



UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

TOPIC: Approval of First and Final Reading of DGBA (Local)-Employee Complaints/Grievances

SUBMITTED BY: Juan Cruz

OF: School Attorney

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: _____

DATE ASSIGNED FOR BOARD CONSIDERATION: May 23, 2018

RECOMMENDATION: The District is recommending the approval of revised policy DGBA (Local)-Employee Complaints/Grievances

RATIONALE:

BUDGETARY INFORMATION:

POLICY REFERENCE & COMPLIANCE:

PERSONNEL-MANAGEMENT RELATIONS
EMPLOYEE COMPLAINTS/GRIEVANCES

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(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 required by the policies listed below. Some of these policies require appeals to be submitted in accordance with DGBA after the relevant complaint process:

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.

Complaints alleging certain forms of harassment, including harassment by a supervisor and violation of Title VII, shall be submitted in accordance with DIA.

Complaints concerning retaliation relating to discrimination and harassment shall be submitted in accordance with DIA.

Complaints concerning instructional resources shall be submitted in accordance with EF.

Complaints concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with CKE.

Complaints concerning the proposed nonrenewal of a term contract issued under Chapter 21 of the Education Code shall be submitted in accordance with DFBB.

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 through appropriate District publications and as authorized by the Superintendent.

~~**Board Subcommittee**~~

~~A panel of three members of the Board shall compose the subcommittee.~~

Guiding Principles

Informal Process

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.

Informal resolution shall be encouraged but shall not extend any deadlines in this policy, except by mutual written consent.

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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	<p>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]</p> <p>In accordance with Texas Government Code, Section 554.002, regarding prohibited retaliation for reporting a violation of law, a state or local governmental entity shall 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. In this policy, a report is made to an appropriate law enforcement authority if the authority is a part of the state or local governmental entity or of the federal government that the employee in good faith believes is authorized to:</p> <ul style="list-style-type: none">Regulate under or enforce the law alleged to be violated in the report; orInvestigate or prosecute a violation of criminal law. <p>Complaints that do not meet the elements of a whistleblower grievance by law shall be routed to begin at Level One.</p>
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

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General Provisions
Filing

to hear such grievance, beginning at the mediation conference level. Complaint forms alleging a violation of law by the Superintendent or the Superintendent's unlawful harassment of an employee may be submitted directly to the Board.

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 website under the department of human resources. In most circumstances, employees on a school campus or in a District department shall file complaints/grievances with the campus principal or department administrator, as applicable.

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, by electronic communication, including e-mail and fax, or by U.S. Mail. A complaint filed by e-mail shall be copied to the director of employee relations. If the director of employee relations is not copied on the e-mail, the complaint shall be deemed filed when the administrator confirms receipt of the complaint. 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 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 employee or representative; however, a representative shall submit written authorization, signed by the employee, which specifically allows the representative to act on behalf of the employee during the grievance process.

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.

Response

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

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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.

Days

"Days" shall mean District business days (as determined by the academic calendar), 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. If the employee designates more than one representative, only one representative shall be allowed to be present during any level of the grievance process. Witnesses shall not be allowed during any level of the grievance process; however, witness statements may be tendered at a grievance hearing. The only parties that shall be allowed during the employee's presentation during any level of the grievance process shall be the employee and one representative, if designated.

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 and representative shall be issued a decision based upon the written record and oral arguments set forth by the employee and representative, as applicable. The District shall have the authority to remove a disruptive representative from the premises. Additionally, after an examination of the facts, if the Superintendent deems the representative has been disruptive in a repetitive manner, he or she may issue a letter of warning to the complainant's representative. If the representative continues to display the same disruptive conduct, the Superintendent may deny the representative further opportunities to represent future complainants.

Consolidating
Complaints

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

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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.

Each employee shall file his or her grievance individually, unless a group of employees has the same or similar complaint and the Superintendent or designee determines that the complaints can be grouped together and the hearing process can proceed in a collective manner.

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 and Appeal Forms

Complaints and appeals 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. Once submitted, the grievance shall be limited to the written remedies and documents addressed on the initial complaint. No new remedies, issues, or documents shall be introduced during the grievance proceedings that have not been specifically mentioned or produced in the initial complaint form. Further, the only remedies ruled upon shall be those listed on the initial complaint; remedies requested in an oral manner at any hearing level shall not be considered. Any new issues or remedies shall be addressed in a subsequent complaint form and under the rules and timelines set forth in this policy.

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 refiled is within the designated time for filing.

Scheduling Conferences

All conferences shall take place during normal District business hours. However, the grievance hearing shall normally be scheduled during non-instructional time or at a time when the employee is not engaged in the regular performance of his or her duties. All participants, including witnesses, shall be released from regular duties if the grievance hearing is scheduled during the

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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, supervisors shall work with the hearing officer, the employee, and the administration, as necessary, to schedule the grievance during non-instructional time or when the employee has finished his or her workday and effectively manage release time for other employee 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 specificity 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 the complainant or his or her representative does not adequately address the vague, general, or indefinite complaint within three days of written notification, the complaint shall be dismissed.

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 prior to entering the formal complaint process. The immediate supervisor shall schedule and conduct an informal mediation conference within 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) and the immediate supervisor 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.

Audio / Video 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.

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The employee shall notify all attendees present that an audio recording is taking place.

The employee, representative, if designated, and the hearing officer shall be prohibited from video recording the hearing. If the employee or his or her representative insist on video recording the hearing, the hearing officer may terminate the hearing at his or her discretion.

Mutual Agreement of the Parties The parties involved may mutually consent to modify the procedure as necessary to accomplish the goal of resolving the dispute in the most efficient and expeditious manner possible.

Withdrawal An employee may withdraw his or her complaint at any time. Once withdrawn, a complaint shall not be reconsidered. If the employee has designated a representative, the representative need not consent to the complaint being withdrawn.

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

Formal Process The formal complaint process shall consist of three levels. Level One and Level Two shall be closed to the public and the employee's designated representative shall be the only other person in attendance. If at any point during the grievance process the employee and representative, (if designated), are to be present in front of the party being grieved against, the hearing officer shall have the discretion to separate the parties and allow separate presentations. A Level Three presentation to the Board ~~subcommittee~~ shall be held within a properly posted Board meeting. The Board ~~subcommittee~~ shall determine whether the hearing will be held in open or closed session, except that the hearing shall be held in closed session upon the request of the employee who is the subject of the complaint, or as authorized by law. The employee shall be afforded a 15-minute hearing at each level of the grievance process; the hearing officer shall have the discretion to provide a 15-minute hearing to administration if deemed necessary. Upon exigent circumstances, the hearing officer at any level may allow more than 15 minutes. No party shall be allowed more time than the other in a grievance hearing.

Level One If resolution of the complaint is not reached at the mediation complaint/grievance level, the employee may enter the Level One complaint process and request a formal meeting with the immediate supervisor or designee within seven days of the 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 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.

Absent extenuating circumstances, 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 but are not limited to written statements, documents from the employee's personnel file, prior disciplinary memos, education records, and the like, or information the administrator believes will help resolve the complaint. The only remedies ruled upon shall be those listed on the initial complaint; remedies requested in an oral manner at any hearing level shall not be considered.

The Level One conference shall not provide for cross-examination of any witnesses, nor shall this conference in any way resemble an evidentiary hearing. If necessary, each side shall simply make presentations to the Level One administrator within the allotted time period. The employee may not appeal any part of a complaint of which said remedy has been granted at a prior level, including mediation.

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:

The original complaint form and any attachments.

All other documents submitted by the employee at Level One.

The written response issued at Level One and any attachments.

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 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.

Audio recordings of the Level One and Level Two conferences 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.

~~At the Board President's discretion, either a Board subcommittee or the Board shall provide a Level Three hearing within 30 days or at the next available meeting scheduled for such purposes. If the Board President's decision is that the Board hear the grievance, the Board subcommittee hearing may be bypassed. The same rules shall apply to a Board subcommittee hearing and a hearing before the Board.~~

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 or Board subcommittee hearing. ~~If a hearing is held before the Board subcommittee, then the Board subcommittee shall render a recommendation to the Board at the next regularly scheduled Board meeting.~~ No member of the Board ~~subcommittee~~ shall conduct any ex parte communications regarding the case. The employee (or employee's representative) shall not communicate

with any Board member regarding any issue pertaining to the outstanding grievance. Board members shall not take part in any deliberations or decision making without having first heard all the evidence.

The Superintendent or designee shall provide the Board or Board ~~subcommittee~~ the record of the Level Two appeal.

The Level Two record shall include:

The Level One record.

The notice of appeal from Level One to Level Two.

The written response issued at Level Two and any attachments.

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.

Other documents exchanged by the parties at least five days prior to the Level Three hearing.

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. The Board ~~or Board subcommittee~~ shall consider only those issues, remedies, and documents presented at the preceding levels and identified in the appeal notice.

The presiding officer of the Board ~~or Board subcommittee~~ may set reasonable 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 ~~or Board subcommittee~~. The Board ~~or Board subcommittee~~ shall hear the complaint and may request that the administration provide an explanation for the decisions at the preceding levels.

The Board ~~or Board subcommittee~~ 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 Board subcommittee~~ with responses, shall be recorded by audio recording.

~~The Board or Board subcommittee shall then consider the complaint. If a hearing was held before the Board subcommittee, the subcommittee shall render a recommendation to the Board at the next regularly scheduled Board meeting. Upon such~~

~~recommendation, the Board 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 response by the Board upholds the administrative decision at Level Two.~~

~~If the hearing is held before the Board,~~ The Board 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 response by the Board upholds the administrative decision at Level Two.

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