

No. _____



UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

TOPIC: First Reading of Policy DGBA (LOCAL) - Personnel-Management Relations Employee

Complaints/Grievances

SUBMITTED BY: Gloria Rendon OF Asst. to the Superintendent

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: _____

DATE ASSIGNED FOR BOARD CONSIDERATION: May 21, 2008

RECOMMENDATION:

It is recommended that the Board of Trustees approve First 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

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GUIDING PRINCIPLES	The Board encourages employees to discuss their concerns and complaints through informal conferences with their supervisor, principal, or other appropriate administrator.
INFORMAL PROCESS	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 Board members 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.
FORMAL PROCESS	<p>If an informal <u>mediation</u> 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.</p> <p>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.</p> <p>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.</p>
FREEDOM FROM RETALIATION	Neither the Board nor any District employee shall unlawfully retaliate against an employee for bringing a concern or complaint. [See DG]
NOTICE TO EMPLOYEES	The principal of each campus and other supervisory personnel shall inform employees of this policy.
SPECIFIC COMPLAINTS	<p>For more information on how to proceed with complaints regarding:</p> <ol style="list-style-type: none">1. Alleged discrimination, including violations of Title IX or Section 504, see DAA.2. Instructional materials, see EFA.3. A commissioned peace officer who is an employee of the District, see CKE.
OTHER REVIEW PROCESSES	<p>Complaints alleging certain forms of harassment, including harassment by a supervisor, shall be processed in accordance with DIA.</p> <p>Complaints arising from any of the following must be addressed through the local and statutory processes indicated below:</p>

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1. The proposed nonrenewal of a term contract issued under Chapter 21 of the Texas Education Code, in accordance with DFBB.
2. The proposed termination or suspension without pay of an employee on a probationary, term, or continuing contract issued under Chapter 21 of the Texas Education Code during the contract term, in accordance with DFAA, DFBA, or DFCA, respectively.

This policy shall apply to all other employee complaints.

DEFINITIONS

For purposes of this policy, terms are defined as follows:

COMPLAINT /
GRIEVANCE

The terms "complaint" and "grievance" shall have the same meaning. A complaint under this policy may include:

1. Grievances concerning an employee's wages, hours, or conditions of work;
2. Specific allegations of unlawful discrimination in employment based on the employee's sex, race, religion, national origin, age, or disability;
3. Specific allegations of unlawful discrimination or retaliation based on the employee's exercise of legally protected rights; or
4. Specific allegations of adverse personnel action based on the employee's good faith report to an appropriate law enforcement authority of a violation of a law by the District or a District employee, i.e., "whistleblower complaints." [See DG]
5. Complaints arising from the dismissal or termination of an at-will employee. [See DCD]
6. Complaints arising from the termination at end of year of the probationary contract of a professional employee. [See DFAB]

FILING

Complaint forms and appeal notices may be filed by hand-delivery, fax, or U.S. Mail. 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. Mailed filings shall be timely filed if they are postmarked by U.S. Mail on the deadline and received by the appropriate administrator or designated representative no more than (3) three days after the deadline. **Complaints shall be filed with the complainant's immediate supervisor.**

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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. Mailed responses shall be timely if they are postmarked by U.S. Mail on the deadline and received by the employee or designated representative no more than 3 (three) days after the response deadline.
DAYS	"Days" shall mean District business days. In calculating time lines under this policy, the day a document is filed is "day zero," and all deadlines shall be determined by counting the following day as "day one."
REPRESENTATIVE	"Representative" means 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.
DESIGNATION OF REPRESENTATIVE	The employee may designate a representative through written notice to the District at any level of this process. If the employee designates a representative with fewer than 3 (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.
WHISTLEBLOWER COMPLAINTS	Whistleblower complaints shall be filed within the time specified by law. Such complaints shall first be filed in accordance with LEVEL TWO, below. 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 (sixty) days of the initiation of the complaint. <u>{See DG} - Complaints that do meet the elements of a whistleblower grievance, by law, shall be routed to begin at Level One.</u>
GENERAL PROVISIONS	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. <u>If the employee submits a grievance that is duplicate of a prior grievance of a prior grievance, the Department of Human Resources may dismiss the complaint without the necessity of a hearing.</u> When 2 (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.

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If a complaint form or appeal notice is not timely filed, the complaint ~~may~~ **shall** 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 10 (ten) days, 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.

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

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 statements of particulars, setting out with specificity the act(s) and/or omissions(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. A statement of particulars at Level One, however, shall not be permitted without approval from the complainant's supervisor or the Superintendent or his or her designee.

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.

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 will assign a hearing officer to hear such grievance, beginning at the mediation conference level beginning at Level Two. 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 beginning at Level Three.

**MEDIATION
CONFERENCE**

**INFORMAL
COMPLAINT
PROCEDURES
REQUIRED**

An employee who has a complaint shall have an informal mediation conference with the immediate supervisor except that a District ombudsman may be in attendance with the consent of the complaining party herein to resolve the complaint, prior to entering the formal complaint process. The immediate supervisor shall schedule and conduct an informal mediation conference within 5 (five) days of receipt of the formal complaint or at a time mutually agreeable to the parties. At the informal conference, the following will 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, the immediate supervisor and/or the district ombudsman shall endeavor to reach 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 environment. Although the ombudsman shall not mandate resolution, the ombudsman may make recommendation 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.

**FORMAL COMPLAINT
PROCESS/LEVELS**

If resolution of the complaint is not reached at the informal complaint level, the employee may enter the formal complaint process and request a formal meeting with the immediate supervisor within 7 (seven) days of the informal conference, unless the time has been extended by written agreement. The employee shall submit with the request a formal complaint in writing. Unless otherwise agreed between the parties, a Level One conference shall be conducted within 10 (ten) days of receipt of the written complaint, as hereinafter set out. The immediate supervisor shall notify the employee of the date, time, and place of the conference at which the complaint shall be reviewed with the employee.

**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.

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LEVEL ONE

Complaint forms must be filed:

1. Within 15 (fifteen) 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; and
2. With the lowest level administrator who has the authority to remedy the alleged problem.

~~If the only administrator who has authority to remedy the alleged problem is the Superintendent or designee, the complaint may begin at Level Two following the procedure, including deadlines, for filing the complaint form at Level One.~~

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

The ~~appropriate administrator~~ **immediate supervisor** shall hold a conference with the employee within 10 (ten) days after receipt of the written complaint **as provided by the "Formal Complaint Process Levels," indicated above.**

The administrator shall have 14 (fourteen) days following the conference to provide the employee a written response.

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 7 (seven) days after receipt of a response or, if no response was received, within 7 (seven) days of the response deadline at Level One. **The employee may not appeal any part of a complaint, which said remedy has been granted at a prior level.**

The Superintendent or designee shall hold a conference within (10) ten days after the appeal notice is filed. At the conference, the Superintendent or designee shall consider only the issues, **remedies**, and documents presented at Level One and identified in the Level Two appeal notice. The Superintendent or designee shall have 14 (fourteen) days following the conference to provide the employee a written response.

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.

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The appeal notice must be filed in writing, on a form provided by the District, within 7 (seven) days after receipt of a response or, if no response was received, within 7 (seven) days of the response deadline at Level Two. **The employee may not appeal any part of a complaint, 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 with copies of the complaint form, all responses, all appeal notices, and all written documentation previously submitted by the employee or the administration. 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. 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 for any reason the Board fails to reach 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.

Revised 5.08