation of law by the employing governmental entity or other public employee to an appropriate law enforcement authority; (b) In this section, a report is made to an appropriate law enforcement authority if the authority is a part of a state or local governmental entity or of the federal government that the employee in good faith believes is authorized to: 1.) regulate under or enforce the law alleged to be violated in the report; or 2.) investigate or prosecute a violation of criminal law.

Complaints that do not meet the elements of a whistleblower grievance by law shall be routed to begin at Level One.

COMPLAINTS AGAINST
SUPERVISORS

Complaints alleging a supervisor's violation of law or the supervisor's unlawful harassment of the employee may be made to the Superintendent who shall assign a hearing officer to hear such grievance, beginning at the mediation conference level. A complaint alleging a violation of law by the Superintendent or the Superintendent's unlawful harassment of an employee may be made directly to the Board.

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GENERAL
PROVISIONS
FILING

Complaints/Grievances shall be filed with the complainant's immediate supervisor on the District's complaint/grievance form within 15 days of the date the employee first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance. Grievance forms may be obtained from the department of human resources or on the District's Web site under the department of human resources. In most circumstances, employees on a school campus **or department administrator** shall file complaints/grievances with the campus principal **or department administrator**.

If the complaint is not filed with the appropriate administrator, the receiving administrator shall note the date and time the complaint form was received and immediately forward the complaint form to the appropriate administrator.

Complaint forms and appeal notices may be filed by hand-delivery, fax, ~~or~~ U.S. Mail, or e-mail. **A complaint filed via e-mail must be copied to the Director of Employee Relations. If the Director of Employee Relations is not copied, the complaint shall be deemed filed when the Administrator confirms receipt of complaint.** Hand-delivered filings shall be timely filed if received by the appropriate administrator or designee by the close of business on the deadline. Fax filings shall be timely filed if they are received on or before the deadline, as indicated by the date/time shown on the fax copy. Mail filings shall be timely filed if they are postmarked by U.S. Mail on or before the deadline and received by the appropriate administrator or designated representative no more than three days after the deadline. **All complaints shall be signed by the grievant or representative; however, a representative must submit written authorization signed by employee, which specifically allows the representative to act on behalf of the employee during the grievance process.**

RESPONSE

At Levels One and Two, "response" shall mean a written communication to the employee from the appropriate administrator. Responses may be hand-delivered or sent by U.S. Mail to the employee's mailing address of record, or, if the grievant filed the complaint by e-mail, to the e-mail address from which the complaint was filed. Mailed responses shall be timely if they are postmarked by U.S. Mail on or before the deadline.

DAYS

"Days" shall mean District business days **(as determined by the academic calendar during the school year and by the summer schedule observed by district staff during the summer)**, unless otherwise noted. In calculating time lines under this policy, the day a document is filed is "day zero." The following business day is "day one."

REPRESENTATIVE

“Representative” shall mean any person who or an organization that does not claim the right to strike and is designated by the employee to represent him or her in the complaint process.

The employee may designate a representative through written notice to the District at any level of this process. The representative may participate in person or by telephone conference call. If the employee designates a representative with fewer than three days’ notice to the District before a scheduled conference or hearing, the District may reschedule the conference or hearing to a later date, if desired, in order to include the District’s counsel. The District may be represented by counsel at any level of the process.

Representatives shall conduct themselves with common courtesy and respect for the rights of others. If, at any level, a representative is deemed to be unruly, disrespectful or disruptive to the hearing process, the grievance hearing shall be concluded and the employee/representative shall be issued a decision based upon the written record and the oral arguments set forth by the grievant/representative. Further, the District may remove a disruptive representative from the premises. Further, if after an examination of facts, the Superintendent deems that the representative has been disruptive in a repetitive manner, the Superintendent may issue a letter of warning to the grievant’s representative and if the representative continues the same disruptive conduct, the Superintendent may not allow further opportunity to represent any future grievants.

CONSOLIDATING
COMPLAINTS

Complaints arising out of an event or a series of related events shall be addressed in one complaint. Employees shall not bring separate or serial complaints arising from any event or series of events that have been or could have been addressed in a previous complaint. If the employee submits a grievance that is a duplicate of a prior grievance, the department of human resources may dismiss the complaint without the necessity of a hearing.

All employees shall file their grievance individually, unless a group of employees has the same/similar complaint(s) that the Superintendent or designee determines can be grouped together and proceed with the hearing process in a collective manner.

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When two or more complaints are sufficiently similar in nature and remedy sought to permit their resolution through one proceeding, the District may consolidate the complaints.

UNTIMELY FILINGS

All time limits shall be strictly followed unless modified by mutual written consent.

If a complaint form or appeal notice is not timely filed, the complaint may be dismissed, on written notice to the employee, at any point during the complaint process. The employee may appeal the dismissal by seeking review in writing within ten days from the date of the written dismissal notice, starting at the level at which the complaint was dismissed. Such appeal shall be limited to the issue of timeliness.

COSTS INCURRED

Each party shall pay its own costs incurred in the course of the complaint.

COMPLAINT FORM

Complaints under this policy shall be submitted in writing on a form provided by the District.

Copies of any documents that support the complaint should be attached to the complaint form. If the employee does not have copies of these documents, they may be presented at the Level One conference. After the Level One conference, no new documents may be submitted by the employee.

A complaint form that is incomplete in any material aspect may be dismissed, but may be refiled with all the required information if the refiling is within the designated time for filing a complaint.

SCHEDULING
CONFERENCES

All conferences shall take place during normal District business hours. However, generally the grievance will be scheduled during non-instructional time or at a time when the employee is not engaged in the regular performance of his/her duties. All participants, including witnesses, shall be released from regular duties if the grievance hearing is scheduled during the workday and shall suffer no loss of pay or other benefits if, and only if, they receive prior approval from their immediate supervisor. To minimize disruption in the workplace, the supervisor shall work with the hearing officer, the grievant, and the administration, as necessary, to schedule the grievance during non-instructional time or when the employee has finished his/her workday and manage the release of employees who are participants in the conference.

STATEMENT OF
PARTICULARS

If a complaint is found to be too vague, general, or indefinite at any level of this policy, the time lines at the complaint level shall be held in abeyance, during which time the complainant shall be required to prepare a written statement of particulars, setting out with speci-

ficity the act(s) and/or omission(s) complained of in order to afford the respondent with fair notice and an opportunity to adequately respond in writing to each charge or offer a remedy. **If grievant or representative do not adequately address the vague, general or indefinite grievance complaint within three (3) days of written notification, the complaint shall be dismissed. The grievant may appeal the dismissal by seeking review in writing within ten days from the date of the written dismissal notice, starting at the level at which the complaint was dismissed. Such appeal shall be limited to the issue of the timeliness of the complaint and whether such complaint was found vague, general or indefinite.**

The Superintendent's designee may conduct a pre-hearing conference or make such other orders as may be deemed necessary or appropriate to clarify issues, afford the respondent with fair notice and an opportunity to respond and assist in the resolution process.

DESIGNATED PARTIES

For purposes of hearing a complaint at both the informal and formal complaint conference, the designated party shall be assigned by the Superintendent.

PROCESSING A
GRIEVANCE

The procedure for processing a grievance is as follows:

MEDIATION
CONFERENCE

At the time the employee files his or her complaint/grievance, the employee shall have an informal mediation conference with the immediate supervisor, except that a District ombudsman may be in attendance herein to resolve the complaint, prior to entering the formal complaint process. **Upon receipt of the complaint, the ombudsman may conduct a preliminary investigation.** The immediate supervisor shall schedule and conduct an informal mediation conference within **five ten** days of receipt of the complaint or at a time mutually agreeable to the parties. At the informal conference, the following shall be discussed: (i) the concern, (ii) the justification or rationale for the concern, (iii) the harm sustained or being sustained by the employee, and (iv) the remedy sought for resolution.

The employee(s), the immediate supervisor, and/or the District ombudsman shall endeavor to reach an agreement resolution of the concern. If resolution is reached, the complaint is resolved. If resolution is not reached, the employee may invoke the formal complaint process.

OMBUDSMAN

The ombudsman shall be appointed by the Superintendent. The ombudsman shall be an employee who is responsible for serving as a resource to employees by assisting in preventing or eliminating conditions that are not conducive to a positive working envi-

ronment. Although the ombudsman shall not mandate resolution, the ombudsman may make recommendations to the employee and/or the immediate supervisor for resolution of concerns. Recommendations of the ombudsman are for the sole purpose of resolving controversial issues and may not be used by the party complaining or the party being complained against for any purpose.

At the conclusion of the **informal** mediation conference, a determination shall be finalized in which the ombudsman shall issue a mediation summary/agreement signed by all parties.

AUDIO RECORDING

As provided by law, an employee shall be permitted to make an audio recording of a conference or hearing under this policy at which the substance of the employee's complaint is discussed. The employee shall notify all attendees present that an audio recording is taking place.

MUTUAL AGREEMENT
OF THE PARTIES

The parties involved may mutually consent, in writing, to modify the procedures as may be necessary to accomplish the goal of resolving disputes in the most efficient and expeditious manner possible.

WITHDRAWAL

An employee may withdraw a dispute at any time. Once withdrawn, a dispute may not be reopened.

A dispute shall be considered withdrawn if an employee fails to pursue the dispute or otherwise is deemed to be unreasonably protracting the process.

FORMAL PROCESS

The formal process shall consist of Levels One and Two, which are closed to the public. No members of the public may attend except the designated representative. A Level Three presentation to the Board shall be within a properly posted Board meeting. The determination of whether the hearing will be opened to the public or held in closed session is within the discretion of the Board, except that the hearing shall be held in closed session upon request by the employee who is the grievant in the dispute. The only exception to the grievant's election to hold the hearing in closed session is when the employee against whom the complaint or a charge is brought makes a written request for an open hearing, in which case the hearing shall be opened to the public.

LEVEL ONE

If resolution of the complaint is not reached at the **informal** mediation complaint/grievance level, the employee may enter the **formal level one** complaint process and request a formal meeting with the immediate supervisor or designee within seven days of the **informal** mediation conference, unless the time has been extended by written agreement. The Superintendent shall appoint another administrator to serve as the Level One hearing officer when the

complaint is against the administrator who would normally hear the Level One complaint.

A Level One conference shall be conducted within ten days of notice by the employee requesting to enter the **formal level one** complaint process. The supervisor or designee shall notify the employee of the date, time, and place of the conference at which time the complaint shall be reviewed with the employee. The administrator may set reasonable time limits for the conference.

The administrator shall provide the employee a written response within 14 days following the conference. The written response shall set forth the basis of the decision. In reaching a decision, the administrator may consider information provided at the Level One conference and any other relevant documents, which may include information directly relevant to the decision, action, or event addressed in the grievance including but not limited to written statements, personnel file, prior disciplining memos, education records, or information the administrator believes will help resolve the complaint.

There shall be no cross-examination of any witnesses, nor shall this conference in any way resemble an evidentiary hearing. Each side will simply make presentations to the supervisor or the person assigned to hold the Level One conference within the time restrictions set by that person.

LEVEL TWO

If the employee did not receive the relief requested at Level One or if the time for a response has expired, the employee may request a conference with the Superintendent or designee to appeal the Level One decision.

The appeal notice must be filed in writing, on a form provided by the District, within seven days of the date of the written Level One response or, if no response was received, within seven days of the Level One response deadline. The employee may not appeal any part of a complaint of which said remedy has been granted at a prior level.

After receiving notice of the appeal, the Level One administrator shall prepare and forward a record of the Level One complaint to the Level Two administrator. The employee may request a copy of the Level One record.

The Level One record shall include:

1. The original complaint form and any attachments.
2. All other documents submitted by the employee at Level One.

3. The written response issued at Level One and any attachments.
4. All other documents relied upon by the Level One administrator in reaching the Level One decision.

The Superintendent or designee shall hold a conference within ten days after the appeal notice is filed. The conference shall be limited to the issues, remedies, and documents presented by the employee at Level One and identified in the Level Two appeal notice. At the conference, the employee may provide information concerning any documents or information relied upon by the administration for the Level One decision. The Superintendent or designee may set reasonable time limits for the conference.

The Superintendent or designee shall provide the employee a written response within 14 days following the conference. The written response shall set forth the basis of the decision. In reaching a decision, the Superintendent or designee may consider the Level One record, information provided at the Level Two conference, and any other relevant documents or information the Superintendent or designee believes will help resolve the complaint, **including the Level One documentation and other relevant information deemed necessary to consider in order to resolve the grievance.**

Recordings of the Level One and Level Two conferences, if any, shall be maintained with the Level One and Level Two records.

LEVEL THREE

If the employee did not receive the relief requested at Level Two or if the time for a response has expired, the employee may appeal the decision to the Board.

The appeal notice must be filed in writing, on a form provided by the District, within seven days of the date of the written Level Two response or, if no response was received, within seven days of the Level Two response deadline. The employee may not appeal any part of a complaint of which said remedy has been granted at a prior level.

The Superintendent or designee shall inform the employee of the date, time, and place of the Board meeting at which the complaint will be on the agenda for presentation to the Board.

The Superintendent or designee shall provide the Board the record of the Level Two appeal. **The grievant shall be provided the Level Two record, as indicated below.** ~~The employee may request a copy of the Level Two record.~~

The Level Two record shall include:

1. The Level One record.
2. The notice of appeal from Level One to Level Two.
3. The written response issued at Level Two and any attachments.
4. All other documents relied upon by the administration in reaching the Level Two decision. **The District reserves the right to redact confidential information, as required by law.**
5. **Other documents exchanged by the parties at least 5 days prior the Level Three grievance.**

~~If at the Level Three hearing the administration intends to rely on evidence not included in the Level Two record, the administration shall provide the employee notice of the nature of the evidence at least three days before the hearing.~~ The Board shall consider only those issues, remedies, and documents presented at the preceding levels and identified in the appeal notice.

The District shall determine whether the complaint will be presented in open or closed meeting in accordance with the Texas Open Meetings Act and other applicable law. [See BE]

The presiding officer may set reasonable time limits and guidelines for the presentation, including an opportunity for the employee and administration to each make a presentation and provide rebuttal and an opportunity for questioning by the Board. The Board shall hear the complaint and may request that the administration provide an explanation for the decisions at the preceding levels.

In addition to any other record of the Board meeting required by law, the Board shall prepare a separate record of the Level Three presentation. The Level Three presentation, including the presentation by the employee or the employee's representative, any presentation from the administration, and questions from the Board with responses, shall be recorded by audio recording, video/audio recording, or court reporter.

The Board shall then consider the complaint. It may give notice of its decision orally or in writing at any time up to and including the next regularly scheduled Board meeting. If the Board does not make a decision regarding the complaint by the end of the next regularly scheduled meeting, the lack of a response by the Board upholds the administrative decision at Level Two.