

## **CIVIL RIGHTS GRIEVANCE PROCEDURE**

It is the policy of the Board of Education of the Pecos Independent School District (“District”) to establish and maintain an environment that provides for fair and equitable treatment. The District is committed to assuring an environment that is appropriate for an institution of learning and that strives for the safety and welfare of all. Individuals shall have the opportunity to initiate the procedure set forth in this section for the prompt resolution of grievances or complaints of unfair, inequitable or discriminatory treatment against the school system, its employees and administrators, and the members of the Board of Education. Confidentiality will be respected to the greatest extent possible. The District will investigate allegations of potentially discriminatory conduct and take corrective action when appropriate, and if the findings are that discrimination has occurred or is occurring, it will take immediate and appropriate steps to address the discrimination (e.g., disciplinary action, victim counseling) to prevent recurrence of any discrimination and correct its effects on the victim and others, if appropriate.

### **PURPOSE:**

The purpose of this procedure is to secure, at the lowest possible level, equitable solutions to grievances and complaints that may arise. These procedures apply to all complaints alleging discrimination on the basis of race, color, national origin, sex, religion, age, or disability in any District service, program or activity. Applicants for admission and employment, students and parents of elementary and secondary school students, are hereby notified that the District does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in the educational programs or activities that it operates, and that the District is required by the Americans with Disabilities Act (Title II), Title VI, Title IX, the Age Discrimination Act, and Section 504 not to discriminate in such a manner.

### **DEFINITIONS:**

- A. Complainant - an individual who submits a grievance or complaint alleging unfair, inequitable or discriminatory action or treatment.
- B. Respondent - the person alleged to be responsible for the violation alleged in a grievance or complaint.
- C. Grievance/Complaint - a written grievance or complaint alleging that District policy, procedure, practice, action or conduct discriminates or has discriminated on the basis of race, color, national origin, sex, religion, age, or disability or that there has been a violation, misinterpretation or inequitable application of school board policy or school rules.

D. Day - a regular school day. The calculation of days in complaint processing shall exclude Saturdays, Sundays, and recognized school holidays.

E. Complaint Coordinator - the person designated to coordinate efforts to comply with and carry out responsibilities under the Americans with Disabilities Act (Title II), Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and other state and federal laws addressing equal educational opportunity. The Complaint Coordinator is responsible for processing complaints and serves as moderator and recorder during hearings.

F. Hearing Committee - this committee is made up of teachers, nurses, counselors, principals, and/or other staff members. The committee assists the building administrator in dealing with misconduct offenses and problems associated with student behavior.

G. Title VI of the Civil Rights Act of 1964 - no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

H. Title IX of the Educational Amendments of 1972 - no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

I. Rehabilitation Act of 1973, Public Law 93-112, Section 504 - no otherwise qualified disabled individual in the United States shall solely by reason of his/her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

## **COMPLAINT PROCEDURES:**

A complainant may file a written complaint with a building principal, supervisor, the Complaint Coordinator, or any Hearing Committee member.

If a complainant feels she or he has a complaint or has been subjected to unfair, inequitable or discriminatory action or treatment, she or he is encouraged to act promptly in order to resolve the situation at the lowest possible level.

The District is responsible for investigating reports of alleged complaints, grievances, discriminatory action or treatment. The District reserves the right to file a complaint itself when the seriousness of an incident warrants starting an investigation.

Confidentiality will be maintained to the greatest extent possible. Information gathered during an informal procedure might be used during a formal procedure if it is begun. There can be no assurance of complete confidentiality, but complaints of perceived grievances or unfair, inequitable or discriminatory action or treatment will be treated as sensitive information not to be shared with others except as consistent with the requirements of the procedures herein, and generally recognized “need-to-know” principles.

These procedures are not intended to be all-inclusive, nor are any specifically recommended. Any member of the administrative staff or the Complaint Coordinator can provide direction, and is available to discuss these and any other possible options. It is important that parents, students, staff, and other individuals make their concerns known to the District to afford the District an opportunity to review those individuals’ concerns and respond to them. Anyone needing assistance should call the Office of the Superintendent (Tel. # 505-757-4700) and ask for the name and phone number of the Complaint Coordinator.

The following situations are not covered by this grievance procedure and are therefore not grievable under this policy:

- a. Unless the complaint or grievance alleges discrimination on the basis of disability, race, religion, national origin, sex, age, and/or any other category protected by anti-discrimination laws, discretionary act(s) of professional judgment relating to the evaluation of the work performance of any employee by his or her immediate supervisor, or relating to the assignment of grades or assessment of academic performance of any student by his or her instructor;
- b. Unless the complaint or grievance alleges discrimination on the basis of disability, race, religion, national origin, sex, age, and/or any other category protected by anti-discrimination laws, any personnel decision made by the Board, including, but not limited to, a refusal to re-employ, a discharge, a demotion, or any other action directly and adversely affecting the employment of an employee; or any student disciplinary decision made pursuant to state regulation, “Rights and Responsibilities of the Public Schools and Public School Students” NMAC 6.11.2, or local policies adopted pursuant thereto;
- c. Situations in which the administration and Board are without authority to act;

- d. Situations in which the remedy for the alleged violation exclusively resides in some person, agency or authority other than the Board or the administration;
- e. Situations as to which a more specific procedure or remedy has been provided by the Board; and
- f. Situations as to which the procedure or remedy is prescribed by state or federal authority.

Unless the complaint or grievance alleges discrimination on the basis of disability, race, religion, national origin, sex, age, and/or any other category protected by anti-discrimination laws, a grievance may not be filed by a former employee after the effective date of termination or discharge of employment, or by a former student after the effective date of expulsion, withdrawal or disenrollment of the student from the District.

## **INFORMAL AND FORMAL STEPS**

**A. INFORMAL COMPLAINT OPTIONS:** Listed below are several informal ways from which to choose to deal with alleged grievances or unfair, inequitable or discriminatory actions or treatment. The District encourages complainants to exercise these options but does not require a complainant to do so.

- 1. SPEAK DIRECTLY TO THE PERSON WITH WHOM THERE IS A PROBLEM.** Include information about what the person is doing, how you feel about the behavior and how you would like the behavior to change.
- 2. WRITE A LETTER TO THE PERSON WITH WHOM THERE IS A PROBLEM.** Include information about what the person is doing, how you feel about the behavior and how you would like the behavior to change. Make a copy of the letter for yourself and deliver the letter in person, preferably accompanied by someone else as a witness to the delivery of the letter. (This person need not know the contents of the letter). A copy of the letter may also be sent to the Complaint Coordinator as documentation of the event, if the complaining party deems it appropriate and so desires.
- 3. MEET WITH A NEUTRAL THIRD PARTY TO DISCUSS THE SITUATION.** This third party can be someone such as a friend, minister, counselor, teacher, family head, administrator, supervisor, or other staff person. The Complaint Coordinator can also serve as, or recommend, a neutral third party. A discussion of the situation with a third party can help examine other ways to deal with the complaint. Following the discussion, a decision as to

whether and how to pursue the matter can be made. In choosing a third party with whom to talk, choose someone with whom you feel comfortable and whom you feel can be trusted to listen sensitively, maintain confidentiality to the greatest extent possible, and have information about the options available for resolving such problems.

**4. ASK A THIRD PARTY TO DISCUSS THE PROBLEM WITH THE PERSON WITH WHOM THERE IS A PROBLEM.**

**5. REQUEST MEDIATION THROUGH THE COMPLAINT COORDINATOR.**

**B. FORMAL COMPLAINT PROCEDURES:** Formal procedures for dealing with alleged grievances of unfair, inequitable or discriminatory actions or treatment require a written complaint that a District student or staff member, or member of the Board of Education, has violated written policies or regulations of the District or District agreements with other governmental agencies.

#### **LEVEL ONE**

**1. FILE WRITTEN COMPLAINT:** An individual files a written formal complaint, which she or he has signed, with the building principal, supervisor, the District's Complaint Coordinator, or any Hearing Committee member. If the supervisor is the person being complained against, the complaint is filed with the next-level supervisor. **If the Superintendent is accused in the grievance or complaint, the complaint should be filed according to the instructions in this paragraph, but will then be processed pursuant to Level 2, paragraph 4, described below.** The written complaint must include the following, to the best of the complainant's knowledge:

- a. A description of the events in question and date of occurrence;
- b. The names(s) of the individual(s) involved;
- c. The negative effects that the action or treatment has caused to the complainant related to her or his ability to be educated, to carry out job responsibilities, or to otherwise benefit from the District's programs; and
- d. The desired remedy.

**2. NOTICE OF THE COMPLAINT IS GIVEN TO THE RESPONDENT, AND A COPY IS GIVEN TO THE COMPLAINT COORDINATOR, IF APPROPRIATE.** The

supervisor or Complaint Coordinator receiving the complaint sends a notice of the complaint by registered mail to the home address of the respondent, or delivers the notice in person, and sends a copy of the complaint to the District's Complaint Coordinator, should he or she be involved.

**3. SUPERVISOR INTERVIEWS COMPLAINANT AND RESPONDENT:** As soon as practical, but within ten (10) school days of the date of receipt of the complaint, the supervisor will arrange a conference with both parties, either together or separately. The supervisor shall advise parties of their right to be accompanied by a representative, advisor, the Complaint Coordinator, parent or guardian and to submit additional documents or evidence for consideration by the supervisor. The purpose of the interview is for the supervisor to review the complaint with the parties, and to offer the respondent the opportunity to explain her or his version of the situation.

- a. If the complaint is mutually resolved, the supervisor shall present a written summary of the resolution to all parties involved, within five (5) school days.
- b. If the complaint is not satisfactorily resolved, the supervisor shall, within five (5) school days, dismiss the complaint, or recommend a solution in writing to all parties involved.
- c. If the supervisor needs additional information, she or he may request the District's Complaint Coordinator to conduct a fact-finding investigation. The investigation shall be concluded in no more than ten (10) school days following the supervisor's request that the fact-finding investigation be conducted. After receiving a written report of the findings of the fact-finding investigation (with copies given to the complainant and the respondent), the supervisor shall, within five (5) school days, recommend a solution in writing to all parties involved.

**4.** If the complainant or the respondent is not satisfied with the decision made by the supervisor, he or she must notify the Supervisor and the District's Complaint Coordinator, if appropriate, within ten (10) school days, and begin the Level Two appeal process.

## **LEVEL TWO**

**1. FILE A WRITTEN APPEAL<sup>a</sup> WITH THE BOARD OF EDUCATION THROUGH THE OFFICE OF THE SUPERINTENDENT.** The appeal of the Level One action is filed, in writing, with the Office of the Superintendent. If the Complaint Coordinator is involved, he or she will review the Level One procedure to be certain that each party was given

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<sup>a</sup> See discussion in paragraph 4 below regarding complaints against the Superintendent and other complaints filed directly at Level Two.

a fair opportunity to present her or his position and supporting information to the supervisor and that possible solutions of the issue at Level One have been exhausted. If the Complaint Coordinator is involved, he or she will work with the parties and the next-level supervisor to correct any procedural errors and to achieve a resolution. If an appeal is still desired, the next step is taken.

**2. FILE BOARD APPEAL REQUEST FORM.** The person appealing presents an Appeal Request form to the Secretary of the Superintendent, along with copies of the written complaint, the written responses, and the basis for the appeal. The appeal must be based on (a) new information; and/or (b) challenge the procedures followed. The Appeal Request form should be signed, dated and submitted within ten (10) school days of receipt of the supervisor's findings and recommendations.

**3. BOARD DOES NOT ACCEPT APPEAL.** The Board, upon receipt of the appeal and a review of the documents, shall decide whether to review the case, at the next regularly scheduled board meeting. If a Board member or the Superintendent is accused in the alleged grievance or complaint, the Board shall determine whether an independent third party shall be appointed to hear the matter. If the Board decides not to accept the appeal, it will so notify the complainant, the respondent, the supervisor and the District's Complaint Coordinator within ten (10) days of its decision.

**4.** For complaints that are filed directly at Level Two (e.g., complaints against the Superintendent, complaints requesting remedies over which the building supervisor or principal lacks authority), the Board will ensure that the matter is investigated (either by the board itself, or by a third party appointed by the board), providing the same opportunities to the complainant as are provided in Level One, including the right to be accompanied by a representative, the right to submit documents or evidence for consideration, and the right to a fact-finding investigation resulting in a written report. When the Board receives the written report of the investigation, it will proceed to a decision pursuant to paragraphs 5 and 6 below.

**5. BOARD BASES DECISION ON SUBMITTED DOCUMENTS OR HEARING.** If the Board decides to review, it shall decide whether to render a decision based upon submitted documents or to schedule a formal hearing. The Board reserves the right to accept, reject or modify resolutions proposed or to increase or decrease the severity of the consequences recommended at lower levels.

If a decision is made on the basis of the submitted documents, copies of the Board's decision will be given to the complainant, the respondent, the supervisor and the District's Complaint Coordinator, within twenty (20) school days of the Board's decision.

The Board President will communicate to the supervisor what steps are to be taken to implement the decision of the Board.

**6. BOARD HEARING.** If a hearing is to be held, the Superintendent's Office will advise Board members (except in complaints involving the Superintendent) and contact the supervisors involved, the District's Complaint Coordinator, and, if appropriate, the complainant and the respondent and ask them to bring relevant materials to the hearing. In the alternative, the Board shall have the discretion to appoint a Hearing Committee to preside at the formal hearing and to recommend a decision to the Board.

When the Board holds a hearing, the formal hearing will be conducted in a closed meeting, unless the complainant requests otherwise. The hearing will be held within twenty (20) school days of the Board's determination to conduct a formal hearing. Following the hearing, copies of the Board's decision will be given to both the complainant and the respondent, within five (5) school days. In its decision, the Board President will communicate to the supervisor what steps are to be taken to implement the decision of the Board.

## **CONCLUSIONS:**

In using the District's informal or formal complaint procedure, the following should be kept in mind:

- A. The District's Complaint Coordinator is available to provide assistance at any point in the process to the complainant, the respondent, and any witnesses called or interviewed in an investigation.
- B. Confidentiality will be maintained to the greatest extent possible.
- C. Individuals who make complaints shall be free from retaliation, coercion, and reprisal in seeking resolution of a complaint. Furthermore, persons acting as witnesses to a complaint shall be free from reprisal.
- D. Any time limits provided for in these complaint procedures may be extended for a reasonable and definite period of time by the appropriate District representative, at the applicable complaint level. Written notice of the reason for and length of the extension shall be provided to all parties before the original timeline expires.
- E. Failure of a complainant to comply with any time limitation in the complaint procedure constitutes grounds for dismissal of the complaint. Dismissal shall not preclude the individual's right to pursue the complaint through other agencies.
- F. If a District representative fails to comply with any time limitation in the complaint procedure, the complainant may immediately proceed to the next level in the complaint procedure.



G. Whenever possible, mediation or problem-solving meetings shall be scheduled during normal District working hours.

I. The supervisor will be responsible for informing all parties involved of the status of a complaint procedure in a timely and sensitive way.

J. A complaint shall be filed at Level One if the remedy sought is within the authority of the supervisor or principal. If it is a remedy over which the supervisor or principal has no authority, the complaint shall be filed at Level Two through the Office of the Superintendent.

K. Complaint records will remain confidential, unless permission is given by the parties involved to release such information. All written and printed matter dealing with the processing of a complaint will be filed separately from the official personnel/student file. Complaint records shall be maintained on file for three (3) years after complaint resolution with the Office of the Superintendent, and if appropriate, the District's Complaint Coordinator.

#### **DISCIPLINARY ACTIONS:**

Staff members may be disciplined for violations of these or other applicable Board policies. Discipline may be imposed where this process demonstrates that unfair, inequitable or discriminatory actions or treatment, harassment, or retaliation for complaining has occurred. Discipline shall be commensurate with the conduct and may range from an oral warning through suspension, termination or discharge. Discipline shall be imposed in accordance with applicable District practices, policies, due process procedures or statutory requirements.

Criteria to consider when deciding upon a sanction shall include, but not be limited to, the extent to which the conduct:

- Indicated that the staff member is unqualified or unfit to carry out assigned duties;
- Affected either party's ability to perform assigned duties;
- Occurred in the presence of or hearing of student(s) and interfered with a student's pursuit of academic goals, and disregarded the staff member's role as an exemplar to students;
- Interfered with ability to provide an academic environment necessary for quality education;
- Disrupted routines or undermined discipline;
- Is determined by this complaint procedure to be intentional; or
- Is based upon improper personal motivation rather than professional considerations.