United States Constitution

A district shall take no action abridging the freedom of speech or the right of the people to petition the board for redress of grievances. *U.S. Const. Amend. I, XIV*

When a board sits in public meetings to conduct public business and hear the views of citizens, it may not discriminate between speakers on the basis of the content of their speech or the message it conveys. *Rosenberger v. Rector & Visitors of Univ. of Virginia, 515 U.S. 819, 828 (1995); City of Madison v. Wis. Emp. Rel. Comm'n, 429 U.S. 167, 174 (1976); Pickering v. Bd. of Educ., 391 U.S. 563, 568 (1968)* [See DG]

Texas Constitution

Employees shall have the right, in a peaceable manner, to assemble together for their common good and to apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address, or remonstrance. *Tex. Const. Art. I, Sec. 27*

Federal Laws

Section 504

A district that receives federal financial assistance, directly or indirectly, and that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973. *34 C.F.R. 104.7(b), .11*

Americans with Disabilities Act

A district that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Code of Federal Regulations, Title 28, Part 35 (Americans with Disabilities Act regulations). *28 C.F.R. 35.107, .140*

Title IX

A district that receives federal financial assistance, directly or indirectly, shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX of the Education Amendments of 1972. *34 C.F.R. 106.8(c); North Haven Bd. of Educ. v. Bell, 456 U.S. 512 (1982)* [For legally referenced material relating to Title IX grievance procedures, see FFH(LEGAL).]

State Laws

Wages, Hours, Conditions of Work

The prohibition against collective bargaining and strikes [see DGA] does not impair the right of employees to present grievances concerning their wages, hours of employment, or conditions of work, either individually or through a representative that does not claim the right to strike. *Gov't Code 617.005*

The term "conditions of work" should be construed broadly to include any area of wages, hours or conditions of employment, and any other matter that is appropriate for communications from employees to employer concerning an aspect of their relationship.

Atty. Gen. Op. JM-177 (1984); Corpus Christi Am. Fed'n of Teachers v. Corpus Christi Indep. Sch. Dist., 572 S.W.2d 663 (Tex. 1978)

The statute protects grievances presented individually or individual grievances presented collectively. *Lubbock Prof'l Firefighters v. City of Lubbock, 742 S.W.2d 413 (Tex. App.—Amarillo 1987, writ ref'd n.r.e.)*

Representative

A district cannot deny an employee's representative, including an attorney, the right to represent the employee at any stage of the grievance procedure, so long as the employee designates the representative and the representative does not claim the right to strike. *Lubbock Prof'l Firefighters v. City of Lubbock, 742 S.W.2d 413 (Tex. App.—Amarillo 1987, writ ref'd n.r.e.); Sayre v. Mullins, 681 S.W.2d 25 (Tex. 1984)*

A district should meet with employees or their designated representatives at reasonable times and places to hear grievances concerning wages, hours of work, and conditions of work. The right to present grievances is satisfied if employees have access to those in a position of authority to air their grievances. However, that authority is under no legal compulsion to take action to rectify the matter. *Atty. Gen. Op. H-422 (1974); Corpus Christi Indep. Sch. Dist. v. Padilla, 709 S.W.2d 700 (Tex. App.—Corpus Christi, 1986, no writ)*

Employment Policy

A district's employment policy must provide each employee with the right to present grievances to the board.

The policy may not restrict the ability of an employee to communicate directly with a member of the board regarding a matter relating to the operation of a district, except that the policy may prohibit ex parte communication relating to:

1. A hearing under Education Code Chapter 21, Subchapter E (Term Contracts) or F (Hearing Examiners); and
2. Another appeal or hearing in which ex parte communication would be inappropriate pending a final decision by the board.

Education Code 11.1513

District Grievance Policy

The board shall adopt a grievance policy to address grievances received by the district. *Education Code 26A.001(a)*

Levels of Review

The policy must provide for the following levels of review, except as provided below:

1. Review by the principal of the district campus at which the grievance is filed or the principal's designee or, for a griev-

ance that arises from subject matter unrelated to a campus, an administrator at the school district's central office;

2. If established by the policy, an appeal to an administrator at the school district's central office;

3. An appeal to the superintendent of the school district or the superintendent's designee; and

4. An appeal to the board of trustees of the school district.

A review or appeal on a grievance must be conducted by a person with the authority to address the grievance unless a preliminary hearing is necessary to develop a record or a recommendation for the board of trustees of the school district.

Education Code 26A.001(b), (c)

General Requirements

The policy must:

1. Prohibit the board or a district employee from retaliating against a student or parent of a student who files a grievance in accordance with the policy;

2. Require a person involved in reviewing a grievance under the policy to recuse himself or herself from reviewing the grievance if the person is the subject of the grievance;

3. Provide for a higher level of review if the person who would otherwise review the grievance is required to recuse himself or herself;

4. Provide for the creation and retention of a record of each hearing on the grievance, including documents submitted by the person who filed the grievance or determined relevant by school district personnel and a written record of the decision, including an explanation of the basis for the decision and an indication of each document that supports the decision;

5. Allow the person who filed the grievance to supplement the record with additional documents or add additional claims;

6. Allow for a member of the board to file a grievance with the district, but prohibit the member from voting on matters related to that grievance;

7. Allow for a remand to a lower level of review to develop a record at any time, including at the board level of review;

8. Require the district to direct a grievance that is filed with the incorrect administrator to the appropriate administrator and

consider the grievance filed on the date on which the grievance was initially filed;

9. Require the district to issue a decision on the merits of the concern raised in the grievance, notwithstanding procedural errors or the type of relief requested;

10. Unless otherwise required by law, allow for a hearing or meeting at which the grievance will be discussed to be open or closed at the request of the person who filed the grievance; and

11. For a grievance before the board, require that the person who filed the grievance be provided at least five business days before the date on which the meeting to discuss the grievance will be held a description of any information the board of trustees intends to rely on that is not contained in the record; and

12. For a grievance before the board, require the meeting at which the grievance is discussed be recorded by video or audio recording or by transcript created by a certified court reporter.

Education Code 26A.001(e)

Deadlines

Appeal

The policy must provide at least 20 days to file an appeal after the date on which a decision on the grievance was made.

Hearings

For a hearing that is not before the board of trustees of the school district, the policy must require:

1. The district to hold a hearing not later than the 10th day after the date on which the grievance or appeal was filed; and

2. A written decision to be made not later than the 20th day after the date on which the hearing was held that includes any relief or redress to be provided and information regarding filing an appeal, including the timeline to appeal under this provision and Education Code 7.057, if applicable.

For a hearing before the board, the policy must require the board to:

1. Hold a meeting to discuss the grievance not later than the 60th day after the date on which the previous decision on the grievance was made; and

2. Make a decision on the grievance not later than the 30th day after the date on which the meeting is held.

Education Code 26A.002

Employee Grievance Policy

A district's grievance policy must permit an employee to report a grievance against a supervisor to a different supervisor if the employee alleges that the supervisor:

1. Violated the law in the workplace; or
2. Unlawfully harassed the employee.

Telephone Representation

If a district's grievance policy provides for representation, the policy must permit an employee's representative to represent the employee through a telephone conference call at any formal grievance proceeding, hearing, or conference at which the employee is entitled to representation according to the policy. This provision applies to grievances under Education Code 11.171(a) and only if the district has the equipment necessary for a telephone conference call.

Education Code 11.171(a), (c)

Audio Recording

A district's grievance policy must permit an employee who reports a grievance to make an audio recording of any meeting or proceeding at which the substance of a grievance that complies with the policy is investigated or discussed. The implementation of an employee's authorization to make an audio recording may not result in a delay of any timeline provided by the grievance policy. A district is not required to provide equipment for the employee to make the recording. *Education Code 11.171(b)*

Board Committee

The board may delegate the authority to hear and decide a grievance to a committee of at least three members composed only of members of the board. For purposes of an appeal to the commissioner under Education Code 7.057, a decision by the committee is a decision of the board of trustees. The policy requirements above apply to the committee in the same manner as those requirements apply to the board. *Education Code 26A.001(e)*

Report on Grievance

Each school district shall annually submit a report on grievances filed in the district during the preceding year. *Education Code 26A.001(g)*

Filing Procedures and Forms

The board shall develop, make publicly available in a prominent location on the district's website, and include in the district's student handbook the procedures for resolving grievances; standardized forms for filing a grievance, a notice of appeal, or a request for a hearing under this chapter; and the method by which a grievance may be filed electronically.

Electronic Filing

A district shall ensure that a grievance may be submitted electronically at the location on the district's website at which the information described above is available.

TEA Notification

A district shall submit and make accessible to the Texas Education Agency the location on the district's website at which the information described above is available.

Education Code 26A.003

Commissioner Enforcement

If a grievance is appealed to the commissioner under Education Code 7.057, the commissioner of education may:

On Appeal

1. Investigate an alleged violation of state or federal law regarding the confidentiality of student information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), relating to the grievance and collaborate with relevant federal agencies in such an investigation; and

2. Take any action necessary to compel the district, the district's board, or a district employee to comply with the state or federal law.

Education Code 26A.001(f)

Determination of Retaliation

If the commissioner determines that a school district educator has retaliated against a student or parent of or person standing in parental relation to a student in violation of the policy requirement, above, the commissioner of education may report the educator to the State Board for Educator Certification for investigation. *Education Code 26A.001(i)*

Superintendent Testimony

If the commissioner of education finds against a school district under Education Code 7.057 in at least five grievances to which that provision applies involving the district during a school year, the superintendent of the school district must appear before the State Board of Education to testify regarding the commissioner's findings and the frequency of grievances against the district. *Education Code 26A.004*

Finality of Grades

An examination or course grade issued by a classroom teacher is final and may not be changed unless the grade is arbitrary, erroneous, or not consistent with a district's grading policy applicable to the grade, as determined by the board.

A board's determination is not subject to appeal.

Education Code 28.0214

Open Meetings Act

A board is not required to conduct an open meeting to hear a complaint or charge against an employee. However, a board may not conduct a closed meeting if the employee who is the subject of the hearing requests a public hearing. *Gov't Code 551.074* [See BEC]

Closed Meeting

A board may conduct a closed meeting on an employee complaint to the extent required or provided by law. *Gov't Code 551.082* [See BEC]

Record of Proceedings

An appeal of a board's decision to the commissioner shall be decided based on a review of the record developed at the district level. "Record" includes, at a minimum, an audible electronic recording or written transcript of all oral testimony or argument. *Education Code 7.057(c), (f)*

It is a district's responsibility to make and preserve the records of the proceedings before the board. If a district fails to create and preserve the record without good cause, all substantial evidence issues that require missing portions of the record for resolution shall be deemed against the district. The record shall include:

1. A tape recording or a transcript of the hearing at the local level. If a tape recording is used:
    a. The tape recording must be complete, audible, and clear; and
    b. Each speaker must be clearly identified.
2. All evidence admitted;
3. All offers of proof;
4. All written pleadings, motions, and intermediate rulings;
5. A description of matters officially noticed;
6. If applicable, the decision of the hearing examiner;
7. A tape recording or transcript of the oral argument before the board; and
8. The decision of the board.

19 TAC 157.1073(d)

Whistleblower Complaints

Before bringing suit, an employee who seeks relief under Government Code Chapter 554 (whistleblowers) must initiate action under a district's grievance or appeal procedures relating to suspension or termination of employment or adverse personnel action. *Gov't Code 554.006* [See DG]