

AGENDA ITEM  
BOARD OF TRUSTEES  
AGENDA

<input type="checkbox"/> Workshop	<input checked="" type="checkbox"/> Regular	<input type="checkbox"/> Special
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- (A)  Report Only  Recognition

Presenter(s):

Briefly describe the subject of the report or recognition presentation.

- (B)  Action Item

GILBERTO GONZALEZ, SUPERINTENDENT

Presenter(s): JESUS ARTURO COSTILLA, EXEC. DIRECTOR OF HUMAN RESOURCES

Briefly describe the action required.

CONSIDER AND TAKE APPROPRIATE ACTION ON THE REQUEST TO AMEND SCHOOL POLICY DGBA (LOCAL)-PERSONNEL-MANAGEMENT RELATIONS-EMPLOYEE COMPLAINTS/GRIEVANCES.

- (C) Funding source: Identify the source of funds if any are required.

- (D) Clarification: Explain any questions or issues that might be raised regarding this item.



Texas Association of School Boards • Legal Services  
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*Serving Texas Schools Since 1949*

January 27, 2015

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

Mr. Gilberto Gonzalez  
Superintendent  
Eagle Pass ISD  
1420 Eidson Rd.  
Eagle Pass, TX 78852-5410

Dear Mr. Gonzalez:

Tammy Jordan has submitted material for legal review as part of Localized Policy Manual Update 101, previously mailed under separate cover. The purpose of this legal review is to identify to the board potential legal problems that may arise as a result of the district's local policy choices.

**Scope of Review:**

When TASB Legal Services reviews a district's local policies, the district receives the benefit of our unique, statewide view of policy trends and legal issues. By the nature of this review, however, the reviewing attorney has no background information regarding local circumstances in your district that might influence your policy choices. Therefore, this review is intended as a complement to, but not a substitute for, periodic comprehensive review by the district's own attorney, who is better able to consider the board's policy manual as a whole in light of local circumstances.

Most comments from TASB Legal Services address potential legal risks arising from the express language of the policies. Your district may also receive comments about significant application issues evident from the policy language. Because the potential legal issues arising from the application of policy language are so numerous, Legal Services cannot comment on every possible application issue. The district should contact its attorney or TASB Legal Services if it needs legal advice about how to apply any of its policies in specific circumstances.

**Review of Your Policies:**

For this review, we have examined only the following code(s): **BE(LOCAL)** and **DGBA(LOCAL)**. We have the following comments:

**DGBA(LOCAL):** At LEVEL THREE: BOARD'S DESIGNEE RECOMMENDATION, this policy allows the board to choose whether to hear oral argument regarding a grievance. The Commissioner of Education has concluded that a board's failure to allow an oral presentation by a grievant denied the grievant a fair opportunity to present the grievance to the board. *Brown v. DeSoto Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 128-R1-698 (Aug. 12, 1999). In an older Commissioner's decision, however, the Commissioner determined that a school board satisfies its obligation to hear grievances by receiving complaints in writing. *Eller v. Beaumont Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 194-R10-393 (Sept. 24, 1993). This policy allows the board to select on a case-by-case basis whether to conduct a hearing with oral argument in front of the board. By making case-by-case decisions, the board is exposing itself to charges that the board has exercised its discretion in a way that impermissibly discriminates against the viewpoint of a particular complainant. Discrimination on the basis of viewpoint in conducting a grievance proceeding could violate the First Amendment. *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747 (5th Cir. 2010). TASB Legal Services recommends that the board adopt a procedure that permits all grievants to make oral presentations to the board or that requires all grievance appeals be forwarded to the board only in writing. If the district wishes to maintain a policy that permits case-by-case decision making, TASB Legal Services recommends that the district consult its school attorney.

Mr. Gilberto Gonzalez  
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CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

**Changes to Your Policies**

Ultimately the content of local policy is the board's choice. As the board makes its policy decisions, it should consider the recommendations of district administrators, input from TASB Policy and Legal Services, and the advice of the district's school attorney. If the district wishes to make changes to its policy, contact Tammy Jordan.

Sincerely,

TASB Legal Services

By: Leslie Story  
Leslie Story

## PROPOSED REVISIONS: 2-13-2015

COMPLAINTS	In this policy, the terms "complaint" and "grievance" shall have the same meaning.
OTHER COMPLAINT PROCESSES	<p>Employee complaints shall be filed in accordance with this policy, except as required by the policies listed below. Some of these policies require appeals to be submitted in accordance with DGBA after the relevant complaint process:0)</p> <ol style="list-style-type: none"><li>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.</li><li>2. Complaints alleging certain forms of harassment, including harassment by a supervisor and violation of Title VII, shall be submitted in accordance with DIA.</li><li>3. Complaints concerning retaliation relating to discrimination and harassment shall be submitted in accordance with DIA.</li><li>4. Complaints concerning instructional materials shall be submitted in accordance with EFA.</li><li>5. Complaints concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with CKE.</li><li>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.</li><li>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.</li></ol>
NOTICE TO EMPLOYEES	The District shall inform employees of this policy through appropriate District publications.
GUIDING PRINCIPLES INFORMAL PROCESS	<p>The Board encourages employees to discuss their concerns with their supervisor, principal, or other appropriate administrator who has the authority to address the concerns. Concerns should be expressed as soon as possible to allow early resolution at the lowest possible administrative level.</p> <p>Informal resolution shall be encouraged but shall not extend any deadlines in this policy, except by mutual written consent.</p>

PERSONNEL-MANAGEMENT RELATIONS  
EMPLOYEE COMPLAINTS/GRIEVANCES

DGBA  
(LOCAL)

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.
FORMAL PROCESS	<p>An employee 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.
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]
COMPLAINTS AGAINST SUPERVISORS	Complaints alleging a violation of law by a supervisor may be made to the Superintendent or designee. Complaint forms alleging a violation of law by the Superintendent may be submitted directly to the Board or designee.
GENERAL PROVISIONS FILING	Complaint forms and appeal notices may be filed by hand-delivery, by electronic communication, including e-mail and fax, or by 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. Filings submitted by electronic communication shall be timely filed if they are received by the close of business on the deadline, as indicated by the date/time shown on the electronic communication. Mail filings shall be timely filed if they are post-marked 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.
SCHEDULING CONFERENCES	The District shall make reasonable attempts to schedule conferences at a mutually agreeable time. If the employee fails to appear at a scheduled conference, the District may hold the conference and issue a decision in the employee's absence.

PERSONNEL-MANAGEMENT RELATIONS  
EMPLOYEE COMPLAINTS/GRIEVANCES

DGBA  
(LOCAL)

RESPONSE	<p>At Levels One and Two, "response" shall mean a written communication to the employee from the appropriate administrator. Responses may be hand-delivered, sent by electronic communication to the employee's e-mail address of record, 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 or before the deadline.</p>
DAYS	<p>"Days" shall mean District business days, 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."</p>
REPRESENTATIVE	<p>"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.</p> <p>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.</p>
CONSOLIDATING COMPLAINTS	<p>Complaints arising out of an event or a series of related events shall be addressed in one complaint. Employees shall not file separate or serial complaints arising from any event or series of events that have been or could have been addressed in a previous complaint.</p> <p>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.</p>
UNTIMELY FILINGS	<p>All time limits shall be strictly followed unless modified by mutual written consent.</p> <p>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.</p>
COSTS INCURRED	<p>Each party shall pay its own costs incurred in the course of the complaint.</p>

PERSONNEL-MANAGEMENT RELATIONS  
EMPLOYEE COMPLAINTS/GRIEVANCES

DGBA  
(LOCAL)

COMPLAINT AND APPEAL FORMS	<p>Complaints and appeals under this policy shall be submitted in writing on a form provided by the District.</p> <p>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 unless the employee did not know the documents existed before the Level One conference.</p> <p>A complaint or appeal 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.</p>
AUDIO RECORDING	<p>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.</p>
LEVEL ONE	<p>Complaint forms must be filed:0.</p> <ol style="list-style-type: none"><li data-bbox="570 1006 1382 1102">1. 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; and</li><li data-bbox="570 1129 1382 1187">2. With the lowest level administrator who has the authority to remedy the alleged problem.</li></ol> <p>In most circumstances, employees on a school campus shall file Level One complaints with the campus principal; other District employees shall file Level One complaints with their immediate supervisor.</p> <p>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.</p> <p>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.</p> <p>The appropriate administrator shall investigate as necessary and schedule a conference with the employee within ten days after receipt of the written complaint. The administrator may set reasonable time limits for the conference.</p> <p>Absent extenuating circumstances, the administrator shall provide the employee a written response within ten days following the con-</p>

PERSONNEL-MANAGEMENT RELATIONS  
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(LOCAL)

ference. In reaching a decision, the administrator may consider information provided at the Level One conference and any other relevant documents or information the administrator believes will help resolve the complaint.

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 ten days of the date of the written Level One response or, if no response was received, within ten days of the Level One response deadline.

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 schedule a conference within ten days after the appeal notice is filed. The conference shall be limited to the issues and documents considered at Level One. 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 ten days following the conference. 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.

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



PERSONNEL-MANAGEMENT RELATIONS  
EMPLOYEE COMPLAINTS/GRIEVANCES

DGBA  
(LOCAL)

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.
APPEAL	The appeal notice must be filed in writing, on a form provided by the District, within ten days of the date of the written Level Two response or, if no response was received, within ten days of the Level Two response deadline.
BOARD'S OPTION	The Superintendent or designee shall inform the employee of whether the complaint will be on the agenda of a Board meeting, or at the Board's option, will be heard by the Board's designee. 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.
DOCUMENTATION AND PROCEDURES	<p>The Superintendent or designee shall provide the Board, and its designee when appropriate, the record of the Level Two appeal. The employee may request a copy of the Level Two record.</p> <p>The Level Two record shall include:</p> <ol style="list-style-type: none"><li>1. The Level One record.</li><li>2. The notice of appeal from Level One to Level Two.</li><li>3. The written response issued at Level Two and any attachments.</li><li>4. All other documents relied upon by the administration in reaching the Level Two decision.</li></ol> <p>The appeal shall be limited to the issues and documents considered at Level Two, except that 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.</p>
OPEN OR CLOSED MEETING	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]
TIME LIMITS AND GUIDELINES	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 or its designee shall hear the complaint and may request that the administration provide an explanation for the decisions at the preceding levels.

PERSONNEL-MANAGEMENT RELATIONS  
EMPLOYEE COMPLAINTS/GRIEVANCES

DGBA  
(LOCAL)

BOARD'S DESIGNEE  
RECOMMENDATION

If the Board's designee heard the appeal, he or she shall make a recommendation to the Board at the first regular meeting following the hearing that affords adequate time to prepare a written recommendation. The employee shall be provided a copy of the recommendation before the meeting and shall be given an opportunity at the meeting to respond to the recommendation. ~~either orally or in writing.~~

RECORDING  
PRESENTATION

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 or designee with responses, shall be recorded by audio recording, video/audio recording, or court reporter.

BOARD'S DECISION

The Board shall then consider the complaint or the decision of its designee. 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.