

## 3141 - GRIEVANCE PROCEDURES

Employees shall use the following procedure for resolving disputes regarding employee termination, employee discipline or workplace safety issues.

### A. DEFINITIONS

1. **Grievance:** An employee may only initiate a grievance in writing regarding employee termination, employee discipline or alleged workplace safety issues.
2. **Grievant:** A “grievant” may include any employee or group of employees. In the case of a grievance regarding employee discipline or termination, only the individual employee impacted by the specific decision may file a grievance. In the case of a workplace safety grievance, a “grievant” is an employee, or group of employees, who is presently affected by, or who are substantially likely to be impacted by, the alleged workplace safety concern.
  - a. A “grievable event” as to employee discipline or termination is the employee’s receipt of verbal or written notice of the imposition of specific discipline or termination of an individual’s employment with the District. The imposition of a day of suspension or the effective date of the employee’s termination are not separate or new grievable events.
  - b. A “grievable event” as to workplace safety issues is the presence of a hazardous condition in the workplace, whether ongoing or reasonably likely to reoccur, that an employee alleges constitutes a violation of a workplace health or safety code, regulation or standard that is applicable to the District’s work environment and that is reasonably under the control of the District.
3. **Days:** Unless expressly identified as “calendar days,” the terms “days” or “workdays” as used in this grievance procedure shall exclude Saturdays, Sundays, and other days on which the District’s business office is closed for public business.
4. **Receipt:** A grievant is deemed to be in receipt of any written communication from the District regarding any grievance, including denial of a 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 mailing.
5. **Employee Termination:** “Employee termination” shall be construed to include instances where the District initiates an involuntary, complete and permanent severance of the employment relationships. However, the term “employee termination” does not encompass all events that lead to a separation from employment. The term “employee termination,” as used in this section, shall not include the following:

- a. Voluntary termination including, without limitation, quitting or resignation;
  - b. Job abandonment;
  - c. Retirement; or
  - d. Any other cessation of employment not involving involuntary termination including but not limited to completion of assignment of a temporary, seasonal or part-time contract or assignment, daily assignment, substitute or replacement employment relationship.
6. **Employee Discipline:** The term "employee discipline" shall include any employment action that involves disciplinary reprimands (oral or written), suspension without pay, disciplinary reduction in pay or other benefits or disciplinary demotion. The term "employee discipline," as used in this section, shall not include the following:
- a. Plans of correction or performance improvement;
  - b. Performance evaluations or reviews;
  - c. Documentation of employee acts and/or omissions in an employment file;
  - d. Administrative suspension with pay;
  - e. Non-disciplinary wage, benefit or salary adjustments;
  - f. Transfer; or
  - g. Other non-material employment actions.
7. **Workplace Safety:** The term "workplace safety," as used in this section, means any alleged violation of any standard established under state law or rule or federal law or regulation relating to workplace safety, which is applicable to the District's work environment and that is reasonably under the control of the District.

## B. TIMELINES AND PROCEDURES

1. **Time Limitations:** The time limits set forth in this rule shall be considered substantive. The failure of the grievant to file and process a grievance within the time limits set forth in this rule shall be deemed 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 Administration to provide a written response to the grievance by the established deadline for such a response operates as, and shall be treated the same as, a written denial of the grievance.

All time limits specified in this rule may, however, be extended by the mutual consent of the Superintendent and the grievant or as otherwise expressly provided within this rule.

## 2. **Grievance Procedure:**

### **Step 1**

**Informal Grievance:** The employee must discuss any grievance related to discipline or workplace safety with the employee's immediate supervisor prior to filing a formal written grievance in order to informally resolve the issue. Grievances related to termination may proceed straight to the written grievance step.

### **Step 2**

**Formal Grievance:** The employee must file a written grievance within fifteen (15) working days of the termination, discipline or actual or reasonable knowledge of the alleged workplace safety issue. The grievance must be in writing using the District's approved form and signed by the grievant(s). The grievance must be filed with the Human Resources office.

#### **A. The written grievance must contain:**

- i. A statement of the pertinent facts surrounding the nature of the grievance;
- ii. The date the incident occurred;
- iii. The steps taken to informally resolve the grievance, the individuals involved in the attempted resolution and the results of such discussion;
- iv. The specific requested remedy; and
- v. Must include the workplace safety rule alleged to have been violated, if applicable.

#### **B. **Administrative Response:**** The Director of Human Resources will meet with the grievant within fifteen (15) working days of receipt of the written grievance. The Administration will provide a written response within five (5) working days of the meeting. The Administration's written response to the grievance must contain:

- i. A statement of the date the meeting between the Administration and grievant was held.
- ii. A decision as to whether the grievance is sustained or denied.
- iii. In the event the grievance is denied, a statement outlining the timeline to appeal the denial.

### **Step 3**

**Impartial Hearing:** The grievant may file an appeal to the Independent Hearing Officer (IHO) by giving written notice to the Director of Human Resources within ten (10) working days of the Administrative Response. The Administration will work with the IHO and grievant to schedule a mutually agreeable hearing date.

- a. **Impartial Hearing Officer Selection:** The Administration shall select the IHO, pursuant to applicable Board policy, 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 when the District receives the grievant's timely notice of appeal.
- b. **Burdens of Proof/Production:**
  - i. **Employee Termination/Discipline:** In a grievance involving a challenge to discipline or termination, unless a different standard applies due to the application of a substantive right 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, by a preponderance of the evidence, that its action was not arbitrary or capricious. A decision will not have been arbitrary or capricious if it was made in the best interest of the District. If the decision was not arbitrary or capricious then the IHO is required to find on behalf of the Administration.
  - ii. **Workplace Safety:** In a grievance involving 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 constitutes a violation of a workplace health or safety code, regulation or standard that is applicable to the District; and for which condition there is an appropriate remedy that is within the reasonable control of the District.
- c. **Conduct of the Hearing:** The IHO shall schedule and meet with the parties on a mutually-agreeable date to review the evidence and hear testimony relating to the grievance. The IHO shall have the 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 IHO shall not be required to abide by the rules of evidence that would apply in a civil or criminal court case. The IHO is responsible for ensuring that he/she is creating and preserving a record of the proceedings that will enable Board review.

- d. Bifurcated Hearings: Where there is a dispute regarding whether the grievance was timely filed or whether the subject matter is subject to this policy, the IHO may bi-furcate the issues and render a separate decision upon these matters.
- e. IHO Response: The IHO shall file a written response within thirty (30) working days of the hearing date. The IHO's written recommendation to the grievance must contain:
  - i. A statement of the pertinent facts surrounding the nature of the grievance;
  - ii. A recommendation as to whether the grievance is sustained or denied, with the rationale for the recommendation;
  - iii. A statement outlining the timeline to appeal the recommendation; and
  - iv. The IHO must sustain or deny the decision of the Administration. Authority is not given to modify the decision as made by the Administration. Authority is not given to grant in whole or in part the specific request of the grievant.

#### **Step 4**

**School Board Review:** The non-prevailing party may file a request for School Board review within ten (10) working days of receipt of the IHO Response. The request of an appeal must be filed, in writing, to:

President of the School Board  
Wauwatosa School District  
12121 W. North Avenue  
Wauwatosa, WI 53226

Generally, the Board's review of the grievance and the IHO's decision will be based upon the record created through the IHO's review of the grievance and the presentation of argument to the Board via letter briefs and/or in person at any meeting that may be scheduled for that purpose. The Board's review of the grievance shall be a *de novo* standard of review.

The Board President shall have the authority to establish any briefing schedule and coordinate the scheduling of any meeting that may involve the attendance of the parties. If either party wishes to present an exhibit or other evidence to the Board that was not presented at a prior step of the grievance process, the party

must provide advance notice of such intent to the other party, and the party must also seek the leave of the Board to accept such additional evidence via a motion presented to the Board. The manner of review is the sole choice of the School Board.

The School Board may decide, in each situation, whether it will review the record and make a decision, assign an IHO to create a recommendation for the School Board's review or hold a new hearing and make an independent decision.

The written decision of the school board shall be issued within sixty (60) days following the conclusion of any briefing schedule established by the Board President. The School Board's written decision regarding the grievance must contain a decision as to whether the grievance is sustained, denied or modified. The decision of the School Board is final and not subject to further review.

*Approved/Adopted: July 13, 2009*  
*Revised: August 29, 2011*  
*Revised: February 9, 2016*