

## **GRIEVANCE PROCEDURE FOR EMPLOYEES**

The New Hanover County Board of Education (Board) believes it is essential to the resolution of Grievances that all parties feel free to state the facts and express their opinions without fear of harm or retribution for participating in a Grievance procedure in good faith. The Board also believes that all parties involved in this process shall make every effort to resolve Grievances informally and at the lowest level of administration and that every effort should be made to ensure that each Employee receives fair and impartial treatment. Any Employee who has a Grievance is encouraged to use tact and diplomacy to resolve it in an informal manner, with his/her Immediate Supervisor when appropriate. However, should such an Informal Process fail to satisfy the Employee, a Formal Process, at the option of the Employee, may be initiated. To that end, the Board hereby adopts these Grievance procedures that are intended to facilitate the resolution of problems.

Complaints by employees of discrimination, harassment or bullying, as defined in Policy 6445, shall be initiated by submitting a Discrimination, Harassment or Bullying Form to the person specified in Policy 6445. The Form is available as a link in Policy 6445 on the Board's website or by contacting the Human Resources Division or an administrator at a school.

### **A. Definitions**

**Grievance** is a claim by an Employee or a group of Employees that:

1. There has been a violation, misapplication or misinterpretation of a specified state or federal law, State Board policy, State rule, Board policy or administrative regulation, school system procedures or local school rule adversely affecting the Employee's terms or conditions of employment;
2. The Employee has been subject to discrimination on the basis of race, religion, sex, national origin, age, or disability in violation of federal or State law, Board policy or administrative regulation;
3. There exists a condition caused or allowed by a school system Employee, student, volunteer or school system contractor which jeopardizes and/or adversely affects the Employee's health or safety;
4. There has been action taken negatively affecting the terms or conditions of employment or employment status of the Employee; including but not limited to, retaliation against that Employee for properly exercising the Employee's rights under this Policy or applicable law; or
5. The Employee has been aggrieved by any other final administrative decision of the school system administration.

The following do not constitute Grievances under this Policy unless it is alleged that these actions were taken in retaliation against the Employee for properly exercising the Employee's rights:

- An Employee's evaluation; or
- An Employee's assignment to teach or assist in teaching a particular class, course or grade level; or
- An Employee's assignment or transfer to a particular school or work location; or
- An Employee's assignment to or removal from an extra duty assignment.

The term "Grievance" does not apply to any matter for which a different method of review is prescribed by law, for which there is a more specific Board policy providing a process for addressing the concern, or upon which the Board is without authority to act.

Employees, including classroom teachers, who fit the statutory definition of "teacher" may petition the Board directly to remove any information from their personnel file that they deem invalid, irrelevant or outdated, pursuant to NCGS 115C-325.2(a), without going through the Grievance process set forth in this Policy.

A complaint by an Employee that does not fit the definition of a Grievance in this Policy may be submitted as a Parent/Public Complaint as set forth in Policy 9510 or, if allowed by NCGS 115C-45(c), may be submitted directly to the Board with a request for a hearing, unless a different method of review is prescribed by law or there is a more specific Board policy providing a process for addressing the concern.

**Employee** means any person employed in a full-time or part-time capacity by the school system.

**Grievant** means the Employee or group of Employees making the claim or filing the Grievance.

**Party in Interest** means the Grievant making the claim, their representatives, and the Employee's Immediate Supervisor or other administrator whose decisions or actions are called into question by the Grievance.

**Immediate Supervisor** means the Employee who directly supervises the Grievant and will be, usually, the administrative Employee to whom an Employee is primarily responsible.

**Day** means a business Day, provided timelines ending on a Saturday, Sunday or holiday shall be extended to the next school system business Day.

**Closed Session** means a meeting or portion of a meeting of the Board, closed to all, but members and persons authorized by the Board. Minutes of Closed Session meetings are not considered a public record, except as required by law.

## **B. General Requirements**

1. The purpose of this procedure is to secure, at the lowest possible level, equitable solutions to the problems that arise from time to time and affect Employees. The Board and its Employees shall hold information received in the Grievance process in confidence except as required by law and this Policy. The Board and its Employees may disclose any information in connection with their investigation of a Grievance to the extent necessary to conduct a proper investigation.
2. No reprisals of any kind shall be taken by the Board or by an Employee of the New Hanover County Schools against any Party in Interest or other Employee on account of his/her participation in good faith in a Grievance initiated pursuant to this Policy. Any attempt to coerce, intimidate, or retaliate against anyone who submits a Grievance in good faith or provides information in good faith as part of an investigation of a Grievance shall not be tolerated and may result in disciplinary action up to and including dismissal.
3. Each decision in the Formal Procedure (See Section D below) shall be in writing and shall be transmitted promptly to all Parties in Interest, except for information that is considered part of the personnel file of an Employee other than the Grievant shall not be included in the written response to the Grievant if prevented by the laws regarding the confidentiality of personnel records. Decisions at Levels II, III and IV, as described later in this Policy, shall also set forth the reasons for it.
4. All meetings and hearings conducted pursuant to this Policy shall be held in private.
5. Both the Grievant and administration shall have a right to representation by a third party during the Formal Procedure of the Grievance. The role and type of participation of the Grievant's representative shall be determined by the Grievant and the administration. Third party representatives are expected to follow the rules established for Grievances and to act with courtesy and decorum. The Grievant shall have no more than one representative present at any level of the Formal Procedure. A Grievant intending to bring a representative shall notify the person, Board or panel conducting the procedure at least two Days before the meeting or hearing with the name and position (colleague, pastor, representative, etc.) of the representative they intend to bring. Attorneys may be present only at level IV of the Formal Procedures. Grievants may not share confidential student or personnel records with their representatives.
6. A Grievance utilizing the Formal Procedure may be withdrawn at any level and may not be reopened once withdrawn by the Grievant.
7. This Grievance procedure shall not be available to contest dismissal, demotion or suspension or non-renewal of a teacher or school administrator, as defined by law, initiated under G.S. 115C-325.1 through G.S. 115C-325.12 or G.S. 115C-287.1. If a Grievance is filed and then a disciplinary action is begun under any of

the provisions of G.S. 115C-325.1 through 115C-325.12 on the same or related issue, no further action shall be taken with the Grievance procedure.

8. The necessary steps of the Grievance shall be followed to the convenience of all parties, whenever possible. When meetings are held during work hours, no Employee(s) shall suffer loss of pay for time away from his/her duties, nor shall he/she receive extra pay when meetings are held at a time other than working hours.
9. The Board believes that a quick and thorough examination of all the essential matters of a Grievance is necessary in order to expedite the process. All parties are expected to comply with time limits contained in this procedure; however, the following rules shall apply to time limits:
  1. They may be extended by mutual agreement of the parties;
  2. They may be extended if an emergency situation or other compelling reason requires the immediate attention of any Party in Interest, necessary witness or decision maker; and
  3. The Board shall determine whether any extensions of time were warranted in its sole discretion.
10. The filing of a Grievance does not give the Employee the right to miss or neglect work or refuse to perform job duties or tasks assigned, even if the Grievance relates to such work, work duties or tasks assigned. Failure to attend work or complete job duties or tasks assigned while a Grievance is pending may be grounds for disciplinary action up to and including termination.
11. All Parties in Interest shall be given access to any and all documents relating to the Grievance in the possession of the school system except confidential records of the Board or those prescribed by law.
12. If a determination is made that a Grievance is founded at any step of the Formal Procedures and the remedy for resolving the Grievance involves disciplinary action concerning another employee, that information becomes a personnel matter and is therefore confidential and cannot be shared with the Grievant. The Grievant will be notified within the time limits specified by this Policy that their Grievance has been thoroughly investigated and appropriate action has been taken if necessary. Thereafter, if the Grievant believes that they have not received an appropriate remedy that is available under this Policy, they may proceed, within the time allowed, to the next highest level.

If the Grievant believes that the situation complained of in the original Grievance has re-occurred after the time for appealing to the next level, the Grievant may proceed to the next level of the grievance process or may initiate a new Grievance, but the Grievant must take one of those two actions within twenty (20) Days of the re-occurrence of the situation. However, the Board is not required to hear multiple

Grievances, by the same Grievant, concerning substantially the same issues or fact patterns.

13. Any member of the Board who, prior to the hearing, believes for any reason that he or she cannot render a fair and impartial decision with respect to the Grievance, shall notify the School Board Attorney and be recused from hearing the Grievance.

### **C. Time Limitations**

1. Timelines - In order to process Grievances as expediently as possible, every effort should be made to handle each step in the specified time period. A formal written Grievance shall be filed as soon as possible following the conclusion of the Informal Procedure, but in no event longer than twenty (20) Days after the first occurrence giving rise to the Grievance. Except by mutual written agreement, failure by the official at any step to communicate a decision within the specified time limit shall permit the Grievant who has complied with these timelines to appeal to the next step. If the Grievant fails to strictly comply with the time periods or other procedures outlined in this Policy, the Grievant waives any further right of appeal or to a hearing before the Board and the Grievance will be considered resolved, unless a time extension is permitted by the Board in its sole discretion.

### **D. [Procedures](#)**

#### **1. Informal Procedure**

If a Grievant believes he or she or they have cause to file a Grievance, such Employee(s) shall first discuss the matter with their Immediate Supervisor, and attempt to resolve the matter informally. If the Grievant is employed in a department within the Operations Division (Food Services, Maintenance, Purchasing or Transportation) and the Grievance is not resolved by an informal discussion with the Immediate Supervisor, the Grievant shall next informally discuss the Grievance with the Director of the department. The Grievant **may not bring a representative** to these meetings. If the Grievance is against the Grievant's Immediate Supervisor, the Grievant is encouraged to try to resolve it using the Informal Procedure but may skip the Informal Procedure and proceed to Level I as set forth in the Formal Procedure below.

#### **2. Formal Procedure**

If the Grievance is not resolved to the satisfaction of the Grievant through the Informal Procedure within the time allowed for filing a formal written Grievance, a formal written Grievance shall be filed in the following manner:

### **Level I of Formal Procedure – Appeal to Immediate Supervisor**

A Grievant shall file a formal written Grievance within twenty (20) Days of the first occurrence of facts giving rise to it, unless the Grievant is a classified Employee appealing a recommendation for suspension without pay, demotion or dismissal. In those cases, the Grievant shall initiate the Grievance at Level II.

The Grievance shall be submitted, in writing on the [NHCS Grievance Reporting](#) form to the Grievant's principal, Immediate Supervisor, or, in the case of Food Service, Transportation, Purchasing, or Maintenance employees, to the Director of the department. If the Grievance is against the person to whom the formal written Grievance should be submitted, the Grievant may skip this step and proceed to Level II. The written Grievance shall specify:

1. The specific contract provision, law, policy, regulation, rule or procedure alleged to have been violated, misapplied, or misinterpreted and an explanation as to how it is alleged to have been violated;
2. The nature of any alleged discrimination;
3. The condition which allegedly jeopardizes the Employee's health or safety;
4. A short and clear statement of facts and/or allegations giving rise to the Grievance, including the dates of the relevant occurrences, and the remedy or solution sought by the Grievant.

Within ten (10) Days of receipt of the Grievance, the person hearing the Grievance shall meet and confer with the Grievant.

Within ten (10) Days of meeting with the Grievant, the person hearing the Grievance shall provide a written statement to the Grievant specifying the Immediate Supervisor's decision and the reasons and facts supporting the decision.

### **Level II of Formal Procedure - Appeal to Director of Human Resources**

If a Grievant is unsatisfied with the decision at Level I , the Grievant may, within five (5) Days of the date of receipt of the Level I written decision, file a Level II Grievance with the Director of Human Resources. The written Grievance shall specify the same information required for a Level I Grievance with all supporting documents, the Level I written decision and a short and clear statement of the Grievant's objections to the Level I decision. If the Grievance is against the person to whom the formal written Grievance should be submitted, the Grievant may skip this step and proceed to Level III.

Within ten (10) Days of the receipt of a Level II Grievance, the Director of Human Resources shall meet or (with the consent of the parties) talk with all Parties in Interest and their allowed representatives.

After the Director of Human Resources completes the investigation into the Grievance, and within ten (10) Days after meeting with (or speaking with) the Grievant, the Director of Human Resources shall provide the Grievant with a written decision.

### **Level III of Formal Procedure - Appeal to Superintendent**

If a Grievant is unsatisfied with the decision at Level II, the Grievant may, within five (5) Days of the date of receipt of the Level II written decision, file a Level III Grievance with the Superintendent or designee. The written Grievance shall include the same information required for a Level I and II Grievance with all supporting documents, the Level I and Level II decisions and a short and clear statement of the Grievant's objections to the previous decisions. If the Grievance is against the person to whom the formal written Grievance should be submitted, the Grievant may skip this step and proceed to Level IV.

Within ten (10) Days of the receipt of a Level III Grievance, the Superintendent or designee shall meet with the Grievant and their allowed representatives.

After the Superintendent or designee meets with the Grievant and reviews the information obtained from Levels I, II and III, the Superintendent or designee shall provide the Grievant with a written decision regarding the Grievance.

### **Level IV of Formal Procedure - Appeal to Board of Education**

#### **Appeals to Board as of Right:**

If a Grievant is unsatisfied with the results of the Level III Grievance decision, the Grievant may, within ten (10) Days of receipt of the Level III decision, file an appeal to the Board when the Employee has a right to appeal under one of the circumstances set forth in subsections 1, 2, 3 or 4 under the definition of "Grievance" in section A of this Policy.

An appeal to the Board is filed by submitting a written Grievance, with all provided supporting documents obtained from the previous decisions and a written statement of the Grievant's objections to the previous decision to the School Board Attorney and Board Chairperson. Unless it is a discretionary appeal (as described below), the Grievance appeal shall be heard by a hearing panel of not less than four members of the Board, appointed by the Board Chairperson.

The Board hearing panel shall make every reasonable effort to mutually schedule a hearing with the Grievant(s) and his/her representative(s) to consider the appeal within ten (10) Days after the Board Chairperson refers the Grievance to the Board hearing panel. The Board Chairperson or hearing panel may place reasonable time limitations on the testimony of witnesses or the number of witnesses and may adopt other reasonable procedures for the hearing. The Board Chairperson or the hearing panel shall make every reasonable effort to notify the parties regarding any limitations on the presentation of evidence at least three (3) Days before the hearing. The appeal hearing shall be audio recorded or transcribed and shall be held in closed session.

#### **Discretionary Appeals to Board**

A Grievant who is not satisfied with a Level III decision of the Superintendent or designee and there is no appeal as of right to the Board as described above under "Appeals as of Right", may petition the Board for a discretionary hearing, which the Board may or may not grant in its sole discretion. In order to petition the Board for discretionary review of the Superintendent or

designee's decision, a written petition including the Grievant's objections to the Level III decision shall be sent to the School Board Attorney and Board Chairperson. Such petition shall be sent by the School Board Attorney to all Board members who shall review the petition and any included documentation and decide whether to grant the petition for a hearing and shall notify the School Board Attorney of their decision. If a majority of Board members agree that the Grievance should be heard, the matter shall be scheduled for a hearing before a Board hearing panel of not less than three Board members appointed by the Board Chairperson. The scheduled date shall not be more than thirty (30) Days beyond receipt by the School Board Attorney and Board Chairperson of the petition unless so agreed by the grievant. The Grievant shall be given adequate notice of whether the petition for a discretionary appeal was granted and if so, the time and place of the hearing. The Board hearing panel of at least three members is delegated the final authority to act for and in the name of the Board as provided by N.C.G.S. § 115C-45; however, any decision of such Board hearing panel may be modified or reversed by majority vote of the Board at the initiative of the Board. Grievants may not request the Board to reconsider a decision of a Board hearing panel consisting of fewer than four Board members. The appeal hearing shall be audio recorded or transcribed and shall be held in closed session.

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