

## 527.1 GRIEVANCE PROCEDURE

### Purpose

The purpose of this Grievance Procedure is to provide a way for employees of Williams Bay School District (District) to resolve grievances concerning discipline, termination, or workplace safety.

This Grievance Procedure is intended to comply with Wis. Stat. § 66.0509(1m). This procedure does not create a contract of employment, and does not change an employee's employment status. Employment disputes that are covered by state or federal statutes and/or administrative enforcement mechanisms are not covered by this Grievance Procedure.

### Definitions

**"Grievance"** means a written complaint related to the discipline or termination of an employee or to "workplace safety."

**"Days"** means calendar days.

**"Employee termination"** shall be narrowly construed to mean a separation from employment by the employer for disciplinary or performance reasons. Employee termination" does not include layoff, failure to be recalled from layoff, furlough or reduction in workforce, administrator or teacher nonrenewal for the purpose of the elimination of a position or a reduction in staff, job transfer, non-disciplinary demotion, reduction in or elimination of position, resignation, voluntary quit, abandonment, end of employment due to disability, retirement, or death, and end of employment and/or completion of assignment of limited term, temporary, seasonal, substitute, or part-time employees, including co-curricular contracts.

**"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. "Employee discipline" does not include oral or written reprimands, performance evaluations, performance improvement plans, termination, non-renewal of teacher contracts under Wis. Stat. § 118.22, non-renewal of administrator contracts under Wis. Stat. § 118.24, layoff, failure to be recalled from layoff, furlough or reduction in workforce, administrative leave or suspension with pay, or any other employment action such as wage, benefit or salary adjustments, or change in assignment, which are taken for a nondisciplinary reason.

**"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 District which is alleged by an employee to have been violated and to have substantially adversely affected the employee's safety at a District workplace.

## Time Limits

If the grievant fails to comply with any time periods or other procedures of this policy, the grievance will be deemed resolved and the grievant shall have no further right to pursue or appeal a grievance decision. If the employer fails to comply with any time periods or other procedures of this policy, the grievant may advance the grievance to the next level, and there shall be no other consequence or remedy for the employer's failure to comply with any time periods or other procedures. A grievance may be withdrawn by the employee at any time. Once a grievance is withdrawn, it cannot be reopened or re-filed. The parties may mutually agree to extend any time deadline. Such extensions shall be non-precedential.

## Process

- A. Written Grievance Submission. Only the employee who is subject to the discipline or termination or directly impacted by the issue of workplace safety may file a grievance. The employee must file a written grievance within seven (7) days of the date the employee knew or reasonably should have known of the termination, employee discipline or workplace safety issue. The written grievance must: (1) identify the category of grievance (i.e., termination, discipline, or workplace safety); (2) identify the facts supporting the grievance; (3) specify the policy, rule, regulation, or law alleged to have been violated, and the rationale supporting the grievance; and (4) describe the relief requested. The grievance must be given to the District Administrator. However, if the grievant is the District Administrator, or if the grievance arises out of action by the Board, the grievance must be given to the Board President.
- B. Representatives. Any party involved in the grievance may have a representative present at all levels once the grievance has been filed in writing.
- C. Initial Decision. The District Administrator shall act on the grievance within fourteen (14) days of receipt of the written grievance, unless the District Administrator is the Grievant, or unless the grievance arises out of action by the Board, in which case the response shall be provided by the Board. The written response shall contain a statement of the basis for the decision to sustain or deny the grievance, and, if denied, the deadline for the Grievant to appeal the grievance to an Impartial Hearing Officer ("IHO").
- D. Impartial Hearing. If the Grievant wishes to appeal the Initial Decision by the District Administrator or Board, the Grievant must file a written appeal with the Board President within seven (7) days of receipt of the Board decision or administrative decision requesting a hearing before an IHO. The hearing shall take place within a reasonable time.
- E. Appeal of IHO's Decision. If either party is dissatisfied by the decision rendered by the IHO, the dissatisfied party may file a written appeal with the Board President within ten (10) days of receiving the IHO's decision. If no appeal is filed within ten (10) days, the decision of the IHO shall become final.

## Procedure for Impartial Hearing

- A. Standard of Review. The standard of review to be applied by the IHO to an Initial Decision shall be as follows:
1. The review of an Initial Decision involving the termination or discipline of an employee shall require deference to the Initial Decision. The IHO shall apply the standard(s) established by applicable provisions of Board policy, handbook, contract and/or common law.
  2. The review of an Initial Decision concerning a workplace safety grievance shall require deference to the Initial Decision. The decision shall be upheld if it is not “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.
- B. Impartial Hearing Officer. The IHO shall not be an officer, agent or employee of the Board at the time of appointment. The Board shall appoint the IHO.
- C. IHO Responsibilities and Authority. The IHO shall do the following:
1. Screen the grievance and determine whether it falls within one of the categories subject to the Grievance Procedure and whether it has been timely filed.
  2. Provide reasonable notice to the parties of the time and location for the hearing.
  3. When requested by either party, subpoena witnesses as necessary to ensure their testimony.
  4. Make evidentiary findings and conclusions. In the case of a grievance related to a termination or discipline, the IHO 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; however, depending on the nature of the hearing, a material fact may not be supported solely by hearsay evidence. Additionally, the IHO may exclude or limit irrelevant, repetitive, or redundant evidence or any evidence lacking probative value. The IHO shall act so as to provide a speedy and inexpensive resolution of any appeal brought before the IHO.
  5. If the grievance is sustained in whole or in part, determine the appropriate remedy, provided, however, that the IHO may not award attorneys fees or litigation expenses against the Board at any time.

6. The IHO shall only consider the precise issue(s) submitted on the written grievance and letter of appeal, if applicable, shall apply the applicable standard of review, and shall have no authority to determine any other issue.
7. The IHO has no authority to make any decision which requires the commission of an act prohibited by law.
8. The hearing shall be recorded. The IHO shall consider whether to engage a court reporter in lieu of recording the hearing. The grievant may request 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.
9. The IHO shall issue a written decision no more than thirty (30) days after the hearing is concluded, including any briefing period, unless the IHO notifies the parties that more time is needed and the reasons therefore.
10. The IHO shall inform the parties that an appeal of the decision may be taken to the Board if filed within ten (10) days of the receipt of the IHO's decision, and that if no timely appeal is filed, the IHO's decision shall become final.

**Procedure for Board Review on Appeal of IHO's Decision.**

- A. If either party is dissatisfied by the IHO's decision, either party has the right to file a written appeal with the Board within ten (10) days of receiving the IHO's decision. If no timely appeal is filed, the IHO's decision shall become final.
- B. The Board President shall provide the parties with ten (10) days' notice of any meeting scheduled by the Board to hear the appeal.
- C. The Board shall review the grievance on the record established by the IHO. Each party may make a brief oral presentation to the Board to summarize the party's position as to whether the IHO decision should be sustained, modified or reversed. No factual evidence or argument not presented to the IHO for consideration shall be presented to the Board for review. The appeal meeting shall be held in closed session. If the Board determines more information is necessary to make a decision, it may remand the matter to the IHO for further proceedings.
- D. The Board may affirm, reverse, or modify the IHO's decision. In reviewing a decision concerning termination, or discipline, the Board shall apply the standard(s) established by applicable provisions of Board policy, handbook, contract and/or common law. In reviewing a decision concerning a workplace safety grievance, the Board shall apply the same standard as the IHO, and shall uphold the administrative decision if it is not "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.

- E. Procedural errors which do not have a substantial effect on the rights of the parties shall not be grounds for reversal of any decision.
- F. The Board's decision shall be final. The Board shall send the grievant and the District Administrator a written statement of its decision within a reasonable time after hearing the appeal.

LEGAL REFERENCE: Wis. Stat. § 66.0509(1m), § 118.22, § 118.24

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