

EMPLOYEE GRIEVANCE POLICY AND PROCEDURE

No. 527
(A) 8-13-12
(R) 1-13-14
(R) 7-14-14

This grievance policy is provided for the exclusive internal method for resolving grievances concerning discipline, termination and work place safety. A determined effort shall be made to settle any grievances at the lowest possible level.

Purpose and Applicability: This procedure provides an employee with the individual opportunity to address concerns regarding discipline, termination, or workplace safety matters, to have those matters reviewed by an Impartial Hearing Officer, and to appeal to the Board of Education, where appropriate. The District expects employees and management to exercise reasonable efforts to resolve any questions, problems, or misunderstandings prior to utilizing the grievance procedure.

If an employee is subject to a contractual grievance procedure, the contractual grievance procedure must be followed as applicable. This procedure does not replace or supersede any statutory provision which may be applicable to an employee's employment with the District. Any grievance, or part of a grievance, that is subject to the jurisdiction of a different governmental body or Wisconsin statute, or subject to a different dispute resolution process, is excluded from this grievance procedure. This grievance procedure does not create a legally binding contract or a contract of employment.

I. **Definitions**

A. **Definition of "Employee":**

1. For purposes of discipline and termination under this grievance procedure, an employee shall be defined to include regular full-time, part-time, and substitute/temporary employees. All other individuals employed by the District, such as seasonal/summer school employees, and short-term substitutes as well as independent contractors, are specifically excluded from the definition of employee and, therefore, this grievance procedure is not available to them.
2. For purposes of workplace safety under this grievance procedure, an employee shall be defined to include regular full-time, part-time, substitute/temporary, and seasonal/summer school employees. All other individuals employed by the District are specifically excluded from the definition of employee and, therefore, this grievance procedure is not available to them.

- B. **Definition of "Discipline":** For purposes of this procedure, "discipline" means an employment action that results in a disciplinary suspension or disciplinary demotion. "Discipline" for purposes of access to this grievance procedure does not include any verbal notices, warnings or reminders. Verbal notices, warnings, or reminders will be documented, but are not subject to the grievance procedure. Written warnings, reprimands, or reminders are to alert the employee that failure to correct the behavior may result in disciplinary suspension, disciplinary

termination, or disciplinary demotion. Written, warnings, reprimands or reminders will be filed in the employee's district personnel file. Any written/documented employee responses to written warnings, reprimands, or reminders will also be filed in the employee's district personnel file.

- C. Definition of "Termination": For purposes of this procedure, "termination" means a separation from employment by the employer for disciplinary or quality of performance reasons. "Termination" does not include voluntary quitting, retirements, layoff, reduction in workday, furlough, reduction in workforce, job transfer or reassignment, or the end or completion of temporary employment, which are not subject to the grievance procedure.
- D. Definition of "Workplace Safety": For purposes of this procedure, "workplace safety" includes any conditions of employment related to the physical health and safety of employees, including the safety of the physical work environment, the safe operation of workplace equipment and tools, provision of personal protective equipment and accident risks. "Workplace Safety" does not include conditions of employment unrelated to physical health and safety matters, including, but not limited to, hours, overtime, assignments and work schedules.

II. **Grievance Processing Procedure for Grievances Concerning Employee Terminations and Employee Discipline:**

Grievances shall be processed in accordance with the following procedure:

Level One- Informal Resolution: An earnest effort shall first be made to settle the matter informally between the employee and the immediate supervisor. A grievance may be initiated through an informal meeting and discussion with the immediate supervisor, the employee and the employee's designated representative. The informal meeting and discussion shall occur within ten (10) work days after the facts upon which the grievance is based first occurred and/or could not be resolved through an informal discussion process. The immediate supervisor will give an answer to the grievance. The grievant(s) shall be required to state the purpose of the discussions and event(s) upon which the discussions are based. The immediate supervisor shall notify the grievant and (if applicable and appropriate) the representative of his/her answer within five (5) work days. If the matter cannot be resolved or if no answer is provided in the above timeframe, the grievant(s) may file a written grievance. In grievance situations specifically involving a safety related issue every effort should be made to expedite the Level one-Informed Resolution in a manner that will not expose the employee/district to further safety liability.

Level Two – Appeal to District Administrator: If the grievance is not resolved at Level One the grievant may submit written grievance to the District Administrator within ten (10) work days after the response at Level One or if no response is provided within ten (10) work days of the deadline for the response. The District Administrator shall meet with the grievant(s) and/or the employee's designated representative and the principal or immediate supervisor within ten (10) work days after receiving the written grievance. The District Administrator shall respond to the written grievance within five (5) work days of the meeting or at a later date as determined by the District Administrator if further investigation is warranted. The District Administrator shall indicate in writing the disposition of the grievance and forward it to the grievant and (if applicable and appropriate) the grievant's representative. If the matter cannot be resolved or if no answer is provided in the above timeframe, the grievant(s) may file an appeal. As noted in Level One if the grievance situation specifically involves a safety related issue the matter

should be moved through the grievance process in a manner that addresses resolution and does not further expose the employee or district to further safety liability.

Level Three – Appeal to Impartial Hearing Officer: If the grievance is not resolved in Level 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 or she intends to process the grievance to an impartial hearing officer. The impartial hearing officer shall be selected based on procedures outlined in Board of Education Policy No. 226

This step of the process is available only if the alleged violation of District policy or *Employee Handbook* involves discipline, termination, or workplace safety. Grievances involving any other issue may be appealed directly to the Board under Level Four and the Board shall review the decision that the District Administrator issued in Level Two.

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

A. The Impartial Hearing Officer shall do the following:

1. Screen the grievance and determine whether it falls within one of the categories subject to the grievance procedure, whether the informal process was exhausted, if applicable, and whether it has timely filed.
2. Notify the parties of the time and location for the hearing at least two (2) weeks before the hearing.
3. Subpoena witnesses, as necessary to ensure their testimony, when requested by either party.
4. Make evidentiary findings and conclusions. In the case of a grievance related to a termination, a teacher contract non-renewal under Wis. Stat. § 118.22, an administrator contract non-renewal under Wis. Stat. § 118.24, or discipline, the Impartial Hearing Officer shall determine whether a full-evidentiary hearing is needed to afford the employee the requisite due process, and, if so, shall allow the grievant to present evidence, call and question witnesses, cross-examine adverse witnesses, obtain copies of evidentiary materials and argue his or her case. The rules of evidence shall not apply at any hearing, but the Impartial Hearing Officer may exclude or limit irrelevant, repetitive, or redundant evidence or any evidence lacking probative value. The Impartial Hearing Officer, in the conduct of the proceeding, shall be mindful of the desire for a speedy and inexpensive resolution of any appeal brought before him/her.
5. If the grievance is meritorious, in whole or in part, determine what relief is necessary to provide recompense to the grievance in a grievance that involves termination, contract non-renewal under Wis. Stat. §§ 118.22 or 118.24, or discipline, and in a grievance filed over workplace safety, determine what action is necessary to correct the hazardous condition, provided, however, that the Impartial Hearing Officer may not award attorney fees or litigation expenses against the District at any time.

6. The Impartial Hearing Officer shall expressly confine himself/herself to consideration of the precise issues(s) submitted on the grievance form and letter of appeal, if applicable, shall apply the applicable standard of review, and shall have no authority to determine any other issue not so submitted or to submit observations or declarations of opinion which are not directly essential in reaching the determination.
 7. The Impartial Hearing Officer will be without authority to make any decision which requires the commission of an act prohibited by law.
- B. The hearing shall be recorded and the grievant shall be given the opportunity to have the hearing conducted in open session, subject to such other legal requirements relating to confidentiality or privacy, which may apply to the subject matter of the hearing, e.g. pupil confidentiality. The Impartial Hearing Officer shall consider whether to engage a court reporter in lieu of recording the hearing.
 - C. The Impartial Hearing Officer shall issue a written decision no more than twenty (20) days after the hearing is concluded, unless the Impartial Hearing Officer notifies the parties that more time is needed and the reasons therefore. The need for post-hearing briefs, as determined by the Impartial Hearing Officer, shall be sufficient reasons to extend the deadline.
 - D. The Impartial Hearing Officer shall inform the parties that an appeal of his/her decision may be taken to the Board if filed within ten (10) days of the receipt of the decision of the Impartial Hearing Officer, after which the decision of the Impartial Hearing Officer shall become final.

Level Four – Appeal to Board of Education

- A. If either party is aggrieved by the decision rendered by the Impartial Hearing Officer, either party had the right to file a written appeal with the Board within ten (10) days of receiving the Impartial Hearing Officer's decision, after which the decision of the Impartial Hearing Officer shall become final.
- B. Except for grievances involving an employee termination (regardless of whether the employee has a contract for a definite term) or teacher or administrator contract non-renewal under Wis. Stat. §§ 118.22 or 118.24, the Board may, at its sole discretion, assign an appeal panel of at least three members of the Board, for the purpose of considering appeals under the grievance process.
- C. The Board or appeal panel shall make every reasonable effort to meet, consider and decide the appeal within thirty (30) days after receipt of the appeal.
- D. The Board President shall give ten (10) days notice to the parties of an appeal hearing before the Board of appeal panel, if such a hearing is necessary.
- E. The Board or appeal panel shall review the grievance on the record established by the Impartial Hearing Officer unless it determines that additional information is needed. Each party may make a brief oral presentation to the Board or appeal panel to summarize his/her position. The appeal hearing shall be recorded and shall be held in closed session, unless the parties are allowed to present additional information, in which case the grievant shall be given the opportunity to have the evidentiary portion of the appeal hearing conducted in open session, subject to such other legal requirements relating to confidentiality or privacy, which may apply to the subject matter of the hearing, e.g. pupil confidentiality.

F. The Board of appeal panel may affirm, reverse, or modify the decision of the Impartial Hearing Officer. The Impartial Hearing Officer's decision will be reversed or modified if the decision was:

1. In violation of constitutional provisions;
2. In excess of the statutory authority or jurisdiction of the school district;
3. Made upon unlawful procedure or in contravention of this Grievance Policy and Procedure;
4. Affected by other error of law;
5. Based upon improper application or interpretation of Board policy;
6. Unsupported by substantial evidence in view of the entire record as submitted (as used in this policy, substantial evidence means such relevant evidence as a reasonably mind would accept as adequate to support a conclusion), or otherwise erroneous;
7. Arbitrary or capricious;
8. Affected by the inappropriate application of the standard of review by the Impartial Hearing Officer or;
9. In contravention of public policy considerations.

G. Procedural errors, which do not have a substantial effect of the rights of the parties, shall not be grounds for reversal of any decision.

H. The decision of the Board or appeal panel shall be final. The Board or appeal panel shall make every effort to send to the grievant and the District Administrator a written statement of its decision within a reasonable time after hearing the appeal.

III. Request for Reconsideration of School Board Decision

- A. This policy establishes a procedure for employees to grieve certain decisions of school officials. The policy does not grant employees the right to appeal decisions of the Board itself, other than a termination of contract non-renewal decision by the Board. Nonetheless, an employee may file, in writing to the Board President, a request that the Board reconsider one of its own decisions. The request shall be filed within fifteen (15) days of the Board's decision and shall state the reasons why the Board should reconsider its decision. The Board may exercise its discretion whether to grant the requested reconsideration.
- B. Judicial review of a Board or appeal panel decision made at Level Four of this policy, if any, shall be as prescribed by law.

IV. Consolidation of Grievances

Grievances of the same type, and with similar fact situations, maybe consolidated at the discretion of the Administration.

V. General Considerations

- A. Impartial Hearing Officer: The Board shall appoint prior to the beginning of each school year, or as the need arises, an Impartial Officer. (See Policy No. 256). The

Impartial Hearing Officer shall not be an officer, agent or employee of the Board at the time of appointment.

1. **Time Limits:** The time limits set forth in this Section shall be considered as substantive, and failure of the grievant to file and process the grievance within the time limits set forth in this Section shall be deemed a waiver and a settlement of the grievance. The number of days indicated at each level should be considered a maximum. The time limits specified may, however, be extended by the mutual consent of the District and the grievant. 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.
 2. **Days:** The term “days” as used in this provision means work days, excluding holidays as defined in the Handbook. If the last day on which a grievance is to be filed or a decision is to be appealed is a holiday as defined in the handbook the time limit is the next defined work day.
 3. **Scheduling:** Grievance meetings and hearings will typically be held during the employee’s off-duty hours. Time spent in grievance meetings and hearings shall not be considered as compensable work time.
 4. **Representation:** The employee shall have the right to representation at every level of the grievance process by a representative(s) of his/her own choosing at the employee’s expense.
- B. **Standard of Review:** The standard of review to be applied by the Impartial Hearing Officer of a final administrative decision giving rise to a grievance shall be based on the following, unless an alternative is provided in applicable policy, law, contract or collective bargaining agreement:
1. The review of a final administrative decision to terminate or discipline an employee with a definite term contract or an “arbitrary and capricious” standard shall be *de novo* and the decision shall be upheld if it is based on a good and sufficient reason, which shall be any reason that is not wholly frivolous and inconsequential and that has a reasonable basis in fact.
 2. The review of a final administrative decision to non-renew a contract (regardless of whether pursuant to a statutory procedure) or to terminate or discipline an employee without a definite term contract or an “arbitrary and capricious standard shall require deference to the final administrative decision and the decision shall be upheld if it is made on any basis other than a basis which is “arbitrary and capricious,” which shall be defined as an action which is either so unreasonable as to be without rational basis or the result of unconsidered, willful, or irrational choice.
 3. The review of a final administrative decision concerning a workplace safety grievance shall require deference to the final administrative decision and the decision shall be upheld if it is made on any basis other than a basis which is “arbitrary and capricious”, which shall be defined as an action which is so unreasonable as to be without rational basis or the result of unconsidered, willful, or irrational choice.
- C. **Time Limits for Filing a Grievance.** In order to process grievances as expeditiously as possible, every effort should be made to handle each step within the specified time period. If the school district official fails to comply with the time periods or other

procedures outlined in this policy, the grievant may advance the grievance to the next level. There shall be no other consequences or remedies for failure of the school district to meet the time periods outlined in this policy. If the grievant fails to comply with the time periods outlined in this policy, the grievant waives any further rights of appeal and the grievance will be deemed resolved. However, with the exception of the time period for filing the written grievance either party may request an extension of any time period provided in this policy, including the informal resolution process. Such extensions shall be by mutual written agreement.

If no grievance is filed, the decision of the administration shall be considered final. The grievance may be voluntarily withdrawn at any level. Once a grievance is withdrawn, it cannot be reopened. A former employee or an employee who separates from employment during the course of the grievance may not file or continue a grievance without the written consent of the District Administrator or designee. If at any time during the grievance process the school district grants the grievant the relief originally requested, the District Administrator or designee may terminate the grievance at that time. Any party involved may have a representative present at all levels once the grievance has been filed in writing. Facts presented and/or examined at the Level One and Level Two hearings shall be made available to both parties. All parties shall respect the confidentiality of the grievance procedure by holding in confidence the facts and information shared in meetings and written correspondence, to the extent authorized by law.

- D. Retaliation: No reprisals of any kind shall be taken by the Board or by an employee of the District against any party in interest or other employee on account of his/her filing a grievance or participating in a filed grievance.

LEGAL REFERENCE

Wis. Stat. § 66.0509 (1m)
Wis. Stat. § 118.22
Wis. Stat. § 118.24