

No. _____



UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

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

Complaints/Grievances

SUBMITTED BY: Juan Cruz **OF** School Attorney

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: August 18, 2010

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 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>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.</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>
NOTICE TO EMPLOYEES	The District shall inform employees of this policy.
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>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 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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COMPLAINTS

In this policy, the terms "complaint" and "grievance" shall have the same meaning. This policy shall apply to all employee complaints, except as provided below.

EXCEPTIONS

This policy shall not apply to:

1. Complaints alleging discrimination, including violations of Title IX (gender), Title VII (sex, race, color, religion, national origin), ADEA (age), or Section 504 (disability). [See DIA]
2. Complaints alleging certain forms of harassment, including harassment by a supervisor and violations of Title VII. [See DIA]
3. Complaints concerning retaliation relating to discrimination and harassment. [See DIA]
4. Complaints concerning instructional materials. [See EFA]
5. Complaints concerning a commissioned peace officer who is an employee of the District. [See CKE]
6. Complaints arising from the proposed nonrenewal of a term contract issued under Chapter 21 of the Education Code. [See DFBB]
7. Complaints arising from 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. [See DFAA, DFBA, or DFCA, respectively]

GENERAL
PROVISIONS

FILING

Complaints/Grievances shall be filed with the complainant's immediate supervisor on the District's complaint/grievance form within fifteen (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 shall file complaints/grievances with the campus principal.

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. 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

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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.

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 or before the deadline.
DAYS	"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."
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. 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 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.</p> <p>When two (2) 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 (10) days from the date of the written dismissal notice, starting at the level at which</p>

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	<p>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>
COMPLAINT FORM	<p>Complaints 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.</p> <p>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.</p>
STATEMENT OF PARTICULARS	<p>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.</p> <p>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.</p>
DESIGNATED PARTIES	<p>For purposes of hearing a complaint at both the informal and formal complaint conference, the designated party shall be assigned by the Superintendent.</p>
PROCESSING A GRIEVANCE	<p>The procedure for processing a grievance is as follows:</p>
MEDIATION CONFERENCE	<p>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. The immediate supervisor shall schedule and conduct an informal mediation conference within five (5) 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.</p>

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 environment. 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.

LEVEL ONE

If resolution of the complaint is not reached at the informal mediation complaint/grievance level, the employee may enter the formal complaint process and request a formal meeting with the immediate supervisor or designee within seven (7) 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 (1) hearing officer when the complaint is against the Administrator who would normally hear the Level One (1) Complaint.**

A Level One conference shall be conducted within ten (10) days of notice by the employee requesting to enter the formal 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 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 seven (7) days of the date of the written Level One response or, if no response was received, within seven (7) days of the Level One response deadline. The employee may not appeal any part of a complaint 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 fourteen (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.

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 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 complaint. The employee may request a copy of the Level Two record.

The Level Two record shall include:

1. The Level One record.
2. The written response issued at Level Two and any attachments.
3. All other documents relied upon by the administration in reaching the Level Two decision.

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 (3) 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.