

Right to Be Heard

Each employee of the District is entitled to be heard by the Board or its designee, in accordance with the provisions of this policy.

Exclusions

If any statute or any other Board policy provides a specific means of review or redress with respect to the interpretation or implementation of such statute or policy, then the provisions of such statute or policy shall govern and shall supersede the provisions of this policy. An example of an exclusion is an employee termination that is governed by specific termination hearing policies.

Definitions

For the purpose of this policy, each of the following words shall have the meaning hereafter assigned to it:

1. Day: A calendar day unless otherwise stated. If the last day of any required time under this policy falls on a Saturday, Sunday, or school holiday, then the time shall be automatically extended until 4:30 p.m. of the next school day.
2. Grievance: The statement made by the grievant setting forth the details of the alleged violation of the law by the respondent and the relief being requested by the grievant or the dissatisfaction of an employee, or employees, concerning his or their wages, hours of work, or conditions of work within the meaning of the Texas Gov't Code, Section 617.005.
3. Grievant: The individual who has a grievance or has filed a grievance against an employee of the District.
4. Hearing Officer's Decision: The written document prepared by the hearing officer reflecting the findings of fact and the decision reached, along with any recommendations being made by the hearing officer.
5. Law: (a) the Texas or United States Constitutions; (b) a federal or state statute; (c) the federal or state common law; (d) a rule or regulation of the State Board of Educator Certification or the Commissioner of Education; or (e) a Board policy (all of which are hereafter collectively referred to as "the law").
6. Party/Parties: Shall refer to the grievant or respondent or both at any hearing level.
7. Representative: The person or organization or association designated by the grievant or respondent to assist him. During any grievance hearing, only one person or entity shall be permitted to speak on the grievant's or respondent's behalf.
8. Respondent: The employee of the District who has been charged by the grievant with a grievance.

**Processing a
Grievance**

The procedure for processing a grievance is as follows:

Informal
Conference

Prior to the time the employee files his or her grievance, the parties shall attempt to resolve the problem informally. Upon receipt of a notice that an employee wishes to meet informally, the supervisor shall hold a conference within five working days of said notice. Each party is entitled to have a representative present at this level. If agreement cannot be reached, then the grievant may file a written grievance along with supporting documentation, if any, with the Superintendent's office for processing.

Filing a Grievance

All grievances must be filed with the office of the Superintendent on the District's grievance form within 30 days of the time when the employee first knew, or should have known, of the decision or action causing the grievance or dissatisfaction, exclusive of the time spent in seeking informal resolution. Grievance forms may be obtained from a recognized organization representative, the school office, or the personnel office. The Superintendent shall promptly notify the respondent and the respondent's immediate supervisor of said grievance and make a copy of the grievance and supporting documentation, if any, available to the respondent. The Superintendent shall notify both the grievant and respondent of who has been designated as the hearing officer at each level.

Prerequisites

A grievance may be rejected summarily by the Superintendent or designee if it fails to comply with any of the following requirements:

1. It must be dated, signed, and in writing on the District's grievance form.
2. It must contain a clear and concise statement of the facts and circumstances upon which the grievance is predicated, including the names of any persons involved, the date of the event or incident giving rise to the grievance, a description of the event or incident, and the witnesses of whom the grievant is aware who may have any information relating to the grievance.
3. It must contain a clear reference to the law alleged to have been violated or the dissatisfaction raised by the employee and the alleged harm or damage caused by such violation or dissatisfaction.
4. It must address only one event or incident.
5. It must describe the steps that the grievant has taken to resolve the grievance informally.
6. It must specify the remedy or remedies sought.

7. It must be timely filed.

The Superintendent or designee has the authority to determine if a grievance lacks any of the above requirements. If a grievance is rejected by the Superintendent or designee, then the grievant shall receive written notification of such rejection within five working days upon filing of said grievance. If rejected, the grievant has the opportunity to meet with the Superintendent or designee to discuss the rejection and possible reconsideration of the grievance.

Level One

The processing of a grievance shall begin at Level One unless another Board policy specifically requires otherwise. At Level One the grievance shall be handled as follows:

1. If, after attempting to settle a grievance informally, the matter is not settled to the satisfaction of the grievant, upon request of the grievant, the hearing officer with whom the grievance is pending shall promptly schedule the matter for formal hearing and give notice to both parties of the date and time for such hearing. The hearing shall be held within five working days of the notice.

Time spent in seeking informal resolution shall not be counted as part of the 30 days filing deadline. Evidence or documentation shall be presented at the hearing showing time and effort spent in seeking resolution or, if resolution could not be reached within the deadline for filing of the formal grievance, the written grievance shall state the reason why informal processing was not possible.

2. On or before the third day before the hearing is held, both parties shall designate in writing and provide copies to the opposing party and hearing officer the following:
 - a. The name, address, and telephone number of the person, if any, who will represent the party before the hearing officer.
 - b. The names of all witnesses to be called by the party or representative and a short summary of the expected testimony of each.
 - c. One copy of each document proposed to be used at the hearing.
3. At the formal Level One hearing, the hearing officer shall discuss the grievance with the grievant(s), the grievant(s)' representative (if any), the respondent, the respondent's representative (if any), take any evidence either documentary, oral,

or both, and render a decision in writing to both parties within five working days after the hearing.

4. The decision rendered shall briefly summarize the grievance, provide a findings of facts and a decision, along with an explanation for such decision. The decision shall also address any relief requested and recommendations, if any.
5. If the decision of the hearing officer does not satisfy the grievant or respondent, either may appeal in writing to the Superintendent, within five working days after receipt of the decision, for a Level Two hearing.

Level Two

At Level Two, the grievance shall be handled as follows:

1. Within five working days after the appeal is filed, the Superintendent or designee shall schedule a hearing and provide notice of the hearing date and location to both the grievant and respondent. The hearing must take place within five working days of the date of the notice.
2. At the time the appeal is filed, the appealing party shall furnish to the other party or representative and to the Superintendent or designee the following:
 - a. The name, address, and telephone number of the person who will represent the appealing party before the Superintendent or designee.
 - b. The names of all witnesses to be called by the appealing party or representative and a short summary of the expected testimony of each.
 - c. One copy of each document proposed to be used at the hearing.
3. On or before the third day prior to the date scheduled for the hearing before the Superintendent or designee, the other party shall furnish to the appealing party or representative and to the Superintendent or designee the following:
 - a. The name, address, and telephone number of the person who will represent him before the Superintendent or designee.
 - b. A written response to the appeal if so desired.
 - c. The names of all witnesses to be called and a short summary of the expected testimony of each.
 - d. One copy of each document proposed to be used at the hearing.

4. The hearing before the Superintendent or designee shall be limited to a consideration of the following:
 - a. The documents presented by the parties in accord with the provisions of this policy. Documents that have not been previously disclosed are not entitled to be considered during the hearing; however, the hearing officer may consider said information within the bounds of fairness and relevance to the actual grievance that has been filed.
 - b. The testimony of the witnesses.
 - c. The opening and closing remarks and arguments of the parties or their representatives.
5. The hearing before the Superintendent or designee shall be a closed hearing. The Superintendent or designee may set reasonable time limits on the presentations of the parties or their representatives.
6. The Superintendent or designee shall have a tape recording made of this hearing. The Superintendent or designee shall be responsible for its safekeeping and for making said recording or transcript of the hearing available to the Board in the event of an appeal to the Board. Either party may cause a record of the hearing to be made at the party's own expense.
7. Within five working days after the hearing, the Superintendent or designee shall render a written decision and deliver a copy to the parties' representatives. If there is not a representative involved on behalf of one or both parties, then said decision shall be delivered directly to that party. The written decision shall contain, at the least, findings of fact, decision reached and the rationale for such decision, relief granted (if appropriate), and recommendations (if any). If the Superintendent or designee will be unable to render said decision within this time frame, he or she may seek a reasonable extension of time from the parties.

Level Three

If either the grievant or the respondent is not satisfied with the decision of the Superintendent or designee, then either party may appeal to the Board. At Level Three, the grievance appeal shall be handled as follows:

1. Within ten working days after receipt of the decision rendered at Level Two, the grievant or respondent shall give the Superintendent and the other party written notice of appeal to the Board.

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2. At the next meeting of the Board wherein the calendar is considered and set, the Board shall set a time and date for hearing the grievance. The Superintendent or designee shall inform the parties that the appeal has been placed on the agenda and advise them of the date, time, and place of the meeting.
3. Except in the case of a grievance filed against the Superintendent, the hearing before the Board is an appeal of the Level Two decision and is not to be construed as a new or de novo hearing. The hearing shall be limited to a consideration of the following:
 - a. The written decision rendered by the hearing officer at Level Two.
 - b. The documents presented by the parties to the hearing officer at the Level Two hearing.
 - c. The tape recording or transcript made at the Level Two hearing. In the event the record was not preserved for any reason, testimony from the witnesses who appeared at the Level Two hearing may be permitted.
 - d. The remarks and arguments of the parties or their representatives.
4. The Board shall allow one hour each for presentations of the parties or their representatives. The Board may extend said time limits in a particularly complex case.
5. The hearing before the Board shall be closed unless the respondent requests that the hearing be open to the public. Such request should be made in a timely manner to allow for appropriate posting in accordance with the Texas Open Meetings Act. The appeal hearing before the Board shall be recorded by audiotape by the District. Either party may cause a record of the hearing at this level to be made by a court reporter at the party's own expense.
6. The Board may make and communicate its decision orally at the conclusion of the hearing or in writing to the parties within 15 days following the hearing. The decision of the Board is final.

**Grievance Against
the Superintendent**

When the Superintendent is the respondent and the grievance cannot be resolved at the informal conference level, the consideration of the grievance shall commence at Level Three.

**Meetings and
Hearings**

All meetings and hearings conducted in accord with this policy shall take place at reasonable hours and comply with the following criteria:

1. No employee shall be absent from his or her assigned duties because of such meetings or hearings without delivering prior notification to his or her supervisor.
2. If a conference or hearing is scheduled during the regular workday, all participants in the process who are District employees shall be released from their regular duties for the time that their presence is required, and shall suffer no loss of pay or other benefits. Employees are expected to return to duty upon release from the hearing or after giving testimony, unless otherwise directed by the hearing officer.

**Additional Terms
and Conditions**

The implementation of this policy is subject to the following terms and conditions:

1. A grievant may, at his or her own expense, be represented by a representative at any level. The representative may participate in person or by telephone conference call.
2. A respondent may, at his or her own expense, be represented by a representative at any level. The Superintendent may appoint an attorney to represent the respondent; however, this will be reviewed on a case-by-case basis.
3. The grievant or respondent may call non-District witnesses at his or her own expense. Either a grievant or respondent may arrange for his or her own transcript to be made commercially at his or her own expense.
4. The time limits for any notice or action required may be extended by agreement of the grievant, respondent, and the hearing officer at Levels One and Two or by the Board at Level Three.
5. If at any time during the appeal process the grievant or the respondent fails to timely perfect notice of appeal to the next level, the decision of the hearing officer at the last completed level shall be final, binding and nonappealable.
6. All issues and evidence related to the grievance must be presented during the Level One grievance. No new issues and evidence shall be permitted at any other level. However, as the hearing is an administrative hearing and not bound by the strict rules of evidence, the hearing officer or the Board may, within the bounds of fairness, hear any evidence deemed relevant.

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7. 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.
8. A grievance may be withdrawn at any level. A withdrawn grievance cannot be refiled or reopened except for with good cause at the Superintendent's discretion.
9. A written settlement agreement executed by the grievant, the respondent, and/or the District shall be final and binding.
10. Employees may freely exercise their right to grieve, or to serve as a representative, in accord with the provisions of this policy without fear of retaliation or reprisal.
11. In a grievance, the burden of proof is on the grievant. Preponderance of the evidence is the basis for prevailing in such matter.
12. In order to protect the District's interests, an attorney may be permitted and available to assist the hearing officer at each hearing level.
13. When the Superintendent determines that two or more individual grievances are sufficiently similar in nature and remedy to permit their resolution through one proceeding, he or she may consolidate the grievances.
14. A copy of the final decision or settlement reached, whether resolved at Levels One, Two, or Three, must be forwarded by the hearing officer to the District's office of legal services for archiving purposes. Said office will be responsible for maintaining said copies. Said decisions may be cited as precedent in future grievance decisions.

**'Whistle Blower'
Complaints**

Employees who allege unlawful discrimination in retaliation for reporting a violation of law to an appropriate authority may invoke this policy by filing a grievance not later than 15 days after the date the alleged violation occurred or was discovered by the employee through the use of reasonable diligence. If the grievance is not resolved at Levels One or Two, the Superintendent shall ensure that the matter reaches the Board expeditiously.

The time lines specified above shall be shortened to ensure that the Board's final decision is made within 61 days after the filing of the grievance. See *Gov't Code 554.006(d)*