

TEXAS SCHOOL FOR THE DEAF

STUDENT DISCIPLINE STUDENTS WITH DISABILITIES

FNG

UNITED STATES CONSTITUTION	<p>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 [See FNA]</p> <p>The board may confine its meetings to specified subject matter and may hold nonpublic sessions to transact business. But when the board sits in public meetings to conduct public business and hear the views of citizens, it may not discriminate between speakers on the basis of the content of their speech or the message it conveys. <i>Rosenberger v. Rector & Visitors of Univ. of Virginia</i>, 515 U.S. 819, 828 (1995); <i>City of Madison v. Wis. Emp. Rel. Comm'n</i>, 429 U.S. 167, 174 (1976); <i>Pickering v. Bd. of Educ.</i>, 391 U.S. 563, 568 (1968)</p>
TEXAS CONSTITUTION	<p>Citizens shall have the right, in a peaceable manner, to assemble together for their common good and to apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address, or remonstrance. Tex. Const. Art. I, Sec. 27</p> <p>There is no requirement that a board negotiate or even respond to complaints. However, a board must stop, look, and listen and must consider the petition, address, or remonstrance. <i>Professional Association of College Educators v. El Paso County Community [College] District</i>, 678 S.W.2d 94 (Tex. App.-El Paso 1984, writ ref'd n.r.e.)</p>
FEDERAL LAWS	
Section 504	<p>A district that receives federal financial assistance, directly or indirectly, and that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973. 34 C.F.R. 104.7(b)</p>
Americans with Disabilities Act	<p>A district that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Code of Federal Regulations, Title 28, Part 35 (Americans with Disabilities Act regulations). 28 C.F.R. 35.107</p>
Title IX	<p>A district that receives federal financial assistance, directly or indirectly, must adopt and publish grievance procedures providing for prompt and equitable resolution of student complaints alleging any action prohibited by Title IX of the Education Amendments of 1972. 34 C.F.R. 106.8(b) [See FB and FFH]</p>
EDUCATION CODE CHAPTER 26	<p>Parents are partners with educators, administrators, and the board in their children's education. Parents shall be encouraged to actively participate in creating and implementing educational programs for their children. Education Code 26.001(a)</p> <p>Unless otherwise provided by law, a board, an administrator, an educator, or other person may not limit parental rights. Education Code 26.001(c)</p>
"PARENT" DEFINED	<p>For purposes of Education Code Chapter 26 (Parental Rights), "parent" includes a person standing in parental relation but does not include a person as to whom the parent-child relationship has been terminated or a person not entitled to possession of or access to a child under a court order. Except as provided by federal law, all rights of a parent under Education Code Title 2 and all educational rights under Family Code 151.003(a)(10) shall be exercised by a student who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Family</p>

STUDENT DISCIPLINE
STUDENTS WITH DISABILITIES

FNG

Code Chapter 31, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order. Education Code 26.002

COMPLAINT
PROCEDURES

The Board adopts the following procedures to address each complaint that it receives concerning a violation of a right guaranteed by Education Code Chapter 26 (Parental Rights).

PARENTAL RIGHTS

Parental rights listed in Education Code Chapter 26 are:

1. Rights concerning academic programs. Education Code 26.003 [See EHA, EIF, FDB, and FMH]
2. Access to student records. Education Code 26.004 [See FL]
3. Access to state assessments. Education Code 26.005 [See EKB]
4. Access to teaching materials. Education Code 26.006 [See EF and EKB]
5. Access to board meetings, other than a closed meeting under the Open Meetings Act. Education Code 26.007 [See BE and BEC]
6. Right to full information concerning a student. Education Code 26.008 [See DF, FFE, and FM]
7. Right to information concerning special education and education of students with learning disabilities. Education Code 26.0081 [See FB]
8. Requests for public information. Education Code 26.0085 [See GBA]
9. Consent required for certain activities. Education Code 26.009 [See EHA, FFE, FL, FM, and FO]
10. Refusal of psychiatric or psychological treatment of child as basis for report of neglect. Education Code 26.0091 [See FFG]
11. Exemption from instruction. Education Code 26.010 [See EMB]

GENERAL
PROVISIONS OF
COMPLAINT
PROCEDURE

Unless otherwise provided by a policy referenced above, students or parents shall be entitled to informal conferences with administrators to resolve their complaints. If such attempts are unsuccessful, the students or parents may take their complaint to the Governing Board. If a complaint involves a problem with a teacher, the student or parent in most circumstances shall be expected to discuss the matter with the teacher before requesting a conference with the principal at Level One.

The student may be represented by an adult at any level of the complaint.

Announcement of a decision in the student's or parent's presence shall constitute communication of the decision.

In this policy, the terms "complaint" and "grievance" shall have the same meaning.

TEXAS SCHOOL FOR THE DEAF

STUDENT DISCIPLINE STUDENTS WITH DISABILITIES

FNG

OTHER COMPLAINT PROCESSES	<p>Student or parent 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 FNG after the relevant complaint process.</p> <ol style="list-style-type: none">1. Complaints alleging discrimination or harassment based on race, color, religion, sex, gender, national origin, age, or disability shall be submitted in accordance with FFH.2. Complaints concerning dating violence shall be submitted in accordance with FFH.3. Complaints concerning retaliation related to discrimination and harassment shall be submitted in accordance with FFH.4. Complaints concerning bullying or retaliation relating to bullying shall be submitted in accordance with FFH.5. Complaints concerning failure to award credit or a final grade on the basis of attendance shall be submitted in accordance with FEC.6. Complaints concerning student discipline shall be submitted in accordance with FO, FOD, and the Student Code of Conduct.7. Complaints concerning any final decisions of the gifted and talented selection committee regarding selection for or exit from the gift program shall be submitted in accordance with EHBB.8. Complaints within the scope of Section 504, including complaints concerning identification, evaluation, or educational placement of a student with a disability shall be submitted in accordance with FB and the procedural safeguards handbook.9. Complaints with the scope of the Individuals with Disabilities Education Act, including complaints concerning identification, evaluation, educational placement, or discipline of a special education student shall be submitted in accordance with EHBAE, FOF, and the procedural safeguards handbook provided to parents of all students referred to special education.10. Complaints concerning instructional resources shall be submitted in accordance with the EF series.11. Complaints concerning a commissioned peace officer who is an employee of TSD must be submitted in accordance with CKE.12. Complaints concerning admissions must be submitted in accordance with FDB.13. Complaints concerning admission, placement, or services provided for a homeless student shall be submitted in accordance with FDC.14. Complaints concerning disputes regarding a student's eligibility for free or reduced-priced meal programs shall be submitted in accordance with COB.
EXTRACURRICULAR ACTIVITY COMPLAINTS	<p>Complaints regarding refusal of entry to or ejection from TSD property based on Education Code 37.105 shall be filed in accordance with this policy. However, the timelines shall be adjusted as necessary to permit the complainant to address the Board in person within 90 calendar days of filing the initial complaint, unless the complaint is resolved before the Board considers it. [See GKA].</p>
NOTICE TO STUDENTS AND PARENTS	<p>For a complaint concerning a student's participation in an extracurricular activity that does not involve a violation of a right guaranteed by Education Code Chapter 26, the Level Two decision is final and may not be appealed to the Board.</p> <p>TSD shall inform students and parents of this policy through appropriate School publications.</p>

STUDENT DISCIPLINE
STUDENTS WITH DISABILITIES

FNG

GUIDING PRINCIPLES	The Board encourages students and parents to discuss their concerns with the appropriate teacher, principal, or other campus 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 and Formal Process	<p>A student or parent may initiate the formal process described below by filing a written complaint form within sixty (60) days of the date on which the parent or person knew or had reason to know of the facts giving rise to the grievance. If the parent or person engaged in informal attempts to resolve the grievance, the filing deadline is the later of:</p> <ol style="list-style-type: none"> A. Ninety (90) days from the date the parent or person knew or had reason to know of the facts giving rise to the grievance; or B. Thirty (30) days from the date on which the district provided information to the parent or person regarding how to file the grievance. <p>Even after initiating the formal complaint process, students and parents are encouraged to seek informal resolution of their concerns. A student or parent 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 TSD employee shall unlawfully retaliate against any student or parent for bringing a concern or complaint.
GENERAL PROVISIONS	
Filing	Complaint forms and appeal notices may be filed by hand-delivery, electronic communication, including email and fax, or by 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	TSD shall make reasonable attempts to schedule conferences at a mutually agreeable time. If a student or parent fails to appear at a scheduled conference, TSD may hold the conference and issue a decision in the student's or parent's absence.
Response	At Levels One and Two, "response" shall mean a written or signed video communication to the student or parent from the appropriate administrator. Responses may be hand-delivered, sent by electronic communication to the student's or parent's email address of record, or sent by U.S. mail to the student's or parent's mailing address of record. Mailed responses shall be timely if they are postmarked by U.S. mail on or before the deadline.

TEXAS SCHOOL FOR THE DEAF

STUDENT DISCIPLINE STUDENTS WITH DISABILITIES

FNG

Days	"Days" shall mean calendar days, unless otherwise noted. In calculating timelines under this policy, the day a document is filed is "day zero." The following calendar day is "day one."
Representative	"Representative" shall mean any person who or organization that is designated by the student or parent to represent the student or parent in the complaint process. A student may be represented by an adult at any level of the complaint. The student or parent may designate a representative through written notice to TSD at any level of this process. If the student or parent designates a legal representative with fewer than three days' notice to TSD before a scheduled conference or hearing, TSD may reschedule the conference or hearing to a later date, if desired, in order to include TSD's counsel. TSD may be represented by counsel at any level of the process.
Consolidating Complaints	Complaints arising out of an event or a series of related events shall be addressed in one complaint. A student or parent 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. However, the student or parent can add additional claims.
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 student or parent, at any point during the complaint process. The student or parent 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 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 TSD. Copies of any documents that support the complaint should be attached to the complaint form. If the student or parent does not have copies of these documents, copies may be presented at the Level One conference. 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.

STUDENT DISCIPLINE
STUDENTS WITH DISABILITIES

FNG

LEVEL ONE

A student or parent who has a complaint shall request a conference with the Principal or Associate Principal within sixty (60) days of the date on which the parent or person knew or had reason to know of the facts giving rise to the grievance. If the parent or person engaged in informal attempts to resolve the grievance, the filing deadline is the later of:

- A. Ninety (90) days from the date the parent or person knew or had reason to know of the facts giving rise to the grievance; or
- B. Thirty (30) days from the date on which the district provided information to the parent or person regarding how to file the grievance.

The Principal or Associate Principal shall schedule and hold a conference with the student or parent within ten (10) days of the request. If the complaint is one of sexual harassment or Section 504 discrimination, the Principal shall include the School's Title IX or 504 Coordinator respectively, in the conference.

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 forward it to the appropriate administrator. The original date will be considered the date of filing.

If a complaint is filed against a teacher or other employee, the administrator will provide notice of the complaint to the teacher or employee against whom the complaint was filed. The notice will be provided at least 5 days before the Level One conference is held. The teacher or employee may submit a written response to be included in the record of the Level One conference.

Education Code 26.011(c).

The administrator may set reasonable time limits for the conference. The Level One conference shall be recorded by the Level One administrator.

Absent extenuating circumstances, the administrator shall provide the student or parent with a written or signed video response within twenty (20) days following the conference. The response shall set forth the basis of the decision and an indication of each document that supports the decision. In reaching a decision, the administrator may consider information provided at the Level One conference and any other relevant documents or information that the administrator believes will help resolve the complaint.

LEVEL TWO

If the outcome of the conference with the Principal or Associate Principal is not to the student's or parent's satisfaction, the student or parent may request, within twenty (20) days, a conference with the Superintendent or designee, who shall schedule and hold a conference. The Superintendent or designee may set reasonable time limits for the conference. Prior to or at the time of the conference, the student or parent shall submit a written complaint that includes a statement of the complaint, any evidence in its support, the solution sought, the student's or parent's signature, and the date of the conference with the Principal.

After TSD receives notice of an appeal to Level Two, the Level One administrator shall prepare and forward a record of the Level One complaint to the Level Two administrator. The student or parent may request a copy of the Level One record. The Level One record shall include:

STUDENT DISCIPLINE
STUDENTS WITH DISABILITIES

FNG

1. The original complaint form and any attachments.
2. All other documents submitted by the student or parent at Level One.
3. If applicable, the written response filed by a teacher or employee the complaint was filed against.
4. The response issued at Level One and any attachments.
5. All other documents relied upon by the Level One administrator in reaching the Level One decision.

LEVEL THREE

If the outcome of the conference with the Superintendent or designee is not to the student's or parent's satisfaction, the student or parent may submit to the Superintendent a written request to file an appeal to the Governing Board within twenty (20) days of the Level Two decision.

The Board president may delegate the authority on an adhoc 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. For purposes of an appeal to the commissioner under Education Code 7.057, a decision by the committee is a decision of the board of trustees. The committee is subject to the same Level Three procedures as described above. Education Code 26A.001(e).

The hearing by the Governing Board will be held no later than sixty (60) days after the date on which the Level Two decision was made. The Superintendent shall inform the student or parent of the date, time, and place of the meeting.

The Superintendent or designee shall provide the Board with the record from Levels One and Two. The person who filed the grievance will be provided, at least five calendar days before the date on which the meeting will be held, a description of any information the Governing Board intends to rely on that is not contained in the record.

The Governing Board shall hear the complaint and take whatever action it deems appropriate. The Board shall record the presentations made at Level Three.

The person who filed the grievance may request the hearing be held in open or closed session. TSD 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] Unless otherwise required by law, TSD will honor the request of the person who filed the grievance.

The presiding officer may set reasonable time limits and guidelines for the presentation, including an opportunity for the student or parent and administration to each make a presentation 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.

BOARD COMMITTEE

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 student or parent or the student'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.

STUDENT DISCIPLINE
STUDENTS WITH DISABILITIES

FNG

The Board shall then consider the complaint. It may give notice of its decision verbally or in writing/video at any time up to and including thirty (30) days after the date on which the Level Three hearing occurred.

RIGHT TO ATTEND
SCHOOL ACTIVITIES

Unless limited by court order, a parent appointed as a conservator of a child has at all times the right to attend school activities, including school lunches, performances, and field trips, as allowed by School policy and procedure. Family Code 153.073(a)(6).

OBJECTION TO
SCHOOL
ASSIGNMENT

The parent or person standing in parental relation to any student may object to the student's school assignment. Upon receiving a written petition to request or object to a student's assignment, a board shall follow the procedures set forth at Education Code 25.034. Education Code 25.033(2),.034 [See FDB]

CHALLENGE TO
EDUCATION
RECORDS

The School shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the records is inaccurate, misleading, or in violation of the privacy rights of the student. 34 C.F.R. 99.21 [See FL]

DENIAL OF CLASS
CREDIT OR FINAL
GRADE

If a student is denied credit or a final grade for a class by an attendance committee, the student may appeal the decision to the board. Education Code 25.092(d) [See FEC]

COMPLAINTS
AGAINST
PROFESSIONAL
EMPLOYEES

A person may not file suit against a professional employee of the School unless the person has exhausted the School's remedies for resolving the complaint. Education Code 22.0514

"Professional employee of the School" includes:

1. A superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, school counselor, nurse, and teacher's aide employed by the School;
2. A teacher employed by a company that contracts with the School to provide the teacher's services to the School;
3. A student in an education preparation program participating in a field experience or internship;
4. A DPS-certified school bus driver;
5. A member of the governing Board of the School; and
6. Any other person whose employment by the School requires certification and the exercise of discretion.

Education Code 22.051(a)

FINALITY OF GRADES

An examination or course grade issued by a classroom teacher is final and may not be changed unless the grade is arbitrary, erroneous, or not consistent with a School's grading policy applicable to the grade, as determined by the TSD Governing Board.

The board's determination is not subject to appeal. This provision does not prohibit an appeal related to a student's eligibility to participate in extracurricular activities under Education Code 33.081. [See FM]

Education Code 28.0214

TEXAS SCHOOL FOR THE DEAF

STUDENT DISCIPLINE STUDENTS WITH DISABILITIES

FNG

REQUESTS FOR PUBLIC INFORMATION The School that receives a request from a parent for public information relating to the parent's child shall comply with Government Code Chapter 552 (Public Information Act). The School shall also comply with the deadlines and provisions set forth at Education Code 26.0085. Gov't Code Ch. 552; Education Code 26.0085

CLOSED MEETING The Governing Board may conduct a closed meeting on a parent or student complaint to the extent required or provided by law. Gov't Code Ch. 551, Subchapter D. [See BEC]

Record of Proceeding An appeal of a board's decision to the Commissioner of Education shall be decided based on a review of the record developed at the School level. "Record" includes, at a minimum, an audible and/or visual electronic recording or written transcript of all expressed testimony or argument. Education Code 7.057(c), (f)

It is the School's responsibility to make and preserve the records of the proceedings before the board. If the School fails to create and preserve the record without good cause, all substantial evidence issues that require missing portions of the record for resolution shall be deemed against the School. The record shall include:

1. A tape recording or a transcript of the hearing at the local level. If a tape recording is used:
 - i The tape recording must be complete, audible, and clear; and
 - ii Each speaker must be clearly identified.
2. All evidence admitted;
3. All offers of proof;
4. All written pleadings, motions, and intermediate rulings;
5. A description of matters officially noticed;
6. If applicable, the decision of the hearing examiner;
7. A tape recording or transcript of the oral argument before the board; and
8. The decision of the board.

19 TAC 157.1073(d)

DISRUPTION person, with intent to prevent or disrupt a lawful meeting, to substantially obstruct or interfere with the ordinary conduct of a meeting by physical action or verbal utterance and thereby curtail the exercise of others' First Amendment rights. Penal Code 42.05; Morehead v. State, 807 S.W. 2d 577 (Tex. Cr. App. 1991)

Note: See EHBAB for provisions concerning students with disabilities; see the FO series for provisions concerning student discipline; see FL for provisions concerning student records.

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