

## Complaints

In this policy, the terms “grievance” or “complaint” shall mean an employee’s specific written statement expressing dissatisfaction with his or her wages, hours of work, or conditions of work. The term also includes an employee’s specific allegations of unlawful discrimination, harassment, or retaliation based on gender, age, religion, national origin, disability, “whistleblower” complaints, or the employee exercise of rights protected by the U.S. Constitution or other state or federal law.

### 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:

1. Complaints alleging discrimination, including but not limited to 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, or any other form of retaliation (including workers’ compensation retaliatory discharge) shall be brought under this policy, but certain forms of such complaints shall be initially investigated pursuant to a report filed in accordance with DIA.
4. Complaints concerning instructional resources shall be submitted in accordance with EF.
5. Complaints concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with CKE.
6. Any complaint, including an employee’s assertion that the proposed action is because the employee made a good faith report to an appropriate law enforcement authority of a District violation of a law, arising from or related to any of the following events must be addressed through the local and statutory processes described in the DF series of District policies, specifically:
  - a. Complaints concerning the proposed nonrenewal of a term contract issued under Chapter 21 of the Education Code, which shall be submitted in accordance with DFBB.

- b. Complaints concerning the proposed suspension without pay from a term contract or a probationary contract issued under Chapter 21 of the Education Code during the contract term [see DFAA or DFBA].
- c. Complaints concerning the proposed termination of an employee on a probationary or term contract issued under Chapter 21 of the Education Code during the contract term, which shall be submitted in accordance with DFAA and DFBA.

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**Note:** This policy shall apply to complaints or grievances resulting from dismissal or termination of at-will employees [see DCD] or professional employees whose probationary contracts are terminated at the end of a school year [see DFAB].

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**Notice to Employees**

The principal of each campus and other supervisors are responsible for ensuring that all employees under their supervision are informed of this policy.

**Purpose**

Informal Process

The Board's employee complaint policy is adopted to provide a process for the prompt and orderly resolution of workplace conflicts without fear of prejudice, coercion, or retaliation. 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.

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.

**Freedom from  
Retaliation**

Neither the Board nor any District employee may unlawfully retaliate against any employee for exercising the right to bring a complaint under this policy.

**Whistleblower  
Complaints**

Whistleblower complaints shall be filed within the time specified by law. 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]

<b>Complaints Against Supervisors</b>	Complaints alleging a supervisor's violation of law may be made to the Superintendent beginning at Level Two. A complaint alleging a violation of law by the Superintendent may be made directly to the Board beginning at Level Three.
<b>General Provisions</b>	
Filing	Complaint forms and appeal notices may be filed by hand-delivery, by electronic communication, including e-mail and 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. 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.
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 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 calendar days, unless otherwise noted. In calculating time lines under this policy, the day a document is filed is "day zero." The following 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.
Immediate Supervisor	"Immediate supervisor" means the administrator or other District employee responsible for the employee's supervision and evaluation.

	<p>The Superintendent may authorize a complaint over dismissal of an at-will employee from District employment or termination of a probationary contract at the end of a school year to be initially filed with the Superintendent or designee according to the time lines and other requirements for filing a complaint at Level One.</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>Complaints that are not filed in accordance with the time lines shall be dismissed. No administrator shall have the authority to extend a deadline for filing a complaint. The employee may appeal the dismissal by seeking review within ten days, starting at the level at which the complaint was dismissed. Such appeal shall be limited to the issue of timeliness. All appeals challenging the determination of timeliness shall be filed in writing and shall state the reason the employee believes the complaint was timely filed.</p>
Costs Incurred	<p>Each party shall pay its own costs incurred in the course of the complaint.</p>
Failure to Attend Hearing	<p>Failure of the employee or designated representative to attend a scheduled hearing shall constitute a waiver of the right to relief at the level and shall affirm the decision of the lower level, if applicable. The failure of an employee or designated representative to attend a scheduled hearing shall also constitute a waiver of the employee's right to proceed to a higher grievance level.</p>
<b>Content of Written Grievance</b>	<p>All employee complaints and appeals must be submitted on the grievance form approved by the District and must include all of the information listed below and detailed on the form. Each complaint or appeal must contain:</p> <ol style="list-style-type: none"><li>1. The employee's name.</li><li>2. The employee's campus or position.</li><li>3. The date of the event or action that gave rise to the complaint.</li><li>4. A detailed statement of the decision or action that gave rise to the complaint or appeal. The statement must include a factual description of all the circumstances that gave rise to the complaint.</li></ol>

5. A detailed statement specifically identifying how the employee has been harmed by that decision or action. The employee has the burden to prove the allegations of the complaint or appeal and to demonstrate the harm.
6. Copies of all documents that the employee shall rely upon during the grievance process and an explanation of what each document shall prove. If the employee does not have copies of documents at the time the complaint or appeal is filed, the employee shall have the opportunity to provide copies of the documents at the Level One conference, but an explanation of the documents shall be required on the original complaint. No new documents shall be accepted after the Level One conference unless the employee did not know the document existed before the time of the Level One conference.
7. Identification of the specific policy or policies, constitutional or statutory provisions, or administrative regulations alleged to be violated or misapplied, or the specific type of discrimination alleged to have been committed and facts to support the allegation.
8. A description of any efforts to resolve the problem informally including to whom the employee spoke, the date of the meeting, and the responses.
9. The specific remedy the employee is seeking through the grievance process.
10. The date of filing.
11. Signatures of the employee and representative, if any. The employee's signature must appear on each grievance form.
12. The name, address, and telephone number of the employee's representative. This information may be added to the grievance record whenever the employee chooses to have representation.

A complaint or appeal that is incomplete in any material aspect shall be dismissed but may be refiled with all the required information provided the refiled is within the designated time for filing.

#### **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.

**Relief Granted**

An employee shall not be allowed to appeal the decision of a hearing officer at Level One or Level Two when the decision has granted all of the relief requested by the employee.

**Level One**

Complaint forms must be filed:

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
2. With the lowest level administrator who has the authority to remedy the alleged problem.

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.

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, within one business day, forward the complaint form to the appropriate administrator.

The appropriate administrator shall investigate as necessary and schedule a conference with the employee within seven days after receipt of the written complaint. If the deadline for the conference falls on a day that the central administration office is not open, the deadline shall extend to the next day that the central administration office is open. The administrator may set reasonable time limits for the conference.

Absent extenuating circumstances, the administrator shall provide the employee a written response within seven 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 is not satisfied with the decision from Level One, or if the time for a response has expired, the employee may request a conference with the Superintendent or designee to discuss the grievance and appeal the Level One decision.

The request must be filed in writing on a form provided by the District, within seven days following receipt of the written response at Level One. If the administration does not provide a written response and the time for providing the response has expired, the employee's request must be filed within seven days following the expiration of the administration's time for providing a written response to the employee's Level One grievance.

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 request must state specifically what portion of the Level One decision the employee disagrees with and specifically why the employee disagrees with the decision. Documents used at Level One that support the Level Two appeal must also be identified. The request must include a copy of the Level One decision and the original complaint, including all attachments and documents that the employee used at Level One and an explanation of what they prove.

The relief available to the employee at Level Two shall be limited to that requested by the employee at Level One. New or additional relief requested at Level Two shall not be considered except at the discretion of the Superintendent or designee.

The Superintendent or designee shall schedule a conference within seven days after receipt of the written appeal notice is filed. If the deadline for the conference falls on a day that the central administration office is not open, the deadline shall extend to the next day that the central administration office is open. The conference shall be limited to the issues and documents presented at Level One and shall be identified in the Level Two appeal notice. The employee or the representative shall have 20 minutes to present the employee's appeal.

The Superintendent or designee shall provide the employee a written response within seven 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 is not satisfied with the decision from Level Two, or if the time for a response has expired, the employee may submit to the Superintendent or designee a request to place the matter on the agenda of a future Board meeting. An employee requesting a Level Three grievance hearing may request that opportunity to make an oral argument before the Board at the meeting where the grievance is to be considered. In the alternative, an employee may present his or her Level Three grievance to the Board solely in the form of a written petition with supporting evidence. A grievance submitted to the Board in writing shall only be discussed in a closed session unless otherwise required to be discussed in open session under this policy and shall not require the employee or representative to attend the hearing. If the employee does not specifically request the opportunity to make an oral argument before the Board, then no oral argument shall be heard and the Board shall consider the written record only.

The appeal notice must be in writing on a form provided by the District, within seven days following receipt of the written Level Two response or, if no response was received, within seven days of the Level Two response deadline. If the appeal notice is untimely, not on the District's form, or incomplete in any material way, the Superintendent, after consultation with the Board President, may dismiss the complaint and provide written notice of dismissal to the complainant.

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

The Board shall consider only those issues and documents presented at Level Two and identified in the Level Three appeal.

The Superintendent or designee shall provide the Board the record of the Level Two appeal. 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 request must state specifically what portion of the Level Two decision the employee disagrees with and specifically why the employee disagrees with the decision. The request must also include a copy of the original complaint, documents relied upon at Level One, the Level One decision, the Level Two appeal, documents relied upon at Level Two, the Level Two decision, and the Level Three appeal. Documents used at Level Two that support the Level Three appeal must also be identified.

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 relief available to the employee at Level Three shall be limited to that requested by the employee at Level One or granted to the employee at Level Two. New or additional relief requested by the employee at Level Two or Level Three shall not be considered.

The Board may hear the complaint in open or closed meeting but shall hear it in open meeting if the employee makes a request to that effect. However, if the employee's complaint is against another District employee, the option to request an open meeting lies with the employee against whom the complaint or charge is being brought.

The employee shall be allotted ten minutes to argue his or her position to the Board according to the procedures established by the Board for the presentation. The administration's presentation, if any, shall also be limited to ten minutes.

The Level Three presentation before the Board, including the employee's or the employee's representative's argument, any presentation from the administration, and questions from the Board with responses shall be recorded by audio tape. The Board's deliberations shall not be recorded.

The Board shall consider the grievance but is not required to respond or take any action on the matter. It may give notice of its decision orally or in writing at any time up to and including the next regularly scheduled Board meeting. The lack of a response by the Board, or Board inaction, upholds the administrative decision at Level Two. Announcing the Board's decision or announcing the effect of the Board inaction in the employee's presence constitutes communication of the decision. If for any reason the Board fails to reach a decision regarding the grievance by the end of the next regularly scheduled meeting, the lack of a response by the Board shall uphold the administrative decision at Level Two.