

Policy of the Lancaster Board of Education

Personnel

GRIEVANCE PROCEDURE

Grievances may be filed in accordance with the procedures described in this section with respect to discharge, discipline or issues pertaining to workplace safety. A grievance may be initiated by any employee. An employee may be represented at all stages of the grievance procedure by a representative of his or her choice.

DEFINITIONS

1. Grievance: A complaint arising from termination, discipline or issues pertaining to workplace safety.
2. Bifurcation: Splitting the case into more than one element to deal with issues independently. Example: If a grievance has a timeliness issue, it may be addressed prior to the violation being grieved.
3. Consolidation: For multiple grievances which relate primarily to the same subject matter or issue, the joinder of the grievances for procedural and hearing purposes.
4. Days: Unless otherwise specifically stated, for purposes of this policy, shall mean calendar days. The time limits provided for herein are substantive and a grievant's failure to process a grievance within the time limits stated herein shall be deemed a waiver and settlement of the grievance unless, if mutually agreed upon by both parties in writing, time limits are waived or extended.
5. Employee: All employees of the District. For employees in collective bargaining units, the grievance procedure in any collective bargaining agreement that predates this policy shall supersede this policy for the duration of the agreement.
6. Employee Discipline: Includes suspension (either paid or unpaid) or a reprimand that is placed in the personnel file. Employee discipline does not include letters of performance expectations or performance improvement plans, evaluations or performance reviews of employees, transfers, demotions or changes in job assignments or placement on paid administrative leave such as during an investigation pending a decision leading to discipline.
7. Termination: Discharge from employment for rule violations, unsatisfactory performance or misconduct. Termination does not include voluntary quit, layoff and/or workforce reduction, failure to be recalled from layoff, job abandonment (e.g., failure to report for work or return from a leave), resignation in lieu of discharge, termination due to lack of appropriate licensure, medical condition or other inability to perform job duties, end of employment of a temporary, seasonal or contract employee, retirement or nonrenewal under Wis. Stat. secs. 118.22 or 118.24.
8. Workplace Safety: A violation of a state or federal regulation on health and/or safety standards in the workplace that is applicable only to the safety of an employee or employees and not the endangerment of property.

PROCEDURE

Employees are encouraged to attempt to resolve disputes informally with their immediate supervisor. However, informal attempts to resolve disputes shall not impact the timeliness requirements of the grievance process in the absence of mutual written agreement.

Initial Filing

Discipline and Termination

In cases of termination or discipline, the employee must file his or her grievance in writing with the District Administrator within ten (10) days of the date the notice of discharge or discipline, was sent or given.

The District Administrator shall either refer the grievance to the grievant's building principal or other administrative supervisor (e.g., the Business Manager, HR Director, etc...) within three (3) business days of receipt of the grievance or shall, in his or her discretion, personally handle the matter. The administrative supervisor or District Administrator shall meet with the grievant and/or the grievant's designated representative within ten (10) days after receiving the written grievance. The administrative supervisor or District Administrator shall respond in writing to the written grievance within ten (10) days of the meeting or, if the administrative supervisor or District Administrator determines that further investigation is warranted, at a later date as determined by the administrative supervisor or District Administrator but in no event later than sixty (60) days after receiving the written grievance. If further investigation is warranted, the administrative supervisor or District Administrator shall notify the grievant in writing of the investigation within ten (10) days of the meeting.

If the grievant is not satisfied with the written response, the employee must request in writing a hearing within ten (10) days of the date the response, was sent or given. If no written response is provided in the above timeframe, the employee must request in writing a hearing within fifteen (15) days of the meeting with the administrative supervisor or District Administrator or, if the administrative supervisor or District Administrator has notified the employee of a further investigation, within sixty-five (65) days of the date of the notification. The request for a hearing shall be on a form or forms provided by the District and shall be filed with the District Administrator.

Workplace Safety

For issues pertaining to workplace safety, the employee must first bring the safety concern to his or her immediate supervisor in writing within ten (10) days of the date on which the issue arises. The supervisor shall respond to the concern in writing within ten (10) days.

If the employee is not satisfied with the response, the employee shall file his or her grievance on the form provided by the District with the District Administrator within five (5) days of the date the supervisor's response was sent or given or, if no written response is received from the employee's immediate supervisor, within fifteen (15) days of the date of the filing of the concern with the immediate supervisor.

The District Administrator shall either refer the grievance to the grievant's building principal or other administrative supervisor (e.g., the Business Manager, HR Director, etc...) within three (3) business days of receipt of the grievance or shall, in his or her discretion, personally handle the matter. The administrative supervisor or District Administrator shall meet with the grievant and/or the grievant's designated representative within ten (10) days after receiving the written grievance. The administrative supervisor or District Administrator shall respond in writing to the written grievance within ten (10) days of the meeting or, if the administrative supervisor or District Administrator determines that further investigation is warranted, at a later date as determined by the administrative supervisor or District Administrator but in no event later than sixty (60) days after receiving the written grievance. If further investigation is warranted, the administrative supervisor or District Administrator shall notify the grievant in writing of the investigation within ten (10) days of the meeting.

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Administrative Supervisors

In the event an administrative supervisor has a grievance, he or she shall file the initial grievance, whether the grievance pertains to termination, discipline or workplace safety, with the District Administrator, who shall process the grievance utilizing the same timelines and procedures as are set forth above for grievances from other employees grieving discipline or discharge.

District Administrator

Grievances by the District Administrator shall be filed with the Chair of the School Board's Personnel Committee and the Committee shall exercise the same functions as are exercised by administrative supervisors or the District Administrator for grievances filed by other employees. The same timelines and procedures shall apply except that, if the District Administrator is not satisfied with the Committee's written response, the request for a hearing shall be filed with the Chair.

Consolidation of Grievances

In the event more than one employee files a grievance related to the same facts or subject matter, the grievances may be consolidated.

Hearings

Within fifteen (15) days of the District Administrator or Chair receiving the hearing request or the next regular Board meeting, whichever is later, the School Board shall appoint an impartial hearing examiner to hear the grievance. The impartial hearing officer shall be an attorney licensed to practice law in the State of Wisconsin or other individual with experience and expertise in public sector labor relations.

Upon appointment, the hearing officer shall set a hearing date, and inform both the employee and the District Administrator of the hearing date. If the District Administrator is the grievant, the hearing officer shall notify the Chair of the Personnel Committee. The hearing shall be held within thirty (30) days after appointment of the hearing officer. In the event of a bifurcated hearing, the first hearing shall be held within thirty (30) days after appointment of the hearing officer.

The hearing officer shall conduct the hearing informally and impartially in such manner as he or she deems best calculated to ascertain the correctness of the allegations of the grievance. The District may request bifurcation of the grievance if timeliness or other issues not relating to the merits of the case are in question. A record shall be made of the hearing in such form as the hearing officer determines is appropriate but shall, at a minimum, include an audiotape of the hearing and preservation of all written materials presented at the hearing.

The hearing officer will abide by the following guidelines:

1. Rules of evidence and procedure as applicable in civil and criminal cases do not apply. (Example: A second party may share what they heard, which could be considered “hearsay” in other legal proceedings.)
2. The scope of authority is limited to the issue in question of the specific case. A broad decision that would bring into play other policies and issues is not within the authority of the hearing officer.
3. The grievant shall have the burden of proof on all issues.

The hearing officer shall have the authority, after having heard whatever evidence he or she deems sufficient, to act as follows:

- a. Uphold the termination of the employee.
- b. Uphold the discipline imposed on the employee.
- c. Reduce the original penalty.
- d. Dismiss the grievance.
- e. In work safety cases, if the hearing officer determines that a safety hazard exists, the hearing officer may enter such orders as are reasonably

necessary to remedy the safety hazard or, if the hearing officer determines that no safety hazard exists, may dismiss the grievance.

- f. In discipline and termination cases, if the hearing officer determines, based on an arbitrary and capricious standard, that the evidence does not support the disciplinary action taken or the termination, the employee may be reinstated, and the hearing officer may order that the employee be paid and/or reimbursed for all or part of his or her salary and benefits, may order that a letter, indicating that the disciplinary action was reversed and that the specific charge should not be considered in any future actions, be placed in the employee's personnel file, or may order that the employee's personnel file be expunged of all material relating to the discharge or discipline or any combination of the foregoing.
- g. The hearing officer's decision shall be in writing and shall be served by first class mail upon the grievant and the District Administrator or Chair and representatives for the grievant and District, if any.

The grievant or, on behalf of the District, the District Administrator or Chair of the Personnel Committee, may appeal the hearing officer's decision to the School Board. Any appeal of the hearing officer's decision shall be made in writing on a form or forms provided by the District within fifteen (15) days of the date of the hearing officer's written decision.

The Board shall review the record of the hearing within thirty (30) days of the receipt of the appeal and issue a written decision within ten (10) days thereafter. The Board shall have the right to affirm, modify or overrule the hearing officer's decision in whole or in part or it may remand the grievance to the hearing officer with directives as determined to be appropriate by the Board. The Board shall not hold any hearing or accept any additional information or evidence on the grievance but shall base its decision exclusively on the record of the hearing. The Board may, in its exclusive discretion, permit written arguments to be filed by or on behalf of the grievant or District Administrator or Chair. If written arguments are permitted, the appeal timeline for review of the record shall be extended from thirty (30) to ninety (90) days.

The decision shall be served by first class mail upon the employee, the District Administrator or Chair, and their representatives, if any.

Approve: September 14, 2011