

TEXAS SCHOOL FOR THE DEAF

PUBLIC COMPLAINTS

GF

**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

A 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.

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)

TEXAS CONSTITUTION

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

**RESPONSE TO
COMPLAINTS**

There is no requirement that the board negotiate or even respond to complaints. However, the board must stop, look, and listen and must consider the petition, address, or remonstrance.

Professional Association of College Educators v. El Paso County Community [College] District, 678 S.W.2d 94 (Tex. App.-El Paso 1984, writ ref'd n.r.e.)

**FEDERAL LAWS
SECTION 504**

The School 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.

29 U.S.C. 794; 34 CFR 104.7(b)

**AMERICANS WITH
DISABILITIES ACT**

The School 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 CFR 35.107

GRIEVANCE PROCEDURES

**INFORMAL
PROCESS**

The Board encourages the public to discuss concerns and complaints through informal conferences with the appropriate administrator.

Concerns should be expressed as soon as possible to allow early resolution at the lowest possible administrative level.

**FORMAL
PROCESS**

If an informal conference regarding a complaint fails to reach the outcome requested by an individual, he or she may initiate the formal process described below by timely filing a written complaint form.

Even after initiating the formal complaint process, individuals are encouraged to seek informal resolution of their concerns. An individual whose concerns are resolved may withdraw a formal complaint at any time.

The process described in this policy shall not be construed to create new or

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additional rights beyond those granted by law or Board policy, nor to require a full evidentiary hearing or "mini-trial" at any level.

FREEDOM FROM RETALIATION

Neither the Board nor any School employee shall unlawfully retaliate against any individual for bringing a concern or complaint.

APPLICATION

Except as addressed by SPECIFIC COMPLAINTS, below, this policy applies to all complaints or grievances from the public.

SPECIFIC COMPLAINTS

For more information on how to proceed with complaints regarding:

1. Alleged discrimination, see [GA](#).
2. Instructional materials, see [EFA](#).
3. On-campus distribution of nonschool materials, see [GKDA](#).

DEFINITIONS

For purposes of this policy, terms are defined as follows:

COMPLAINT / GRIEVANCE

The terms "complaint" and "grievance" shall have the same meaning.

FILING

Complaint forms and appeal notices may be filed by electronic delivery, hand-delivery, 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 shall be timely filed if they are received on or before the deadline, as indicated by the date/time shown on the receiving machine. Mail filings shall be timely filed if they are postmarked by U.S. Mail on the deadline and received by the appropriate administrator or designated representative no more than three days after the deadline.

DAYS

"Days" shall mean all weekdays when the School is open for business. In calculating time lines under this policy, the day a document is filed is "day zero," and all deadlines shall be determined by counting the following day as "day one."

RESPONSE

At Levels One and Two, "response" shall mean a written communication to the individual from the appropriate administrator. Responses may be hand-delivered or sent by U.S. Mail to the individual's mailing address of record. Mailed responses shall be timely if they are postmarked by U.S. Mail on the deadline and received by the individual or designated representative no more than three days after the response deadline.

REPRESENTATIVE

"Representative" shall mean any person who or organization that is designated by an individual to represent the individual in the complaint process.

The individual may designate a representative through written notice to the School at any level of this process. If the individual designates a representative with fewer than three days' notice to the School before a scheduled conference or hearing, the School may reschedule the conference or hearing to a later date, if desired, in order to include the School's counsel.

GENERAL PROVISIONS

Complaints arising out of an event or a series of related events shall be addressed in one complaint. An individual 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.

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 individual, at any point during the complaint process. The individual may appeal the dismissal by seeking review in writing within ten days, 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 FORM Complaints under this policy shall be submitted in writing on a form provided by the School. (See [GF-Exhibit](#)).

Copies of any documents that support the complaint should be attached to the complaint form. If the individual 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 unless the individual did not know the documents existed before the Level One conference.

A complaint form that is incomplete in any material aspect may be dismissed, but may be refiled with all the requested information if the refiling is within the designated time for filing a complaint.

LEVEL ONE Complaint forms must be filed:

1. Within 15 days of the date the individual 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.

If the only administrator who has authority to remedy the alleged problem is the Superintendent or designee, the complaint may begin at Level Two following the procedure, including deadlines, for filing the complaint form at Level One.

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 immediately forward the complaint form to the appropriate administrator.

The appropriate administrator shall hold a conference with the individual within ten days after receipt of the written complaint.

The administrator shall have ten days following the conference to provide the individual a written response.

LEVEL TWO If the individual did not receive the relief requested at Level One or if the time for a response has expired, he or she 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 School, within ten days after receipt of a response or, if no response was received, within ten days of the response deadline at Level One. (See [GF Exhibit](#)).

The Superintendent or designee shall hold a conference within ten days after the appeal notice is filed. At the conference, the Superintendent or designee shall consider only the issues and documents presented at Level One and identified in the Level Two appeal notice. The Superintendent or designee shall have ten days following the conference to provide the individual a written response.

LEVEL THREE If the individual did not receive the relief requested at Level Two or if the time for a response has expired, he or she may appeal the decision to the Board.

The appeal notice must be filed in writing, on a form provided by the School, within ten days after receipt of a response or, if no response was received, within ten days of the response deadline at Level Two. (See [GF Exhibit](#)).

The Superintendent or designee shall inform the individual 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 with copies of the complaint form, all responses, all appeal notices, and all written documentation previously submitted by the individual or the administration. The Board shall consider only those issues and documents presented at the preceding levels and identified in the appeal notice.

The School 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. 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. 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:
 - a. The tape recording must be complete, audible, and clear; and
 - b. 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.

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 for any reason the Board fails to reach 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.

DISRUPTION

It is a criminal offense for a 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)

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