

PERSONNEL-MANAGEMENT RELATIONS
EMPLOYEE GRIEVANCES

DGBA
(LOCAL)

Purpose	The purpose of this policy is to provide a timely and orderly process for the resolution of employee complaints. The Board intends that, whenever feasible, complaints be resolved at the lowest possible administrative level.
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). [See DIAA and DIAB] 2. Complaints alleging certain forms of harassment, including harassment by a supervisor and violations of Title VII. [See DIAA and DIAB] 3. Complaints concerning retaliation relating to discrimination and harassment. [See DIAA and DIAB] 4. Complaints concerning a commissioned peace officer who is an employee of the College District. [See CGF] 5. Complaints concerning an employment preference for former foster children. [See DC] 6. Complaints arising from the dismissal of term contract faculty members. [See DMAA] 7. Complaints concerning the nonrenewal of term contract employees and those arising from the nonrenewal of term contract faculty members. [See DMAB] 8. Complaints concerning the withdrawal of consent to remain on campus. [See GDA]
Notice to Employees	The College District shall inform employees of this policy through appropriate College District publications and on the College District's website.
Guiding Principles Informal Process	The Board encourages employees to discuss their concerns with their supervisor 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.

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	Informal resolution shall be encouraged but shall not extend any deadlines in this policy, except by mutual written consent.
Formal Process	An employee may initiate the formal process described below by filing a written complaint form within 10 business days of the date the employee knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance. The complaint form shall be filed with the office of human resources and lowest level administrator who has the authority to remedy the alleged problem. If the subject matter of the complaint requires a Board decision, is a complaint about a Board member, or is a complaint about the College President, the complaint shall be initiated at the Board level. A preliminary hearing to develop a record or recommendation for the Board may be conducted by an appropriate administrator. If the complaint is not filed with the appropriate administrator, the office of human resources must note the date and time the complaint form was received and immediately forward the complaint form to the appropriate administrator. 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.
<i>Option to Continue Informal Process</i>	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.
Freedom from Retaliation	Neither the Board nor any College District employee shall unlawfully retaliate against an employee for bringing a concern or complaint or for participating as a witness or representative in the processing of a complaint. However, nothing in this policy limits or delays the College District's right to take appropriate disciplinary action, up to and including termination, when an employee's behavior warrants such action.
Whistleblower Complaints	Whistleblower complaints shall be filed within the time specified by law. Such complaints shall first be filed in accordance with Level Two, below. Timelines for the employee and the College 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]

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Complaints Against Supervisors

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

Definitions

Conference

"Conference" means a meeting conducted at any level of the grievance process for the purpose of discussing the employee's complaint, reviewing relevant information, and allowing the employee to present concerns and supporting information.

A conference is an informal administrative meeting and does not constitute a formal evidentiary hearing or trial.

Days

"Days" shall mean College District business days, unless otherwise noted. In calculating timelines under this policy, the day a document is filed is "day zero." The following business day is "day one."

Representative

"Representative" shall mean any person who or organization that does not claim the right to strike and is designated by the employee to represent the employee in the complaint process.

The employee may designate a representative through written notice to the College District at any level of this process. If the employee designates a representative with fewer than three days' notice to the College District before a scheduled conference, the College District may reschedule the conference to a later date, if desired, in order to include the College District's counsel. The College District may be represented by counsel at any level of the process.

Immediate Supervisor

The term "immediate supervisor" means the administrator or other College District employee responsible for the employee's supervision and evaluation.

General Provisions

Filing

Complaint forms and appeal notices may be filed by hand-delivery, by electronic communication, including email 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 post-marked 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 College District shall make reasonable attempts to schedule conferences at a mutually agreeable time. If the employee fails to

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"Hearing" means the presentation of a grievance to the Board at Level Four of this policy. A hearing at Level Four is limited to the presentation of the issues and information previously submitted through the grievance process and is not a formal evidentiary hearing or trial. The Board may establish reasonable time limits and procedures for the presentation.¶

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	appear at a scheduled conference, the College District may hold the conference and issue a decision in the employee's absence.
Response	At Levels One, Two, and Three, "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 email 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.
Consolidating Complaints	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. When two or more complaints are sufficiently similar in nature and remedy sought to permit their resolution through one proceeding, the College District may consolidate the complaints.
Untimely Filings	All time limits shall be strictly followed unless agreed upon by both parties with written consent. 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 five business 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.
Costs Incurred	Each party shall pay its own costs incurred in the course of the complaint.
Complaint and Appeal Forms	Complaints and appeals under this policy shall be submitted in writing on a form provided by the College District. <u>To initiate the grievance process, a complaint form must contain sufficient detail to:</u> • <u>Identify the factual basis of the complaint;</u> • <u>Identify the individual harm suffered by the complainant;</u> • <u>Identify any attempts to informally resolve the complaint;</u> <u>and</u> • <u>Identify the specific relief requested.</u>

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	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, the original documents 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. 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 refileing is within the designated time for filing.	
Record	A record of each complaint, conference shall be created and retained in accordance with this policy. The record shall include documents submitted by the employee who filed the complaint, documents determined relevant by College District personnel, and the decision. The record shall include but is not limited to: • The complaint and appeal forms and any attachments; • All documents submitted by the employee or considered by the administration; • Written responses issued at each level; • Any audio recordings submitted in accordance with this policy; and • Any other information relied upon in reaching a decision. The administrator conducting the conference is encouraged to ensure that an accurate record of the proceeding is maintained, which may include audio recording or detailed written documentation. Only information contained in the official record may be considered at subsequent levels of review, except as otherwise provided by law or this policy. The office of human resources will retain official grievance records.	Deleted: hearing Formatted: Bullets and Numbering Formatted: Bullets and Numbering
Remand	A complaint or appeal form that is incomplete in any material aspect shall be refiled, if at Level One, and remanded at all other levels in order to develop an adequate record of the complaint. If an adequate record has not been developed, the appropriate administrator may remand the complaint to a lower level.	Deleted: or hearing Deleted: The Board or Board committee may remand a complaint to a lower level if at the Board level of review an adequate record has not been developed.

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Resolution	When an employee is granted the resolution he or she requested in the complaint, the grievance shall be deemed resolved. A resolved grievance shall not be eligible for an appeal to the next level of the process.
Withdrawal	An employee may withdraw a grievance at any time. Once withdrawn by the employee, a grievance shall be deemed resolved. A resolved grievance shall not be eligible for an appeal to the next level of the process.
Investigation	The College District may conduct an investigation at any level in the complaint process. If the College District and the employee mutually agree, all deadlines shall be suspended during an investigation.
Audio Recording	As provided by law, an employee shall be permitted to make an audio recording of a conference 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.
	College District representatives participating in the conference may also make an audio recording and shall notify all attendees in advance that an audio recording is taking place.
	A recording made by any party may not disrupt the proceeding. The administrator conducting the conference may establish reasonable procedures to ensure the orderly conduct of the meeting.
Use and Submission of Recordings	Any party who creates an audio recording and intends to rely on that recording as part of the complaint or appeal shall provide a copy of the recording to the office of human resources within two business days of the conference.
	A recording that is not submitted in accordance with this provision may be excluded from consideration at that level and in any subsequent appeal, unless the employee demonstrates good cause for the delay.
	Recordings submitted in accordance with this provision shall be maintained as part of the official complaint record.
Complaint Levels	The employee shall file a complaint with the office of human resources and the lowest-level administrator with authority to resolve the issue.
Level One	The office of human resources shall acknowledge receipt of the written complaint and provide the employee and Level One

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administrator with the information regarding next steps and applicable timelines.

The appropriate administrator shall schedule a conference with the employee within 10 business days after receipt of the written complaint. The administrator may set reasonable time limits for the conference.

Absent extenuating circumstances, the administrator shall provide a written response within 10 business days following the conference to the employee and the office of human resources. 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.

All documentation and recordings related to the Level One conference that are relied upon by any party shall be provided to the office of human resources for inclusion in the official grievance record.

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 next-level administrator who has the authority to remedy the alleged problem to appeal the Level One decision.

The appeal notice must be submitted in writing, on a form provided by the College District, to the Level Two administrator or designee and office of human resources within five business days of the date of the written Level One response or, if no response was received, within five business days of the Level One response deadline.

The appeal form must specifically identify any alleged errors in the Level One response, and any bases for disagreeing with the Level One decision.

Upon receipt of the appeal, the office of human resources shall acknowledge the request and provide the employee and Level Two administrator with information regarding next steps and applicable timelines.

The office of human resources shall prepare and forward a record of the Level One complaint to the Level Two administrator or designee. 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;

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2. All other documents submitted by the employee at Level One;
3. The written response issued at Level One and any attachments; and
4. All other documents relied upon by the Level One administrator in reaching the Level One decision.

The Level Two administrator or designee shall schedule a conference within 10 business days after the appeal notice is filed. The conference shall be limited to the issues and documents considered at Level One and identified in the Level Two appeal notice. At the conference, the employee may provide information concerning any documents or information relied upon by the administration for the Level One decision. The Level Two administrator or designee may set reasonable time limits for the conference.

The Level Two administrator or designee shall provide a written response to the employee and office of human resources within 10 business days following the conference. The written response shall set forth the basis of the decision. In reaching a decision, the Level Two administrator or designee may consider the Level One record, information provided at the Level Two conference, and any other relevant documents or information the Level Two administrator or designee believes will help resolve the complaint.

All documentation and recordings related to the Level Two conference that are relied upon by any party shall be provided to the office of human resources for inclusion in the official grievance record.

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 request a conference with the College President or designee to appeal the Level Two decision.

The appeal notice must be sent to the College President or designee and the office of human resources and filed in writing, on a form provided by the College District, within five business days of the date of the written Level Two response or, if no response was received, within five business days of the Level Two response deadline.

The appeal form must specifically identify any alleged errors in the Level Two response, and any bases for disagreeing with the Level Two decision.

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Upon receipt of the appeal, the office of human resources shall acknowledge the request and provide the employee and College President or designee with information regarding next steps and applicable timelines.

The office of human resources shall prepare and forward a record of the Level Two complaint to the Level Three administrator or designee. The employee may request a copy of the Level Two record.

The Level Two record shall include:

1. The Level One record;
2. The written response issued at Level Two and any attachments; and
3. All other documents relied upon by the Level Two administrator or designee in reaching the Level Two decision.

The Level Three administrator or designee shall schedule a conference within 10 business days after the appeal notice is filed. The conference shall be limited to the issues and documents considered at Level Two. At the conference, the employee may provide information concerning any documents or information relied upon by the administration for the Level Two decision. The Level Three administrator or designee may set reasonable time limits for the conference.

The Level Three administrator or designee shall provide a written response to the employee and the office of human resources within 10 business days following the conference. The written response shall set forth the basis of the decision. In reaching a decision, the Level Three administrator or designee may consider the Level One and Level Two records, information provided at the Level Three conference, and any other relevant documents or information the Level Three administrator or designee believes will help resolve the complaint.

All documentation and recordings related to the Level Three conference that are relied upon by any party shall be provided to the office of human resources for inclusion in the official grievance record.

The written response issued by the Level Three Administrator, shall constitute the College District's final administrative decision regarding the grievance. Upon issuance of the Level Three response, the grievance process established by this policy shall be

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considered exhausted, and no further internal appeal shall be available.

Nothing in this policy shall be construed as prohibiting an employee from addressing the Board during public comment in accordance with Board policy BDB.

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Commented [AS2]: I want to add language that makes it clear that the President is the final decision.

Commented [SAH3R2]: I modified the language a bit because the policy allows for a "designee," in addition to the College President

Commented [SAH4]: I recommend including this language to avoid a challenge to the policy as violating the constitutional right to petition the government for a redress of grievances; however, I worded it in such a way as to hopefully avoid the suggestion that public comment is an automatic extension of the grievance process.

If an employee does sign up for public comment, the Board should be reminded that it is nothing more than a "stop, look, and listen," and that the Board should not respond or take action **unless** the particular issue is actually on the agenda. Otherwise, it's a TOMA violation.

NOTE: If an employee attempts to address the Board while the grievance process is still ongoing, it is appropriate for the Board to verbally refer the employee back to the grievance process.

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If the employee did not receive the relief requested at Level Three or if the time for a response has expired, the employee may submit a written request to place the matter of appealing the Level Three decision on the agenda of a future Board meeting. ¶
The appeal notice must be sent to the College President or designee and the office of human resources and filed in writing, on a form provided by the College District, within five business days after receipt of the written Level Three response or, if no response was received, within five business days of the Level Three response deadline. ¶
Upon receipt of the appeal, the office of human

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The presiding officer may set reasonable time limits

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Complaints involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of an employee shall be heard in closed meeting unless the employee who is the subject of th