

TEXAS SCHOOL FOR THE DEAF**EMPLOYEE COMPLAINTS/GRIEVANCES****DGBA****PURPOSE OF POLICY**

The purpose of this policy is to provide employees an orderly process for the prompt and equitable resolution of complaints. The Board intends that, whenever feasible, complaints be resolved at the lowest possible administrative level.

SPECIFIC POLICIES

This policy shall govern all employee issues or complaints not otherwise covered by any other specific policies or laws.

DIRECT COMMUNICATION WITH BOARD MEMBERS

Employees shall not communicate with a Board member on issues pending a hearing or an appeal relating to the employee.

DEFINITIONS

The following definitions shall apply:

Termination

Termination is a complete severance of the employment relationship between employer and employee.

Demotion

For contract employees, demotion is an involuntary assignment to a lower pay grade.

For classified employees, demotion is an involuntary change in classification title that provides a lower minimum salary rate.

Discipline

Any negative action imposed upon an employee for violation of rules, policies, or regulations of the School.

Representative

At all levels of the grievance process, the employee(s) filing the grievance may be represented at the employee's own expense by a fellow employee, attorney, or person or organization that does not claim the right to strike.

Calendar Days

As used in this policy, except where otherwise indicated, days shall be defined as the calendar days.

Immediate Supervisor

The principal, administrator or other line supervisor in the employee's chain of command who has responsibility for direct supervision of the employee and has authority to initiate action on the employee.

Board

The term "Board" or "Board of Trustees" shall mean the Governing Board of the Texas School for the Deaf ("TSD") or a subcommittee of the Board consisting of at least three board members.

Grievance

A complaint by an employee or group of employees involving wages, hours, or conditions of work or the termination or discipline of any employee. The term grievance does not include a proposed or actual termination of an employee under contract. The terms "complaint/problem" shall be construed to be synonymous with the term grievance and within this policy may be used interchangeably.

Respondent

The person or person(s) against whom a grievance may be, or has been brought.

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NOTIFICATION

Each principal, assistant principal, and other supervisory personnel shall ensure that employees under their supervision are informed of this policy.

NO RETALIATION

No retaliation of any kind shall be taken at any level against any employee for filing a grievance or participating as a witness or representative in the processing of a grievance. Grievances shall not be referred to in an employee's personnel file unless so requested by the employee or ordered by the hearing officer if necessary for execution of the decision.

UNITED STATES CONSTITUTION

The School shall take no action abridging the freedom of speech or the right of the people to petition the board for redress of grievances. U.S. Const. Amend. I, XIV

The Board may confine its meetings to specified subjects and may hold nonpublic sessions to transact business. However, when a board sits in public meetings to conduct public business and hear the view of citizens, the Board will not discriminate between speakers on the basis of the content of their speech or the message it conveys.

Rosenberger v. Rector & Visitors of Univ. of Virginia, 515 U.S. 819 828 (1995); City of Madison v. Wis Emp. Rel. Comm'n, 429 U.S. 167, 174 (1976); Pickering v. Bd. Of Educ., 391 U.S. 563, 568 (1968) [See DG]

WHISTLEBLOWER COMPLAINTS

Employees who allege adverse employment action in retaliation for reporting a violation of law to an appropriate authority shall initiate a complaint under this policy within the time specified by law and policy. In all such cases, if there is a conflict between federal and/or state case and/or statutory law and this policy, federal case and/or statutory law, followed by state case and/or statutory law, shall take precedence over this policy, in the order named.

COMPLAINTS REGARDING SEXUAL HARASSMENT, AMERICANS WITH DISABILITIES ACT AND TITLE IX

Employees who allege sexual harassment or violations of the Americans with Disabilities Act or Title IX may file a grievance directly with the Human Resources Director using the grievance form without first seeking an informal-grievance conference.

COMPLAINTS AGAINST SUPERVISORS ABOUT VIOLATIONS OF THE LAW

Complaints alleging a supervisor's violation of law may be made to the Superintendent beginning at Level II. A complaint alleging a violation of law by the Superintendent may be made directly to the Board beginning at Level III.

COMPLAINTS AGAINST OTHER EMPLOYEES

With rare exceptions, most employee complaints about other employees must be addressed as a supervisory issue and not the grievance process. Requests for exceptions should be addressed to the Superintendent and will be decided by the Superintendent on a case-by-case basis. Complaints of sexual harassment (regardless of whether against a supervisor or against another employee) will always be handled by this grievance process and do not require exception approval by the Superintendent.

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CONFIDENTIALITY

All complaints and investigations are treated confidentially to the extent possible, and information is disclosed strictly on a need-to-know basis. The identity of the complainant is usually revealed to the parties involved during the investigation, and the HR Director will take adequate steps to ensure the complainant is protected from retaliation during and after the investigation. All information pertaining to a complaint or investigation under this policy will be maintained in secure files with the HR department.

SUPPORTIVE MEASURES

Supportive Measures are non-disciplinary, non-punitive measures designed to protect the safety of all parties and may be requested by the complainant or respondent. Human Resources will conduct an individualized assessment of the facts and circumstances of the situation to determine if supportive measures are warranted and appropriate. Supportive measures may include temporary reassignment or leave while an investigation is conducted.

PROCEDURAL RULES

The following shall apply:

Filing and Consolidating complaints

All grievances or complaints arising out of a single or a related series of events must be addressed in one grievance filing. The grievance must be presented in writing, in a form promulgated by the Superintendent or designee and should contain all pertinent information to be considered in the resolution of the grievance. An employee is precluded from bringing separate or serial grievances or complaints arising from any event or series of events that has or could have been previously grieved.

The grievant or their representative may submit additional documentation or additional claims as needed to the Human Resources Director.

In a grievance, the burden of proof is on the grievant to demonstrate that actions are arbitrary, capricious, or unlawful.

Incomplete filing

The written grievance must contain all of the information requested in the grievance form. Any grievance that is incomplete when filed shall be returned to the grievant who shall then have five calendar days to refile the grievance.

If the grievance is refiled without containing all necessary information, or is incomplete in any material manner, it may be dismissed for such failure.

Equal Employment Opportunity (EEO) Grievances

Employee Grievances related to sexual harassment and/or discrimination may be filed directly with the Superintendent or Human Resources Director and are not subject to the 90-day requirement.

Filing with appropriate respondent

If the grievance is filed with the wrong supervisor, the supervisor who receives the grievance shall:

1. Enter the date and time of receipt upon the formal

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grievance papers and endorse same;

2. Forward the grievance to the appropriate individual for processing; and
3. Promptly notify the grievant and the grievant's representative.

The date the grievance was initially received by the School will remain the grievance filed date.

Remand to Lower Level

At any point in the grievance process, including at the Board level, the grievance may be returned to a lower appeal level to ensure complete and accurate records.

Informal Problem- solving Conference

Prior to filing a written grievance, the employee and the supervisor(s) may attempt to resolve the problem informally (here titled the "informal problem-solving conference").

If engaging in an attempt to resolve the issue informally, the employee must:

1. Request the informal conference with the appropriate supervisor(s) within 60 days of when the employee first knew or should have known of the decision or action causing the problem.
2. Make a good faith effort to resolve the issue with the supervisor.

During the informal problem-solving conference, the Supervisor must:

1. Make a good faith effort to resolve the issue with the employee.
2. Inform the employee in writing of the outcome of the problem- solving conference.
3. Provide Human Resources with documentation of the informal- problem solving conference to include:
 - a. Date, time and participants of the conference
 - b. An overview of the issue
 - c. Agreed resolution

The employee or supervisor may request that a Human Resources representative attend the informal problem-solving conference.

FORMAL GRIEVANCE LEVEL
ONE: IMMEDIATE
SUPERVISOR

Employee Responsibilities – Level One Formal Grievance

If the employee is not satisfied with the results of the informal problem- solving conference or does not intend to engage in an informal resolution, a formal written grievance may be filed with the Human Resources (HR) Director. The written grievance must be filed within either:

1. Sixty (60) calendar days from the date on which the employee knew or had reason to know of the facts giving rise to the grievance; or
2. If the employee engaged in the informal problem-solving conference, the later of:
 - a. ninety (90) calendar days from the time the employee knew or had reason to know of the facts giving rise to the grievance; or
 - b. Thirty (30) calendar days after the date the School provided information to the person regarding how to file the grievance.

The written grievance must include:

1. the actual date of the event(s) causing the grievance,
2. the facts surrounding the events causing the grievance,
3. the solution sought,
4. if applicable, the date the grievant requested or scheduled the informal grievance conference,
5. if applicable, the date and time the informal problem-solving conference took place,
6. if applicable, the participants in the conference,
7. if applicable, the result of the conference, including
 - a. The supervisor's explanation for the events
 - b. The attempted resolution by the supervisor
 - c. Why the attempted resolution did not satisfy the grievant

HR Director Responsibilities – Level One Formal Grievance

The HR Director shall:

1. Record the date/time the grievance is received as well as the subject of the grievance
2. Forward the grievance to the immediate supervisor
3. Receive and record the resolution of the grievance

Immediate Supervisor Responsibilities – Level One Formal Grievance

At the formal grievance Level I conference, the supervisor shall:

1. Discuss the grievance with the grievant(s), the grievant(s) representative, if any, within ten (10) days of the date the grievance was initially filed.
2. Take any evidence, either documentary, verbal, signed or both, and
3. Render a decision in writing within twenty (20) days of the hearing.

Upon rendering the decision, the Immediate Supervisor (first-level respondent) shall deliver a copy of the decision to the grievant by either hand or certified mail, return receipt requested, a copy to the grievant's representative by hand or mail, and a copy to the Human Resources Department. The decision will include an explanation of the basis for the decision and an indication of each document that supports the decision.

FORMAL GRIEVANCE LEVEL
TWO: APPEAL TO
SUPERINTENDENT OR
DESIGNEE

If the decision of the first-level respondent does not satisfy the grievant, the grievant may file a written notice of appeal, requesting a Level II hearing with the Superintendent's designee, with the HR director within twenty calendar (20) days of the date upon which the Level I decision is delivered to the employee officially.

1. Upon receipt of the appeal, the HR Director shall notify the superintendent of the appeal. The superintendent shall designate a supervisor to act on the appeal.

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2. The HR Director shall provide the Level II supervisor the written complaint, any supporting records, and the level one written decision.

3. The Level II supervisor shall, within ten days of the date the appeal of the Level I decision is filed, conduct a meeting with the grievant to hear the grievance appeal.

The Level II supervisor must render a decision in writing and provide a draft copy to the Superintendent and the HR Director, along with the evidence submitted, within 10 calendar days.

4. The Superintendent or their designee shall, within ten (10) days of receiving the draft copy of the decision endorse the written decision, or, in writing, modify the draft decision or reject it, and issue their own written decision. In making the determination as to whether to accept, modify or reject the draft decision, the Superintendent, may, but is not required to, take additional testimony, orally or in writing, from such person or persons as they deem appropriate for purposes of rendering a just and proper decision. The decision will include an explanation of the basis for the decision and an indication of each document that supports the decision.

5. Upon rendering the decision, the Superintendent or the Superintendent's designee shall deliver a copy of the decision to the grievant by either hand or certified mail, return receipt requested, a copy to the grievant's representative by hand or mail, and a copy to the Human Resources Department.

6. The HR Director shall receive and record the final decision.

LEVEL THREE; APPEAL TO THE BOARD

An employee may appeal a Level II grievance decision by filing a written notice of appeal with the Superintendent within twenty (20) calendar days of the date upon which the superintendent's decision is delivered to such employee. Procedures for appeals to the Board shall be provided by the Superintendent's office upon request.

The Board president may delegate the authority on an ad hoc basis to hear and decide the grievance to a committee of at least three Board members. The committee may be comprised of only Board members. The Board may convene in person or by video conference, if permitted by the Texas Open Meetings Act.

The Board shall provide a Level III (Stop, Look, and Listen) hearing within 60 days after the date the Level II decision was made. Presentations shall be limited to twenty (20) minutes per side.

The grievant shall be provided with a minimum of a 5-day notice of the hearing date and a description of any information the board of trustees intends to rely on that is not contained in the record.

The Board shall respond, in writing, within ten (10) days of the grievance

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hearing. The response will include an explanation of the basis for the decision and an indication of each document that supports the decision.

The Board shall electronically record the grievance appeal. Hearings conducted before the Board will be held in compliance with Open Meetings Act requirements. Unless otherwise required by law, the grievance will be discussed in open or closed session at the request of the person who filed the grievance.

RECUSAL

A person involved in reviewing a grievance must recuse himself or herself from reviewing the grievance if the person is the subject of the grievance. If the sole individual responsible for reviewing the grievance is recused, the grievance will proceed to a higher level of review.

SUPPLEMENTATION OF THE RECORD

The individual who filed the grievance may supplement the record with additional documents or claims during each level of the grievance review process.

PROCEDURAL ERRORS

Regardless of whether the grievance contains procedural errors or the type of relief requested, the School will issue a decision on the merits of the concern raised in the grievance.

RECORD OF GRIEVANCE DECISIONS

The Human Resources Director shall maintain a record of all employee grievances, including written decisions of the Superintendent and the Governing Board.

CONTINTUED MONITORING

For a period of six months Human Resources, in coordination with the Division Director and Supervisor, will monitor the circumstances surrounding the complaint to ensure the situation has been remedied.

ALTERNATIVE LEGAL REMEDIES

Nothing in this policy may prevent the complainant or the respondent from pursuing formal legal remedies or resolution through local, state or federal agencies or courts including, but not limited to, Texas Workforce Commission Civil Rights Division (<https://www.twc.texas.gov/jobseekers/how-submit-employment-discrimination-complaint>) or the U.S. Equal Employment Opportunity Commission (<https://www.eeoc.gov/how-file-charge-employment-discrimination>.)

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