

## EMPLOYEE GRIEVANCE PROCEDURES

### (DISCIPLINE, TERMINATION AND WORKPLACE SAFETY)

The purpose of this procedure is to provide for an internal grievance procedure that is consistent with the requirements of state law and School Board policy for resolving grievances concerning employee discipline, employee termination and workplace safety. This procedure is intended to serve as the written document, required by statute, which sets forth the process for the grievant and the District to use to process a grievance. A determined effort shall be made to settle any grievance at the lowest possible level in the grievance procedure.

#### A. Definitions

1. **Grievance:** A "grievance" is defined as a timely written complaint, submitted according to the procedures identified herein, that concerns employee discipline, employee termination, or workplace safety.
2. **Grievant:** A "grievant" may be any employee or a group of employees.
3. **Days:** Unless expressly identified as "calendar days," the terms "days" or "workdays" as used within this grievance procedure shall exclude only Saturdays, Sundays, and such holidays and other days on which the main district administrative office is not open for public business.
4. **Receipt of Written Communication:** A grievant is deemed to be in receipt of a written communication from the District regarding a grievance, including a denial of the grievance at any stage of the process, as of the date the communication is either personally delivered to the grievant, sent to the employee's school district email address, or sent by mail to or left at the employee's mailing address of record with proof of such delivery.
5. **Grievable Event:** The terms "termination," "discipline" and "workplace safety" are intended to have only the limited meaning given to them under the state statutes that require the School Board to create a grievance system addressing those issues. For purposes of clarity and as examples of issues that either are, or are not, grievable under this grievance procedure (unless the applicable statutes are so interpreted by a court or tribunal, or amended at a later time) the following shall apply:

**a. Employee Discipline**

A "grievable event" as to employee discipline is the employee's receipt of verbal or written notice of the imposition of specific discipline by the District; or, if no express notice of discipline is received, the occurrence of the event alleged by the employee to constitute disciplinary action. The initiation and conduct of an investigation into a potentially disciplinary matter is not a grievable event.

The term "discipline" is defined as a suspension (unpaid or paid), or a written reprimand. The term discipline shall not be interpreted to include a supervisor's performance evaluation of an employee; a performance improvement plan; any verbal or written notice of performance expectations; any verbal reprimand; or the placing of an employee on administrative leave with pay pending an investigation.

**b. Employee Termination**

A "grievable event" as to employee termination means the employee's receipt of any written or verbal notice of termination of an individual's employment with the District. The effective date of the employee's termination is not a separate or new grievable event.

Termination is defined as an involuntary, complete and permanent severance of the employment relationship as a result of some type of affirmative misconduct, usually for some infraction of the rules or policies of the District, abandonment of the position, incompetence or other reason deemed sufficient by the School Board and/or its designee. Termination results in involuntary separation and with prejudice to the employee. A termination will result in the loss of length of service and other employment benefits. The term "termination" does not encompass all events that lead to a separation from employment. For example, the following personnel actions are not to be deemed "terminations" under the grievance procedure: (1) any voluntary quit, including resignation or retirement; (2) a job transfer or change in assignment; (3) a reduction in hours or in full-time equivalency; (4) non-reappointment to an extra-curricular or co-curricular assignment where other employment remains on-going; or (5) completion of assignment by any temporary, substitute, or similar limited-term employee. Where separation from employment results from the District's use of specific statutory procedures for the nonrenewal of a fixed-term employment contract, such separation via nonrenewal is not grievable as a "termination."

**c. Workplace Safety**

A "grievable event" as to a workplace safety issue is the presence of a hazardous condition in the workplace, whether ongoing or reasonably likely to reoccur, that an employee alleges (1) constitutes a violation of a workplace health or safety code, regulation, or standard; or (2) poses a recognized hazard

likely to cause death or serious physical harm to the employee; and that has not previously been grieved under this grievance procedure and addressed by a decision of a hearing officer or the Board.

The term "workplace safety" means a hazardous condition in the workplace, whether ongoing or reasonably likely to reoccur, that an employee alleges (1) constitutes a violation of a workplace health or safety code, regulation, or standard; or (2) poses a recognized hazard likely to cause death or serious physical harm to the employee. Further, a grievance over an alleged workplace safety issue under this grievance procedure is appropriate only if:

- 1) The safety of at least one employee is involved (as opposed to exclusively the safety of students or visitors);
- 2) The issue concerns the safety of a person (e.g., not the "safety" of one's vehicle or other personal possessions);
- 3) The grievance is filed by an employee who is presently affected by the issue, or who might reasonably in the future be affected by the issue (i.e., an employee otherwise lacking any interest in the issue may not file a grievance on behalf of another employee); and
- 4) The issue presented by the grievance must be under the reasonable control of the school district.

Although a given issue, complaint or concern may not properly qualify as a grievance over "termination," "discipline," or "workplace safety," employees may still pursue and seek a resolution to such issues, complaints or concerns by raising the matter with their immediate supervisor or by pursuing other internal procedures that may be available. (e.g. Policy 112-Nondiscrimination, Policy 870-Public Complaints)

**B. Time Limits**

The failure of the grievant to file and process a grievance within the time limits set forth in this procedure shall be deemed a waiver of the grievance and a waiver of the grievant's right to access and use this grievance procedure as to the issues that were raised, or that could have been raised, in the grievance.

The failure of the person hearing the grievance to provide a written response to the grievant by the established deadline will be treated the same as a written denial of the grievance.

The number of days indicated at each level should be considered a maximum. The time limits specified in this procedure may, however, be extended by mutual consent of the person hearing the grievance and the grievant, or as otherwise expressly provided within this procedure.

The parties may, through mutual consent, agree to start the grievance at a higher step if the grievance involves termination and is initially filed in a timely manner pursuant to the timelines set forth below.

C. **Grievance Processing Procedures**

**An earnest effort shall first be made to settle the matter informally between the employee and the immediate supervisor.** If the matter under grievance is not resolved, grievances shall be processed in accordance with the following procedures:

**Step One – Written Grievance**

If the grievance is not resolved informally with the immediate supervisor, the grievant(s) shall file a written grievance with the immediate supervisor/administrator within ten (10) work days after the facts upon which the grievance is based first occurred. The written grievance shall, at a minimum, be signed and dated; prominently identify the document by using the word “GRIEVANCE;” and specify (1) the date the grievable event occurred; (2) whether the grievance concerns a termination, disciplinary action, or a workplace safety issue; (3) the basic nature of the complaint/allegations and the issue(s) to be resolved; (4) the handbook and policy provisions relevant to the grievance; (5) the alleged responsible supervisor(s); (6) any known witness to key events; (7) the relief or remedy that is requested.

The immediate supervisor/administrator shall respond to the grievance in writing within ten (10) work days. However, if there is an ongoing investigation related to the subject matter of the grievance, the immediate supervisor/administrator may extend the time limit for issuing an initial response as reasonable and necessary by giving written notice of such an extension to the grievant generally not to exceed ten (10) work days. If the matter cannot be resolved, or if no answer is provided in the above timeframe, the grievant(s) may file an appeal to the District Administrator.

If the grievant's immediate supervisor is the District Administrator, the grievance would skip Step Two.

**Step Two – Appeal to District Administrator**

If the grievance has not been resolved and either (1) has been denied in the form of a written response from a supervisor or administrator other than the District Administrator; or (2) no initial administrative response has been provided by the District by the applicable deadline for an initial administrative response, then the grievant may drop the grievance or, to continue the grievance, the grievant must file a request for reconsideration by the District Administrator.

A request for administrative reconsideration by the District Administrator shall be filed in writing with the District Administrator within five (5) work days of the date the employee received the initial administrative denial of the grievance, or, if no initial response was provided, within ten (10) work days of the deadline for providing a written response.

The District Administrator shall provide a final administrative response to the grievant in writing within ten (10) work days of the District's receipt of the request for reconsideration. If the grievance has not been resolved and either (1) has been denied in the form of a final administrative response from the District Administrator; or (2) no final administrative response has been provided by the District Administrator by the applicable

deadline for such a response, the grievant may continue to pursue the grievance by filing a request for a hearing as provided under Step 3, below.

### **Step Three – Appeal to Impartial Hearing Officer**

If the grievance is not resolved in Step Two, the employee must notify the District Administrator, within ten (10) work days after receipt of the District Administrator's answer or if no response is provided within ten (10) work days of the deadline for the response, if he/she intends to process the grievance to the designated impartial hearing officer.

If there is a dispute over the timeliness or the ability to use the grievance procedure on the issue, the District shall have the discretion to separate the issues into two hearings for the purpose of deciding those issues (e.g., address whether the grievance was filed in a timely manner before hearing the merits of the grievance).

Upon receipt of the request for a hearing, the administration shall select and assign a qualified impartial hearing officer to the grievance, per the requirements of Board Procedure #527 ADM (2), Impartial Hearing Officer Selection Procedure.

The hearing officer shall have discretion to establish specific procedures for the conduct of the hearing, provided that such procedures are consistent with any applicable statutory and general due process requirements. The hearing officer shall meet with the parties at a mutually-agreeable date to review the evidence and hear testimony relating to the grievance. The hearing officer shall not be required to abide by the rules of evidence that would apply in civil or criminal court cases. For instance, he/she may choose to admit hearsay evidence and accord it such weight that it may be due. The hearing officer is responsible for ensuring that he/she is creating and preserving a record of the proceedings that will enable Board review. Upon completion of this review and hearing, the hearing officer shall render a written decision to the administration, the grievant, and (if applicable and appropriate) the grievant's representative. A decision of the hearing officer shall be limited to the subject matter of the grievance and shall be restricted solely to interpretation of the policy or handbook in the area where the alleged breach occurred. The hearing officer shall not modify, add to, or delete from the express terms of the policy or handbook. The hearing officer may deny the grievance or conclude that the grievance should be sustained in whole or in part and recommend a remedy, if any. A decision of the hearing officer shall be limited to the subject matter of the grievance and shall be consistent with the role of the hearing officer as established in Board policy/procedure. The decision of the hearing officer and any recommendations contained therein are subject to review by the Board via appeal, as described below.

Hearing officers are encouraged to use appropriate means of narrowing the issues in dispute, including seeking and documenting such stipulations as to which the parties may be able to agree. The hearing officer shall decide disputed facts based upon a "preponderance of the evidence" standard.

In a case involving a challenge to discipline or termination, unless a different standard applies due to the application of substantive rights or employment protections arising from a source other than this grievance procedure, the District shall have the initial burden of production to demonstrate a plausible factual basis for the challenged action, which shall be subject to rebuttal by the grievant. The District shall have the ultimate burden of proving that its action was not arbitrary or capricious.

In a grievance over a workplace safety issue, the grievant shall have the burden of proving by a preponderance of the evidence the existence of a condition in the workplace, whether ongoing or reasonably likely to reoccur, that (1) constitutes a violation of a workplace health or safety code, regulation, or standard; or (2) poses a recognized hazard likely to cause death or serious physical harm to the employee; and for which condition there is an appropriate remedy that is within the reasonable control of the District.

As a general guideline that may vary, the administration should appoint a hearing officer who indicates that he/she would be available to hear and issue a decision on the grievance within sixty (60) calendar days of the date the District receives the grievant's timely notice of request for a hearing. The hearing officer shall make reasonable efforts to fulfill his/her role within this general guideline, and shall notify the parties in the event that meeting the guideline becomes impractical.

#### **Step Four – Appeal to School Board**

If the grievance is not resolved to the satisfaction of the grievant or the administration at Step Three, the grievance may be appealed to the School Board with ten (10) work days after receipt of the decision at the prior step. Either the Administration or the grievant may appeal an impartial hearing officer's decision to the Board by filing a written notice of appeal, addressed to the Board and delivered to the office of the District Administrator (with a copy provided to the other party). The notice of appeal must clearly identify the issues being raised for a decision by the Board.

Within twenty-five (25) days after the appeal to the Board has been filed, the parties shall exchange written briefs with each other and submit them to the Board.

Within ten (10) work days after receipt of briefs from both parties, the School Board and legal counsel shall meet with the parties to review the evidence and hear testimony relating to the grievance. At the hearing, each party may cross-examine any witness of the other party. If either party presents an exhibit that was not presented at a prior step of the grievance process, the exhibit must be provided to the other party at least twenty-four (24) hours prior to the hearing.

On appeal from Step Three, the hearing officer's factual findings and conclusions of law shall have distinct standards of review. The School Board shall accord some deference to the hearing officer's findings of fact but (1) may modify any such findings if after consulting with the hearing officer the School Board concludes that the most reasonable view of the record calls for modification of one or more of the findings; or (2) may remand the case to the hearing officer for further factual development and (if necessary)

revised conclusions of law. In terms of conclusions of law and mixed questions of fact and law, the School Board shall apply a de novo standard of review, meaning that the hearing officer's findings shall be accorded no deference.

The School Board shall render a written decision that affirms, reverses, or modifies the decision of the hearing officer (or, if applicable, of the District Administrator). Such decision shall be rendered in a timely manner usually within thirty (30) calendar days of the Board meeting at which a decision is made, and a copy of the decision shall be provided to the administration, the grievant, and (if applicable and appropriate) the grievant's representative. The School Board's decision is final and may not be appealed. All School Board actions throughout this process shall comply with requirements of Wisconsin's Open Meetings Law.

**D. Disputes as to Timeliness or Grievability**

No grievant has the right to pursue an untimely grievance or a grievance that falls outside the definition of a grievance (e.g., because the complaint does not deal with termination, discipline, or workplace safety). If there is a dispute over the timeliness or the grievability of a grievance that the parties are unable to resolve, the administration shall have the discretion to request, and the hearing officer shall allow, bifurcation of the merits of the grievance and any issue(s) regarding grievability. In the event of bifurcation of the issues, any decision as to a grievability issue shall be appealable to the Board prior to any remand to a lower step of the grievance procedure for decisions and/or a hearing on the merits.

**E. Grievant's Right to Elect Representation**

Any grievant may choose to be represented at all stages of the grievance procedure by a representative(s) of his/her own choosing. Student records shall not be disclosed to an employee's representative except in compliance with applicable law and Board policy.

**F. Consolidation of Grievances**

Grievances over the same or closely related issues, or arising from the same factual circumstances, may be consolidated at any point where such consolidation is deemed practical by the administration or Board.

**G. Group Grievances**

Group grievances are those that involve more than one employee and/or any of the following:

- A. More than one work site;
- B. More than one supervisor; or
- C. An administrator other than the immediate supervisor.

At Step Two of the grievance process, all group grievances will initially be decided directly by the District Administrator.

**H. Grievances Filed by the District Administrator**

In the event a grievance is filed by the District Administrator, it shall be initially filed with the School Board President and School Board Clerk according to the deadlines established within Step One of this grievance procedure, above, and the Board shall have the role and responsibilities of the District Administrator in Step Two and elsewhere in the process. All other notices provided by the District Administrator acting as a grievant shall similarly be filed with the Board President and Board Clerk.

**I. Voluntary Modifications to and Waiver of Procedures**

In the interest of achieving the most timely and satisfactory resolution of employee complaints and grievances, a grievant may voluntarily reach an agreement with the District Administrator to modify the process established within this grievance procedure, provided that no such modification eliminates the role of the School Board as the final level of appeal that is available in any grievance. For example, a grievant may voluntarily waive specific procedural steps within this process, including the right to waive any hearing before an impartial hearing officer. However, any such voluntary modification or waiver of any portion of this grievance procedure shall be documented in writing, signed by the District Administrator and the grievant, and added to the record of the grievance.

**J. Settlement of Grievances**

The District Administrator and the grievant may reach a voluntary settlement of the grievance at any time under which the grievant agrees to withdraw and drop the grievance. The District Administrator must approve any settlement that results in the payment of financial compensation to the grievant contingent upon School Board approval of the settlement, unless separate settlement authority involving financial compensation is provided to the District Administrator in advance of executing the settlement agreement.