



Community College Grievance Process¹

Community college employees and students, as well as citizens, have the right to petition the board for redress of grievances under the Texas Constitution. A grievance may require that a board simply listen to presentations during the public comment section of a board meeting without giving some level of consideration, but may also implicate other due process rights that require the board to consider the grievance or otherwise require board oversight. This document addresses frequently asked questions regarding the community college grievance process.

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A. Grievances Generally

Q: *What is a grievance?*

A: State and federal laws regarding grievances, also referred to as complaints, are read broadly to apply to virtually any topic that can be the subject of a grievance. For example, Texas Government Code section 617.005 protects an employee’s right to redress of grievances and has been construed broadly to include evaluations, salary disputes, grading policies, sick leave, and “any other matter which is appropriate for communications from employees to employer concerning an aspect of their relationship.” Tex. Att’y Gen. Op. No. JM-177, at 3 (1984).

¹ An electronic version of this document is available on [TASB College eLaw](http://tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/community-college-grievance-process.pdf) at tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/community-college-grievance-process.pdf.

Community college policy may consolidate or streamline grievances, and certain complaints may be governed by other college policies, but all remaining complaints may be brought under one of the college's general grievance policies.

Q: *Must a community college board hear grievances?*

A: Federal and state law require a community college to address all citizens' grievances, including those of employees and students. The First Amendment to the U.S. Constitution protects an individual's right to petition the government for the redress of grievances. U.S. Const. amend I. The Fourteenth Amendment Due Process Clause also provides procedural protections for individuals. U.S. Const. amend. XIV.

The Texas Constitution grants citizens the right to assemble for their common good and the right to apply to those invested with the powers of government for the redress of grievances. Thus, a community college must provide students, employees, and the general community the opportunity to have their complaints and concerns heard by those in positions of authority. Tex. Const. art. I, § 27.

Further, Texas Government Code section 617.005 prohibits collective bargaining and strikes by public employees, but it preserves the right to a redress of grievances. Tex. Gov't Code § 617.005.

Q: *How does a grievance process benefit a community college?*

A: A community college grievance process provides for quick resolution of complaints, effective risk management, and exhaustion of administrative remedies.

Quick resolution: The grievance process is designed to promote resolution of complaints at the lowest possible level, at the earliest time, and before disputes evolve and parties harden their positions. In many cases, a grievant will be satisfied after being assured that the concerns were heard and that the college had legitimate reasons for its actions.

Effective risk management: The grievance process affords the college an opportunity to correct any errors it may have made and to resolve disputes before facing litigation, the cost of which is borne ultimately by the public. *Ninan v. Houston Cmty. Coll. Sys.*, No. 14-14-00713-CV, 2015 WL 4985116 (Tex. App.—Houston [14th] Aug. 20, 2015, no pet.) (mem. op.).

Exhaustion of administrative remedies: Some laws require that a potential plaintiff first exhaust the college's local grievance procedure before filing a lawsuit against the college or a college employee. *See, e.g.,* Tex. Gov't Code § 554.006 (Texas

Whistleblower Act claims); *Looper v. Houston Cmty. Coll. Sys.*, No. 14-07-00040-CV, 2007 WL 4200642 (Tex. App.—Houston [14th Dist.] Nov. 29, 2007, pet. denied) (mem. op.) (upholding dismissal of whistleblower act claim for failure to initiate a grievance).

Q: What TASB policies apply to grievances filed with community colleges?

A: Community college boards with policy manuals through TASB Policy Service have three separate grievance policies:

- **DGBA(LOCAL)** for employee grievances;
- **FLD(LOCAL)** for student grievances; and
- **GB(LOCAL)** for grievances by all others, including vendors and taxpayers.

Certain complaints require specific resolution processes that are described in other policies. For example, complaints alleging certain forms of harassment are processed in accordance with TASB Policies DIAA and DIAB (for employees) and FFDA and FFDB (for students). Complaints arising from the dismissal of a faculty member on a term contract are governed by TASB Policy DMAA(LOCAL). See TASB Policy DGBA(LOCAL) for a complete list of alternative resolution processes that are exceptions to the process at DGBA.

B. Grievance Procedures

Q: Must a community college board hear an individual's grievance?

A: A community college must provide a method for individuals to petition, but neither the Petition Clause, nor any other First Amendment protection, requires that a board actually listen to an individual's grievances or respond to those particular concerns. *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271 (1984). However, individuals have a right to petition a community college board for redress of grievances under Texas Constitution article I, section 27.

Courts applying the state constitutional law to educational entities differ as to whether the board simply listening to presentations during the public comment section of a board meeting, without giving some level of consideration, is sufficient. *Corpus Christi Indep. Sch. Dist. v. Padilla*, 709 S.W.2d 700 (Tex. App.—Corpus Christi 1986, no writ); *Prof. Assoc. of College Educators v. El Paso County Cmty Dist.*, 678 S.W.2d 94 (Tex. App.—El Paso 1984, writ ref'd n.r.e.). Because it is arguable that in some instances the grievance may implicate due process rights, which require the board to consider the grievance, hearing grievances can provide the board several practical benefits and enables the board's oversight authority. For those reasons, TASB Community College Services recommends that a board hear formal grievances. A board may opt to accept such grievances by submission of written materials.

Q: *What is an example of a community college grievance process?*

A: TASB Policy DGBA(LOCAL) provides for a four-level process, with Level Three being to the community college president or a designee. Local policies may differ regarding the number of levels.

Q: *How does the community college grievance process begin?*

A: The grievance process under TASB Policy DGBA(LOCAL) begins when a grievant files a written complaint form with the community college and is not properly invoked by having conversations with individual board members or employees.

Q: *Should grievants attempt to address their complaints with a community college informally?*

A: TASB Policy DGBA(LOCAL) encourages grievants to informally resolve their complaints prior to filing a formal grievance because informal resolution conserves resources and preserves relationships. Parties may continue informal resolution attempts after starting the formal grievance process. A grievant whose concerns are addressed informally may withdraw a formal complaint at any time.

Q: *How can a grievant initiate the formal grievance process with a community college?*

A: The formal process begins when a grievant completes a community college complaint form. While attempts at informal resolution are encouraged, such attempts will not serve as a substitute for a formal grievance. If a grievant fails to make use of the grievance process, beginning at Level One, the board may deny the grievant the opportunity for a hearing on the merits. If the person fails to file a timely grievance but later attempts to file a lawsuit, the lawsuit is likely to be dismissed. *See, e.g., Zepeda v. Boerne Indep. Sch. Dist.*, No. SA-07-CA-607-XR, 2007 WL 2726193 (W.D. Tex. Sept. 14, 2007) (dismissing a lawsuit against the school district because plaintiff never availed herself of the grievance process).

Q: *Can a community college combine related complaints into a single grievance?*

A: When appropriate, a community college can combine related complaints into a single grievance. When the subject matter of two or more complaints is reasonably related, the college may consolidate a series of complaints into a single grievance. *See, e.g., Merla v. San Antonio Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 087-R10-801 (July 10, 2003) (school district acted reasonably by consolidating six related grievances filed by the same employee over 18-month period).

Q: *May a community college reject a grievance as untimely filed?*

A: A community college may reject a grievance as untimely, but the grievant must be given an opportunity to argue that the grievance is not late.

Late filings: A grievance may be denied because it was not filed within the time limits created by local policy. *Canutillo Educators Ass'n v. Canutillo Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 042-R10-203 (July 29, 2004) (upholding school district's denial of grievance that was not timely filed).

Local deadlines are enforceable: A college can adopt and enforce a local deadline for filing a grievance, even if the deadline is much shorter than the statute of limitations for a related legal claim. *Hitchcock v. Bd. of Trs., Cypress-Fairbanks Indep. Sch. Dist.*, 232 S.W.3d 208 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

Triggering event: Although the facts may not be clear in every circumstance, one court decision suggests that government officials look at the grievant's written complaint to identify the event giving rise to the complaint when determining whether the complaint is timely. *Tijerina v. Alanis*, 80 S.W.3d 292 (Tex. App.—Austin 2002, pet. denied) (holding grievance against school district by employee who was reassigned and given probationary contract was timely when complaint form was filed within 15 days of his termination but considered late under district policy).

However, an appeal to a college board *must* be permitted if requested. Even when a grievant apparently fails to file a timely grievance, a college should permit the grievant to proceed through all levels of the grievance process if the grievant wishes to argue that the complaint *is* timely.

Administrators or college attorneys cannot unilaterally shut down the grievance process because of late filing or any other reason if the grievant wants to appeal to the next level under the grievance policy. Moreover, a board cannot delegate to its attorney or other administrators the right to decide grievances, and a board must give grievants an opportunity for a hearing if requested. A college's local policies assume grievances will be heard by boards of trustees. Similarly, the Texas Constitution gives citizens the right to present grievances to those invested with the powers of government, here the college board. Tex. Const. art. I, § 27.

Appeal can now review both issues of timeliness and the merits: Previously, if a grievance was denied because it was filed late, any further appeal by the grievant had to be limited to the issue of timeliness; otherwise, the college would waive that issue if it also considered the merits of the grievance. *Hernandez v. Meno*, 828 S.W.2d 491 (Tex. App.—Austin 1992, writ denied). However, the Texas Supreme Court has since held that a governmental body does not waive its objection to timeliness by

considering the merits of the complaint. *Van Indep. Sch. Dist. v. McCarty*, 165 S.W.3d 351 (Tex. 2005) (concluding that a school district board did not waive its objection to timeliness when it heard evidence on the merits of a grievance). Nevertheless, to streamline the grievance process, TASB Policy DGBA(LOCAL) still limits appeals regarding timely filings to that topic.

Q: *With whom at a community college should a grievant file the complaint form?*

A: The complaint form should be filed with an appropriate community college administrator. In most cases, an employee initiates a grievance by filing a Level One complaint with the employee's direct supervisor. Occasionally, however, the subject of the complaint will be a decision made by the college president or chancellor, or other person who outranks the employee's direct supervisor. In those cases, it is appropriate to permit the employee to begin the grievance at a higher level. See TASB Policy DGBA(LOCAL).

Q: *May a grievant be represented during the community college grievance process?*

A: A grievant may request the assistance of a representative, including an attorney and at the grievant's own cost, at any level of the process.

Employees: An employee or group of employees may be represented at any level of the process by an attorney or by any other person or organization that does not claim the right to strike. Tex. Gov't Code § 617.005; *Corpus Christi Am. Fed'n of Teachers v. Corpus Christi Indep. Sch. Dist.*, 572 S.W.2d 663 (Tex. 1978).

The administration: A college may involve attorneys in the grievance process, either to offer advice about how to handle grievances or to participate in grievance hearings. Sometimes the fact that the college's attorney has advised administrators on a grievance at Levels One, Two, or Three prohibits the attorney from then advising the board regarding the grievance. If this situation arises in your college, ask the college's attorney whether the board should retain a separate attorney for the limited purpose of advising the board at the Level Four hearing while the college's regular attorney advocates for the administration.

Legal fees: By local policy, each party to a grievance is responsible for paying its own costs. See TASB Policy DGBA(LOCAL) at "Costs Incurred."

C. Level One

Q: *What should a community college administrator do after receiving a complaint form?*

A: Upon receiving a complaint form, a community college administrator should then hold a Level One conference and respond to the grievant in writing. See the applicable TASB Policy for more details regarding the grievance procedures.

Investigation permitted: The administrator may investigate the complaint, as needed, before or after the conference. Documentary evidence found or created by the administrator may form part of the record of the grievance if it is appealed.

Conference required: TASB Policy DGBA(LOCAL) provides that the administrator shall schedule the Level One conference within ten business days. If the administrator fails to schedule the conference, the college risks its opportunity to resolve the complaint at the local level prior to litigation. *Fort Bend Indep. Sch. Dist. v. Rivera*, 93 S.W.3d 315 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (concluding an employee complied with the grievance policies by making numerous attempts to meet with her supervisor).

Time limit permitted: TASB Policy DGBA(LOCAL) specifically allows the Level One administrator to set a time limit for the Level One conference. The length of time should be reasonable, based on a case-by-case assessment of the complexity of issues presented. Consider providing a reasonable, but generous amount of time for the conference to avoid allegations that the time period did not afford the employee a fair opportunity to present the employee's concerns.

Be responsive: TASB Policy DGBA(LOCAL) requires that the administrator send a written response to the grievant within 10 business days. The grievant's time for appeal runs from the date of the administrator's response instead of the date the grievant receives the response, so be sure the response is timely and accurately dated. If the time for a response passes and none is received, the grievant may appeal to the next level.

Basis of the decision: TASB Policy DGBA(LOCAL) requires the administrator to include the basis of the administrator's decision in the written response. In most cases, providing a reason for the administrator's decision will be straight forward and may assist in the resolution of the grievance. In some cases, however, a detailed written statement of the administrator's reasoning may not be advisable. Administrators should consult with the community college's own counsel about the level of detail and legal review appropriate for written responses at Levels One, Two, and Three.

To record or not to record: TASB Policy DGBA(LOCAL) does not specify whether Level One, Level Two, or Level Three conferences will be tape recorded by the college. The decision is left to the discretion of the relevant administrator on a case-by-case basis. Administrators should consult their college's own attorneys for guidance on this practice.

D. Level Two

Q: *If a grievant is not satisfied with the outcome of Level One, can the grievant appeal?*

A: If a grievant is not satisfied, the grievant may appeal to Level Two. See the applicable TASB Policy for more details regarding the community college grievance procedures.

Record on appeal: TASB Policy DGBA(LOCAL) specifies the documents that will be included in the official record of a grievance if it is appealed. The record will include the employee's complaint, the Level One administrator's response, and the documents relied on by both sides. At the Level Two conference, the employee may provide information about documents relied on by the administration for the Level One decision.

Limited appeal: TASB Policy DGBA(LOCAL) states that an appeal at Level Two is limited to the issues and documents presented at Level One and identified in the Level Two appeal notice. The purpose of this limitation is to ensure that all complaints are heard first at Level One to encourage early resolution and respect the chain of command.

Written response: As described above, TASB Policy DGBA(LOCAL) requires the Level Two administrator to provide a written response, including the basis of the decision, within ten days following the conference.

E. Level Three

Q: *What is the grievance process at Level Three?*

A: The process at Level Three is similar to Level Two; however, the designated administrator is the college president or chancellor, or designee.

F. Level Four

Q: *If a grievant is not satisfied with the outcome of a grievance, can the grievant appeal to the community college board?*

A: If a grievant is still unsatisfied with the outcome, the grievant may appeal to the community college board at the appropriate level (Level Three or Level Four, as applicable). It is important for the board to hold a hearing on the grievance without delay. See the applicable TASB Policy for more details regarding the grievance procedures.

The policy requires a board hearing: TASB Policy DGBA(LOCAL) requires the college president or chancellor to place a Level Four grievance appeal on the agenda for an upcoming meeting. As described above, a board must allow a grievant a reasonable opportunity to present a grievance.

Do not delay: TASB Policy DGBA(LOCAL) does not specify how quickly a Level Four appeal will appear on the agenda of a board meeting. If a college waits too long, however, it may be determined that a hearing was denied, so that a court may hear a grievant's appeal.

Document cause for delay: If a hearing is delayed due to actions of the grievant, not the college, document the cause for delay.

Q: *What information may the community college board consider at Level Four?*

A: Before the hearing, the community college board will receive the record of the proceedings below. The board may consider the record, supplemental information provided by the administration, and any other evidence presented as part of the formal grievance.

Record on appeal: As at Level Three, TASB Policy DGBA(LOCAL) specifies the documents that will be included in the official record of the grievance.

Supplemental evidence: TASB Policy DBGA(LOCAL) provides that if, at Level Three, the administration intends to rely on evidence not included in the record on appeal, the administration must inform the employee at least three days before the hearing. If new evidence is going to be introduced at Level Three, the other side should be permitted to review and respond to the additional evidence.

Outside information: When considering the merits of a Level Three grievance, board members should consider only the evidence presented to them as part of the formal grievance—typically, the written material in their board packets and evidence and arguments at the hearing itself. If a board member is unable to ignore information received from external sources, the board member should consider abstaining from participation in the grievance. A grievant is entitled to a hearing before an impartial tribunal, and evidence of board member bias can be used to overturn a board decision. *See, e.g., Valley v. Rapides Parish Sch. Bd.*, 118 F.3d 1047 (5th Cir. 1997) (overturning a superintendent's termination when the record showed that four members of a nine-member school district board harbored bias against the superintendent).

Q: *Can a community college board conduct a grievance hearing in closed session?*

A: Before the hearing, the college president or chancellor and board president must determine whether the hearing will take place in open or closed session. However, the Texas Open Meetings Act (OMA) permits, but does not require, a board to conduct hearings and deliberate on certain matters in closed meetings. The OMA permits a hearing to take place in a closed meeting only if the topic of the grievance falls squarely within one of the limited OMA exceptions. Tex. Gov't Code §§ 551.001-.146. Always consult with the board's attorney when deciding which topics can be discussed in closed session.

When a valid request for an open meeting is submitted, the board must conduct a public hearing and deliberate about the matter in an open meeting. *Corpus Christi Teachers Ass'n v. Corpus Christi Indep. Sch. Dist.*, 535 S.W.2d 429 (Tex. Civ. App.—Corpus Christi 1976, no writ).

G. Decision and Appeal

Q: *What must a community college district board do after a grievance hearing has concluded?*

A: The community college board considers and decides the grievance and may grant the grievance and reverse the administration's decision, deny the grievance and uphold the administration's decision, or grant in part the grievance and modify the administration's decision.

Q: *Can the outcome of a grievance filed with a community college be appealed to district court?*

A: A grievant may file suit in district court in accordance with the court's jurisdiction over the particular law alleged to have been violated.

H. Policies and Other Considerations

Q: *Are employees protected from retaliation for filing grievances with a community college?*

A: Employees are protected from retaliation by both law and policy.

Policies prohibit retaliation: TASB Policy DGBA(LOCAL) prohibits unlawful retaliation against those who bring forward complaints or concerns. Only in extreme circumstances will a court conclude that bringing a series of harassing or inappropriate complaints has impaired an employee's effectiveness and constituted grounds for dismissal. *Kaplan v. City of Arlington*, 184 F. Supp. 2d 553 (N.D. Tex.), *aff'd without opinion*, 48 F. App'x 916 (5th Cir. 2002) (concluding employee's consistently hostile and inflammatory grievances demonstrated that she was ineffective at her job).

State and federal laws also protect employees who bring complaints: An employee who believes that he or she has suffered retaliation for pursuing a grievance may file a lawsuit based on the Texas Constitution. *See, e.g., Herrera v. Eagle Pass Indep. Sch. Dist.*, No. 07-06-0303-CV, 2008 WL 2221800 (Tex. App.—Amarillo May 29, 2008, no pet. h.). The employee may also be entitled to protection under the Texas Whistleblower Act. Tex. Gov't Code §§ 554.001-.010. Finally, an employee who raises a concern in his or her role as a private citizen, rather than as an employee, may be protected from retaliation by the First Amendment. *Davis v. McKinney*, 518 F.3d 304 (5th Cir. 2008) (interpreting *Garcetti v. Ceballos*, 547 U.S. 410 (2006)).

Q: *Where can I get more information regarding the community college grievance process?*

A: Community college representatives may contact Community College Services to discuss these or other legal issues at 800.580.1488 or colleges@tasb.org.

For more information on community college law topics,
visit TASB Community College eLaw online at colleges.tasb.org/elaw.

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