

EMPLOYEE GRIEVANCE POLICY AND PROCEDURE¹

Informal Resolution:

An employee² with a complaint related to employee discipline (except employee termination) or workplace safety should first seek to resolve the issue(s) with his/her immediate supervisor through informal discussion. Informal resolution of discipline complaints shall be initiated within seven (7) days of the date when an employee has been notified of the discipline. An employee complaint about a workplace safety issue may be raised informally at any time while the safety issue persists. If the employee fails to initiate the informal resolution process with regard to employee discipline within seven (7) days, the employee waives any further entitlement to utilize the grievance process with respect to the discipline (except employee termination).

If the informal discussion does not resolve the employee discipline or workplace safety complaint and the employee is dissatisfied with the response of his/her immediate supervisor, the employee may seek informal resolution by the District Administrator or his/her designee within seven (7) days after bringing it to the attention of his/her immediate supervisor. This step within the informal resolution process is optional; thus, it is not a necessary step in determining whether the informal resolution process has been exhausted.

If the complaint regarding employee discipline or workplace safety concerns the employee's supervisor, the employee may seek to resolve the complaint directly with the District Administrator. If the complaint regarding employee discipline or workplace safety concerns the District Administrator, the employee may seek to resolve the complaint directly with the Board President. In cases of such employee discipline, the informal resolution process shall be commenced within seven (7) days of the date when an employee has been notified of the discipline. If the employee fails to initiate the informal resolution process with regard to employee discipline within seven (7) days, the employee waives any further entitlement to utilize the grievance process with respect to the discipline (except employee termination).

Employee termination decisions and contract non-renewal decisions are not subject to the informal resolution process.

¹ This Employee Grievance Policy and Procedure, as currently drafted, conforms to the requirements of 2011 Wisconsin Act 10. Future legislation may eliminate the obligation to adopt such a policy and procedure, and/or may modify the requirements for such policy and procedure. Please be advised that Lathrop & Clark LLP will update this Employee Grievance Policy and Procedure, as necessary, to conform to any future legislation, and provide it to you, at no additional cost.

² This Employee Grievance Policy and Procedure is intended to apply to all school district employees, except where a valid, enforceable collective bargaining agreement provides the school district employee with a grievance procedure.

Time Limits for Filing a Grievance

If the informal resolution process does not resolve the complaint, and the employee believes that his/her complaint rises to the level of a grievance, as defined below, the employee may initiate a formal grievance pursuant to the procedures described herein. A grievance involving employee termination or discipline shall be filed no later than twenty-one (21) days after the employee receives notice of the discipline, termination or non-renewal of a contract pursuant to Wis. Stat. §§ 118.22 or 118.24. A grievance involving workplace safety shall be filed no later than twenty-one (21) days after the employee first attempts to resolve his/her workplace safety concerns through the informal resolution process.

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 or other procedures 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, except a decision to terminate an employee shall be final upon ratification by the Board. 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.

Definitions:

- A. **Grievant:** A grievant is an employee whose own substantial interests related to termination, discipline, or workplace safety are adversely affected, denied, or controverted by a final administrative decision. In the cases of an employee with a definite term contract, a “final administrative decision” is defined to include, but not be limited to, a Board approved termination based on an informal hearing (See General Considerations, Paragraph C., below). In the case of a teacher or administrator non-renewal, a “final administrative decision” is defined to include a Board approved non-renewal following the procedures set forth in Wis. Stat. §§ 118.22 or 118.24.

- B. Grievance: A grievance is a formal written complaint by an employee that a final administrative decision related to termination, discipline, or workplace safety violated, misapplied, or misinterpreted a local Board policy, administrative regulation or procedure, or specified federal or State law or rule, or in the case of an employee with a written employment contract, the terms of such written employment contract.
1. Employee Termination: The term “employee termination” shall be narrowly construed to mean a separation from employment initiated by the employer, (including, for purposes of an employee with a definite term contract, a separation from employment initiated by the employer which is effective during the term of the contract), but shall not include, without limitation by enumeration, the following:
 - a. Layoffs;
 - b. Workforce reduction activities;
 - c. Voluntary termination including, without limitation, quitting and resignation;
 - d. Job abandonment;
 - e. End of employment due to disability;
 - f. Retirement;
 - g. Death;
 - h. End of employment and/or completion of assignment of limited-term, temporary, seasonal, substitute, or part-time employees; or
 2. Employee Discipline: The term “employee discipline” shall be narrowly construed to mean a suspension without pay, or a demotion or reduction in rank, pay, or other benefits, imposed by the employer for disciplinary reasons, but shall not include, without limitation by enumeration, the following:
 - a. Termination, non-renewal of teacher contracts under Wis. Stat. § 118.22, non-renewal of administrator contracts under Wis. Stat. § 118.24, layoffs or workforce reduction activities;
 - b. Adverse employment actions other than a suspension without pay, or a demotion or reduction in rank, pay or other benefits, imposed upon the employer for disciplinary reasons;
 - c. Lateral transfers or reassignments;
 - d. Plans of correction or performance improvement;
 - e. Performance evaluations or reviews;
 - f. Documentation of employee acts and/or omissions in an employment file;
 - g. Oral or written reprimands or warnings;
 - h. Administrative suspension with or without pay pending investigation of misconduct or nonperformance; or
 - i. Non-disciplinary wage, benefit, or salary adjustments, or reductions in assigned hours.

3. **Workplace safety:** The term “workplace safety” shall be narrowly construed to refer to (1) an existing condition that substantially endangers an employee’s health and safety; or (2) any workplace policy or procedure established by state or federal law or the Board to protect the safety and health of employees in the school district and, as used in this section, is alleged by an employee to have been violated and to have substantially adversely affected the employee’s safety at a District workplace.

C. **Days:** “Days” mean calendar days.

General Considerations

- A. **Impartial Hearing Officer:** The Board shall adopt, prior to the beginning of each school year, or as the need arises, a resolution authorizing an Impartial Hearing Officer appointed by the Board to hold a grievance hearing and make a decision regarding the grievance. The Impartial Hearing Officer shall not be an officer, agent or employee of the Board at the time of appointment. The Board may approve a list of Impartial Hearing Officers, prior to the beginning of each school year (or as the need arises), to be called upon under this procedure.
- 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 a “cause” 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 a “cause” 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 either so unreasonable as to be without rational basis or the result of unconsidered, willful, or irrational choice.

C. **Termination of an Employee with a Contract for a Definite Term:**³ The required procedure for terminating an employee where there is an expectation of continued employment because of a contract for a definite term, a “cause” standard or another basis in law or fact, is as follows:

1. The District Administrator or his/her designee (or in the case of the termination of the District Administrator, an individual designated by the Board President) shall notify the employee, in writing, that he/she intends to recommend that the Board terminate the employee at the next regularly scheduled Board meeting or a Special Board meeting within forty-five (45) days of the date of the written notice.
2. At the Board meeting to hear the termination recommendation, the Board shall hold an informal hearing, which means that the District Administrator or his/her designee (or in the case of the termination of the District Administrator, an individual designated by the Board President) will present a summary of the evidence and argument in support of the recommendation for termination, to be followed by an opportunity for the employee and his/her representative to present a summary of any evidence and argument in response. An informal hearing, for purposes of this Grievance Policy and Procedure, is not a full-blown evidentiary hearing, i.e., there shall be no swearing of witnesses and no direct or cross examination of witnesses; and the rules of evidence do not apply.
3. The Board shall issue its decision, in writing, within seven (7) days of the informal hearing. If the Board accepts the recommendation to terminate the employee, the Board shall inform the employee, in writing, that the Board has terminated the employee’s contract/employment and that, if the employee wishes to appeal the termination decision, the employee shall file an appeal at Level Two by filing a completed grievance form with the Board President within twenty-one (21) days of receiving written notice of termination. If no appeal is filed, the Board’s decision shall become final.

D. **Non-Renewal of a Teacher or Administrator Contract.** The procedures for non-renewal of a teacher or administrator contract set forth in Wis. Stat. §§ 118.22 and 118.24, respectively, shall be applicable. If the Board non-renews the contract of a teacher or administrator, pursuant to Wis. Stat. §§ 118.22 or 118.24, and the teacher or administrator wishes to appeal the non-renewal decision, the teacher or administrator shall file an appeal at Level Two of this Grievance Policy and Procedure by filing a grievance form with the Board President within twenty-one (21) days of receiving final, written notice of non-renewal from the Board. If no appeal is filed, the Board’s decision shall be final.

³ This procedure shall also apply to the non-renewal of an employee’s contract where Wis. Stat. §§ 118.22 and 118.24 do not apply, but where there is an expectation of continued employment because of the terms of the contract or another basis in law or fact.

Level One

- A. The grievant may initiate a formal grievance by obtaining a grievance form from his/her immediate supervisor or designee or from the human resources manager or department, filling out the form, and providing a copy to his/her immediate supervisor and to the District Administrator. On the form, the grievant shall (1) identify the category of grievance (i.e., termination of an employee without a contract with a definite term, discipline, or workplace safety), (2) describe the attempts to resolve the complaint informally (if applicable), (3) identify the facts supporting the grievance, (4) specify the policy, rule, regulation, or law alleged to have been violated, and (5) describe the relief requested. In order to be considered, a grievance shall be filed, in writing, using the appropriate form.
- B. The District Administrator or his/her designee shall act on the grievance within seven (7) days of the filing of the grievance. If the District Administrator or his/her designee denies the grievance, he/she shall inform the grievant who shall have seven (7) days to appeal the denial to the Board by filing a letter of appeal with the Board President.

Level Two

- A. Within ten (10) days after receipt of an appeal from a grievant, the Board President shall appoint an Impartial Hearing Officer as authorized by resolution of the school board. 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 been 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 grievant 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 attorneys 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 issue(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 thirty (30) 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 reason 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 Three

- A. If either party is aggrieved by the decision rendered by the Impartial Hearing Officer, either party has 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 procedure.

- C. The Board or appeal panel shall make every reasonable effort to meet, consider and decide the appeal within sixty (60) 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 or 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 or appeal panel may affirm, reverse, or modify the decision of the Impartial Hearing Officer. The Impartial Hearing Officer's decision will be reversed 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 reasonable mind would accept as adequate to support a conclusion), or otherwise erroneous;
 - 7. Arbitrary and 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 affect on 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.

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.

Request for Reconsideration of School Board Decision

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 or 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.

Judicial review of a Board or appeal panel decision made at Level Three of this policy, if any, shall be as prescribed by law.

LEGAL REFERENCE: Wis. Stat. § 66.0509(1m)

 Wis. Stat. § 118.22

 Wis. Stat. § 118.24

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 September 12, 2011 (2nd Reading)

EMPLOYEE GRIEVANCE FORM

Employee Name: _____ Date: _____

Please identify the category of your grievance (circle one):

Termination

Discipline

Workplace Safety

Are you an employee with a contract?

Yes

No

Describe your attempts to resolve your complaint informally (if applicable).

Identify the facts that support your grievance.

Specify the policy(ies), rule(s), regulation(s), and/or law(s) that you believe has/have been violated.

Describe the relief that you are requesting.

If you require additional space, please attach additional sheets to this form.