

EMPLOYEE COMPLAINT/GRIEVANCE

Exhibit A: Employee Complaint Form

Exhibit C: Level Two Appeal Notice

Exhibit E: Level Three Appeal Notice

DGBA (LOCAL)

DGBA (LEGAL)

EXHIBIT A

Note: Informal resolution is encouraged but does not extend any deadlines in DGBA (LOCAL), except by mutual written consent.

Whistleblower complaints must be filed within the time specified by law and may be made to the Superintendent or designee beginning at Level Two.

EMPLOYEE COMPLAINT FORM — LEVEL ONE

To file a formal complaint, please fill out this form completely and submit it by hand delivery, electronic communication, or U.S. mail to the appropriate administrator within the time established in DGBA (LOCAL). All complaints will be heard in accordance with DGBA (LEGAL) and (LOCAL) or any exceptions outlined therein.

1. Name: _____

2. Address: _____

Telephone number: _____

E-mail address: _____

3. Position: _____ Campus/Department: _____

4. If you will be represented in presenting your complaint, please identify the person representing you. If the person representing you will participate by telephone conference call, please check the box below. The District will inform you if the equipment necessary for telephone representation is unavailable.

Representation will be by telephone conference call.

Please note: You must designate a representative who will be participating in person or by telephone with an advance notice of at least three days, or the District may reschedule the conference or hearing to a later date.

Name: _____

Address: _____

Telephone number: _____

E-mail address: _____

5. Please describe the decision or circumstances causing your complaint (give specific factual details).

6. What was the date of the decision or circumstances causing your complaint?

7. Please explain how you have been harmed by this decision or circumstance.

8. Please describe any efforts you have made to resolve your concerns and the responses to your efforts. Please include dates of communication and with whom you communicated regarding your concerns.

9. Please describe the outcome or remedy you seek for this complaint.

Employee signature: _____

Signature of employee's representative: _____

Date of filing: _____

Complainant, please note:

A complaint form that is incomplete in any material way may be dismissed but may be refiled with all the required information if the refileing is within the designated time for filing a complaint.

Attach to this form any documents you believe will support the complaint; if unavailable when you submit this form, they may be presented no later than the Level One conference. Please keep a copy of the completed form and any supporting documentation for your records.

EXHIBIT C

LEVEL TWO APPEAL NOTICE

To appeal a Level One decision or the lack of a timely response after a Level One conference, please fill out this form completely and submit it by hand delivery, electronic communication, or U.S. mail to the Superintendent or designee within the time established in DGBA (LOCAL). Appeals will be heard in accordance with DGBA (LEGAL) and (LOCAL) or any exceptions outlined therein.

1. Name: _____

2. Address: _____

Telephone number: _____

E-mail address: _____

3. Position: _____ Campus/Department: _____

4. If you will be represented in presenting your appeal, please identify the person representing you. If the person representing you will participate by telephone conference call, please check the box below. The District will inform you if the equipment necessary for telephone representation is unavailable.

Representation will be by telephone conference call.

Please note: You must designate a representative who will be participating in person or by telephone with an advance notice of at least three days, or the District may reschedule the conference or hearing to a later date.

Name: _____

Address: _____

Telephone number: _____

E-mail address: _____

5. Who held the Level One conference? _____

Date of conference: _____

Date you received a response to the Level One conference: _____

6. Please explain specifically how you disagree with the outcome at Level One.

7. Attach a copy of your original Level One complaint and any documentation submitted at Level One.
8. Attach a copy of the Level One response being appealed, if applicable.

Employee signature: _____

Signature of employee's representative: _____

Date of filing: _____

Complainant, please note:

A complaint or appeal form that is incomplete in any material way may be dismissed but may be re-filed with all the required information if the re-filing is within the designated time for filing a complaint or appeal.

Please keep a copy of the completed form and any supporting documentation for your records.

EXHIBIT E

LEVEL THREE APPEAL NOTICE

To appeal a Level Two decision or the lack of a timely response after a Level Two conference, please fill out this form completely and submit it by hand delivery, electronic communication, or U.S. mail to the Superintendent or designee within the time established in DGBA (LOCAL). Appeals will be heard in accordance with DGBA (LEGAL) and (LOCAL) or any exceptions outlined therein.

1. Name: _____

2. Address: _____

Telephone number: _____

E-mail address: _____

3. Position: _____ Campus/Department: _____

4. If you will be represented in presenting your appeal, please identify the person representing you. If the person representing you will participate by telephone conference call, please check the box below. The District will inform you if the equipment necessary for telephone representation is unavailable.

Representation will be by telephone conference call.

Please note: You must designate a representative who will be participating in person or by telephone with an advance notice of at least three days, or the District may reschedule the conference or hearing to a later date.

Name: _____

Address: _____

Telephone number: _____

E-mail address: _____

Who held the Level Two conference? _____

Date of conference: _____

Date you received a response to the Level Two conference: _____

5. Please explain specifically how you disagree with the outcome at Level Two.

6. Do you want the Board to hear this appeal in open session? Yes No
If so, the Board will consider your request; however, you may not have a legal right under the Texas Open Meetings Act to require a meeting in open session.
7. Attach a copy of your original Level One complaint and any documentation submitted at Level One and a copy of your Level Two appeal notice.
8. Attach a copy of the Level Two response being appealed, if applicable.

Employee signature: _____

Signature of employee's representative: _____

Date of filing: _____

Complainant, please note:

A complaint or appeal form that is incomplete in any material way may be dismissed but may be re-filed with all the required information if the re-filing is within the designated time for filing a complaint or appeal.

Please keep a copy of the completed form and any supporting documentation for your records.

Complaints

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

**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 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 shall be submitted 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. Complaints concerning the proposed nonrenewal of a term contract issued under Chapter 21 of the Education Code shall be submitted in accordance with DFBB.
7. Complaints concerning the proposed termination or suspension without pay of an employee on a probationary, term, or continuing contract issued under Chapter 21 of the Education Code during the contract term shall be submitted in accordance with DFAA, DFBA, or DFCA.

Notice to Employees

The District shall inform employees of this policy through appropriate District publications.

Guiding Principles

Informal Process

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 be-

tween an employee and a Board member would be inappropriate because of a pending hearing or appeal related to the employee.

Formal Process

An employee may initiate the formal process described below by timely filing a written complaint form.

Even after initiating the formal complaint process, employees are encouraged to seek informal resolution of their concerns. An employee 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 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 District employee shall unlawfully retaliate against an employee for bringing a concern or complaint.

Whistleblower Complaints

Whistleblower complaints shall be filed within the time specified by law and may be made to the Superintendent or designee beginning at Level Two. 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]

Complaints Against Supervisors

Complaints alleging a violation of law by a supervisor may be made to the Superintendent or designee. Complaint forms alleging a violation of law by the Superintendent may be submitted directly to the Board or designee.

General Provisions

Filing

Complaint forms and appeal notices may be filed by hand-delivery, by electronic communication, including e-mail 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 postmarked 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.

PERSONNEL-MANAGEMENT RELATIONS
EMPLOYEE COMPLAINTS/GRIEVANCES

DGBA
(LOCAL)

Days	<p>“Days” shall mean District business days, unless otherwise noted. In calculating time lines under this policy, the day a document is filed is “day zero.” The following business day is “day one.”</p>
Representative	<p>“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.</p> <p>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.</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>All time limits shall be strictly followed unless modified by mutual written consent.</p> <p>If a complaint form or appeal notice is not timely filed, the complaint may be dismissed, on written notice to the employee, at any point during the complaint process. The employee may appeal the dismissal by seeking review in writing within ten 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.</p>
Costs Incurred	<p>Each party shall pay its own costs incurred in the course of the complaint.</p>
Complaint and Appeal Forms	<p>Complaints and appeals under this policy shall be submitted in writing on a form provided by the District.</p> <p>Copies of any documents that support the complaint should be attached to the complaint form. If the employee 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 by the employee unless the employee did not know the documents existed before the Level One conference.</p>

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 refiling 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.

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 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 investigate as necessary and schedule a conference with the employee within ten days after receipt of the written complaint. The administrator may set reasonable time limits for the conference.

Absent extenuating circumstances, the administrator shall provide the employee a written response within ten 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 did not receive the relief requested at Level One or if the time for a response has expired, the employee 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 District, within ten days of the date of the written Level One response or,

if no response was received, within ten days of the Level One response deadline.

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 Superintendent or designee shall schedule a conference within ten days after the appeal notice is filed. The conference shall be limited to the issues and documents considered at Level One. At the conference, the employee may provide information concerning any documents or information relied upon by the administration for the Level One decision. The Superintendent or designee may set reasonable time limits for the conference.

The Superintendent or designee shall provide the employee a written response within ten 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 did not receive the relief requested at Level Two or if the time for a response has expired, the employee may appeal the decision to the Board.

The appeal notice must be filed in writing, on a form provided by the District, within ten days of the date of the written Level Two response or, if no response was received, within ten days of the Level Two response deadline.

The Superintendent or designee shall inform the employee 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 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 appeal shall be limited to the issues and documents considered at Level Two, except that 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 District 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, including an opportunity for the employee and administration to each make a presentation and provide rebuttal 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.

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 employee or the employee'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.

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 the Board does not make 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.

**United States
Constitution**

The District 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 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) [See DG]

Texas Constitution

Employees 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*

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. *Prof'l Ass'n of College Educators v. El Paso County Cmty. [College] District*, 678 S.W.2d 94 (Tex. App.—El Paso 1984, writ ref'd n.r.e.)

Federal Laws

Section 504

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)*, .11

Americans with
Disabilities Act

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, .140*

Title IX

A district that receives federal financial assistance, directly or indirectly, shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX of the Education Amendments of 1972. *34 C.F.R. 106.8(b)*; *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512 (1982)

State Laws

Wages, Hours,
Conditions of Work

The prohibition against collective bargaining and strikes [see DGA] does not impair the right of employees to present grievances concerning their wages, hours of employment, or conditions of work, either individually or through a representative that does not claim the right to strike. *Gov't Code 617.005*

The term “conditions of work” should be construed broadly to include any area of wages, hours or conditions of employment, and any other matter that is appropriate for communications from employees to employer concerning an aspect of their relationship. *Atty. Gen. Op. JM-177 (1984)*; *Corpus Christi Fed. of Teachers v. Corpus Christi Indep. Sch. Dist.*, 572 S.W.2d 663 (Tex. 1978)

The statute protects grievances presented individually or individual grievances presented collectively. *Lubbock Prof'l Firefighters v. City of Lubbock*, 742 S.W.2d 413 (Tex. App.—Amarillo 1987, writ ref'd n.r.e.)

Representative

The District cannot deny an employee's representative, including an attorney, the right to represent the employee at any stage of the grievance procedure, so long as the employee designates the representative and the representative does not claim the right to strike. *Lubbock Prof'l Firefighters v. City of Lubbock*, 742 S.W.2d 413 (Tex. App.—Amarillo 1987, writ ref'd n.r.e.); *Sayre v. Mullins*, 681 S.W.2d 25 (Tex. 1984)

The District should meet with employees or their designated representatives at reasonable times and places to hear grievances concerning wages, hours of work, and conditions of work. The right to present grievances is satisfied if employees have access to those in a position of authority to air their grievances. However, that authority is under no legal compulsion to take action to rectify the matter. *Atty. Gen. Op. H-422 (1974)*; *Corpus Christi Indep. Sch. Dist. v. Padilla*, 709 S.W.2d 700 (Tex. App.—Corpus Christi, 1986, no writ)

Employment Policy

The District's employment policy must provide each employee with the right to present grievances to the Board.

The policy may not restrict the ability of an employee to communicate directly with a member of the Board regarding a matter relating to the operation of the District, except that the policy may prohibit ex parte communication relating to:

1. A hearing under Education Code Chapter 21, Subchapter E (Term Contracts) or F (Hearing Examiners); and
2. Another appeal or hearing in which ex parte communication would be inappropriate pending a final decision by the Board.

Education Code 11.1513

Grievance Policy

The District's grievance policy must permit an employee to report a grievance against a supervisor to a different supervisor if the employee alleges that the supervisor:

1. Violated the law in the workplace; or
2. Unlawfully harassed the employee.

*Telephone
Representation*

If the District's grievance policy provides for representation, the policy must permit an employee's representative to represent the employee through a telephone conference call at any formal grievance proceeding, hearing, or conference at which the employee is entitled to representation according to the policy. This provision applies to grievances under Education Code 11.171(a) and only if the District has the equipment necessary for a telephone conference call.

Education Code 11.171(a), (c)

Audio Recording

The District's grievance policy must permit an employee who reports a grievance to make an audio recording of any meeting or proceeding at which the substance of a grievance that complies with the policy is investigated or discussed. The implementation of an employee's authorization to make an audio recording may not result in a delay of any time line provided by the grievance policy. The District is not required to provide equipment for the employee to make the recording. *Education Code 11.171(b)*

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 the District's grading policy applicable to the grade, as determined by the Board.

The Board's determination is not subject to appeal.

Education Code 28.0214

Open Meetings Act

The Board is not required to conduct an open meeting to hear a complaint or charge against an employee. However, the Board may not conduct a closed meeting if the employee who is the subject of the hearing requests a public hearing. *Gov't Code 551.074* [See BEC]

Closed Meeting

The Board may conduct a closed meeting on an employee complaint to the extent required or provided by law. *Gov't Code 551.082* [See BEC]

Record of Proceedings

An appeal of the Board's decision to the Commissioner shall be decided based on a review of the record developed at the District level. "Record" includes, at a minimum, an audible electronic recording or written transcript of all oral testimony or argument. *Education Code 7.057(c), (f)*

It is the District's responsibility to make and preserve the records of the proceedings before the Board. If the District 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 District. 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.

19 TAC 157.1073(d)

**Whistleblower
Complaints**

Before bringing suit, an employee who seeks relief under Government Code Chapter 554 (whistleblowers) must initiate action under the District's grievance or appeal procedures relating to suspension or termination of employment or adverse personnel action. *Gov't Code 554.006*
[See DG]