Grievances

TASB Legal Services

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Grievance Basics

What is a grievance?

Virtually any topic can be the subject of a grievance or complaint (two terms with the same meaning, in this context). As described below, school district policy may consolidate or streamline grievances, and certain complaints may be governed by other district policies, but all remaining complaints may be brought under one of the district’s general grievance policies.

State law and local policy allow grievance policies to be interpreted broadly: Texas Government Code section 617.005 protects an employee’s right to redress of grievances. Section 617.005 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-0177, at 3 (1984).

For example, a complaint under TASB Policy DGBA(LOCAL) may include grievances concerning an employee’s wages, hours, or conditions of work. An employee grievance may also include complaints arising from the dismissal or termination of an at-will employee.

Must school boards hear grievances?

Federal and state law requires that districts address complaints filed by all citizens, including employees.

- **U.S. Constitution:** The U.S. Constitution grants citizens the right to petition the government for redress of grievances. U.S. Const. amend. I, XIV.
- **Texas Constitution:** 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. Tex. Const. art. I, § 27. Thus, a school district must provide parents, students, employees, and the general community the opportunity to have their complaints and concerns heard by those in positions of authority.

In addition, certain state laws specifically protect an employee’s right to file a complaint with a public employer.

- **Texas Government Code:** Texas Government Code chapter 617 prohibits collective bargaining and strikes by public employees, but it preserves the right to present grievances. Tex. Gov’t Code § 617.005. A district cannot attempt to eliminate these

- **Texas Education Code:** Under Texas Education Code section 11.1513(i), a school district’s employment policy must permit each employee to present grievances to the board.

**How does a grievance process benefit school districts?**

A 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, before disputes evolve and parties harden their positions. Many times a person filing a grievance, or grievant, will be satisfied after being assured that the district listened to their concerns and had legitimate reasons for its actions.

**Effective risk management:** The grievance process affords the school district an opportunity to correct any errors it may have made and to resolve disputes before facing litigation. Fort Bend Indep. Sch. Dist. v. Rivera, 93 S.W.3d 315 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

**Exhaustion of administrative remedies:** Some laws require that a potential plaintiff first exhaust the district’s local grievance procedure before filing a lawsuit against the district or a district employee. See, e.g., Tex. Educ. Code § 22.0514 (suits against “professional employees” of a school district). See also Davis v. Dallas County Sch., 259 S.W.3d 280 (Tex. App.—Dallas 2008, no pet.) (upholding dismissal of workers’ compensation retaliation claim for failure to exhaust administrative remedies through a grievance); Harlandale Indep. Sch. Dist. v. Rodriguez, 121 S.W.3d 88 (Tex. App.—San Antonio 2003, no pet.) (dismissing employment-related claims against a school district because the plaintiff failed to file a grievance).

**What policies apply to grievances?**

Districts with policy manuals through TASB Policy Service have three separate grievance policies:

- **DGBA(LOCAL)** for employee grievances;
- **FNG(LOCAL)** for student and parent grievances; and
- **GF(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 DIA (for employees) and FFH (for students). Complaints arising from the proposed nonrenewal of a term contract are governed by TASB Policy DFBB, while complaints arising from the proposed termination or suspension without pay of an employee on a probationary,
term, or continuing contract are governed by DFAA, DFBA, or DFCA, respectively. See TASB Policy DGBA(LOCAL) for a complete list of other complaint processes that must be followed when submitting certain types of complaints.

**Can a person’s presentation during the public comment portion of a board meeting be considered a formal grievance?**

The grievance process is not satisfied by a presentation during the public comment portion of a board meeting.

**Must appear on an agenda:** Merely permitting a grievant to attend a board meeting and speak during public comment does not fulfill the board’s obligation to hear a grievance. Under the Texas Open Meetings Act (OMA), the board is not permitted to comment or act on the merits of a complaint unless the topic appears on the meeting notice. Because the board cannot take responsive action, a presentation during public comment does not provide a fair opportunity for a grievance presentation. *See Brown v. DeSoto Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 128-R1-698 (Aug. 12, 1999) (finding teacher who spoke during public comment about termination of her probationary contract was deprived of fair opportunity to present her grievance). *See also Adams v. Flour Bluff Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 115-R10-598 (Aug. 6, 1999) (deciding that a district must allow a person to present a grievance on the issue of termination of a probationary contract).

**Cannot circumvent the process:** Similarly, a person who skips the district’s multi-step grievance process and speaks to the board during public comment has failed to properly invoke the district’s grievance process. For example, when a teacher complained about the denial of assault leave during the open comment portion of a board meeting, the teacher’s presentation did not serve as a basis for concluding that the board had heard and denied her grievance. “If an open comment presentation were sufficient to exhaust administrative remedies for purposes of [appeal to the commissioner], grievance policies would never be followed.” *Thomson v. Fort Worth Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 155-R8-497, at 3 (Nov. 5, 2002).

**Can a person’s conversation with a board member about the person’s complaint invoke the grievance process?**

No, the grievance process is not properly invoked by having conversations with individual board members.

The Texas Education Code says school district policy must not restrict employees from talking to board members about school operations. Tex. Educ. Code § 11.1513(j). This kind of informal conversation is not sufficient to constitute filing a grievance, however.
The Grievance Process

Most districts’ grievance policies provide a three-level process, with the Level Two hearing being with the superintendent or a designee. Some smaller districts with only one campus provide for a two-level process. Larger districts often elect to use a four-level process, with the Level Three hearing before a hearing officer or board committee.

Filing the Complaint

The TASB-recommended policies encourage attempts to informally resolve complaints prior to filing a formal grievance. From the school district’s perspective, early and informal resolution conserves resources and preserves relationships. TASB Policy encourages the informal resolution of disputes whenever possible, even after the formal grievance process has been initiated. A person whose concerns are addressed informally may withdraw a formal complaint at any time.

How does the formal grievance process begin?

The formal process begins when an individual completes and submits a district complaint form.

No substitute: While attempts at informal resolution are encouraged, such attempts will not serve as a substitute for a formal grievance. If a person fails to make use of the grievance process, beginning at Level One, the board may deny the opportunity for a hearing on the merits. See Fenter v. Quinlan Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 055-R10-301 (Feb. 25, 2002) (denying petitioner’s appeal because she never properly invoked the district’s grievance policy); but see Anzaldua v. Valley View Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 023-R10-11-2013 (Aug. 15, 2014) (finding that local policy tolled 15-day timeline to file formal grievance while employee pursued informal grievance process). 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., SA-07-CA-607-XR, 2007 WL 2726193 (W.D. Tex. Sept. 14, 2007), aff’d, 294 F. App’x 834 (5th Cir. 2008) (dismissing a lawsuit against the district because plaintiff never availed herself of the grievance process).

Complaint form: Only the completion of a district complaint form will invoke the district’s grievance process. For a sample employee complaint form, see TASB Policy DGBA(EXHIBIT). Sample complaint forms for students and parents can be found at TASB Policy FNG(EXHIBIT), while sample community complaint forms can be found at TASB Policy GF(EXHIBIT). Districts should make these forms available on request at school campuses and administrative offices or on the district’s website.
Can a district combine related complaints into a single grievance?

Yes, the district can combine related complaints into a single grievance when appropriate.

Consolidating two or more complaints is appropriate when the subject matter of the complaints is reasonably related. 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).

May a district reject a grievance as untimely filed?

A grievance may be rejected 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. See, e.g., Ellis v. Whiteface Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 073-R1-603 (Aug. 26, 2004) (upholding district’s denial of grievance filed more than 15 days after the grievant knew or should have known about the event giving rise to his complaint); Walker-Nelms v. Fairfield Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 004-R10-09-2021 (Apr. 26, 2022) (upholding district’s denial of grievance filed outside of timelines in policy GF(LOCAL)).

Local deadlines are enforceable: A school district 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. For example, when a teacher filed suit seeking backpay for planning periods that had been scheduled outside the school day, the court decided in the school district’s favor because the teacher had been late in filing a grievance at the local level. The court rejected the teacher’s argument that the district’s local 15-day deadline denied her access to a legal remedy in violation of the open courts and equal protection provisions of the Texas Constitution. 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 school officials look at the written complaint to identify the event giving rise to the complaint. On appeal from a grievance dismissed as untimely, the Austin Court of Appeals looked primarily at the initial complaint to see if it was late. An employee who had been on a continuing contract was reassigned and given a probationary contract. When he was later dismissed without the procedures appropriate for a continuing contract, he complained. The district claimed he complained too late, well after the district policy’s timeline of 15 days after receiving his contract. But the court asked whether the complaint form was filed within 15 days of the event described on the form—in this case, the termination—and decided the grievance was timely. Tijerina v. Alanis, 80 S.W.3d 292 (Tex. App.—Austin 2002, pet. denied).
**Timelines may relate to the grievant’s receipt of relevant documents:** Districts should promptly provide the grievant with documents relevant to the complaint. The commissioner has concluded that, in instances where documents are necessary to substantiate a complaint, the grievance timelines will begin when the documents are received, not when the event occurred. *Berlin v. North East Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 002-R10-0906 (Feb. 28, 2008).

**Appeal to the board must be permitted if requested:** Even when a person apparently fails to file a timely grievance, the district should permit the person to proceed through all levels of the grievance process if the person wishes to argue that the complaint was timely. A grievant is entitled to a board determination of timeliness. *Halpin v. Mansfield Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision Nos. 119-R10-698; 155-R10-798 (Aug. 6, 1999).

Administrators or school district 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 district’s local policies and the Texas Education Code “assume[ ] grievances will be heard by boards of trustees.” *Mata v. Edcouch-Elsa Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 021A-R10-1202, at 4 (Aug. 2, 2004). In sum, “[a] board of trustees does not have the right to delegate final authority to hear or deny a grievance” in order to insulate its actions from review by the commissioner. *See Mata v. Edcouch-Elsa Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 021A-R10-1202, at 4 (Aug. 2, 2004) (finding district improperly delegated authority to attorney to write letter to grievant indicating that the Level Three grievance was denied as untimely).

If the subject of a grievance implicates due process rights, such as in the matter of a teacher’s term contract, the board must provide a grievant a fair hearing as to timeliness. A fair hearing must include an opportunity to present argument or evidence to the board. The board’s decision will be considered arbitrary, capricious, and in violation of due process if the grievance is decided solely on the grievance document and board policies with no argument or evidence permitted. *See Morgan v. Denton Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 099-R8-0811 (Dec. 19, 2013) (holding board’s decision to dismiss grievance concerning contract rights without allowing grievant an opportunity to present evidence or argument violated due process).

**Appeal can review both issues of timeliness and the merits:** The Texas Supreme Court has held that a school board does not waive its objection to timeliness by considering the merits of the complaint. *See Van Indep. Sch. Dist. v. McCarty*, 165 S.W.3d 351 (Tex. 2005) (concluding that a school board did not waive its objection to timeliness when it heard evidence on the merits of a grievance). In order to streamline the grievance process, TASB Policy limits appeals regarding timely filings to that topic.
**With whom should a grievant file the complaint form?**

The complaint form should be filed with an appropriate administrator.

**Employees:** In most cases, an employee initiates a grievance by filing a Level One complaint with the employee’s direct supervisor. Occasionally, however, an employee complains about a decision made by the superintendent 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 what would normally be Level Two. See TASB Policy DGBA(LOCAL). An example would be a teacher who objects to having been reassigned to another campus by the superintendent.

In addition, district policy must allow an employee to file a grievance with a different supervisor if the employee is alleging that the employee’s own supervisor violated a law in the workplace or unlawfully harassed the employee. Tex. Educ. Code § 11.171(a).

**Parents and students:** In most parent or student complaints, the Level One complaint should be made to the campus principal. If the complaint is about a teacher, the parent or student may be expected to discuss the matter with the teacher before proceeding to Level One. See TASB Policy FNG(LOCAL).

**Community members:** Typically, a community member initiates a grievance by filing a Level One complaint with the lowest level administrator who has the authority to remedy the addressed problem. If that administrator happens to be the superintendent or the superintendent’s designee, then the community member may file the grievance beginning at Level Two. See TASB Policy GF(LOCAL).

**May the person filing the grievance be represented during the grievance process?**

Yes, a grievant may request the assistance of a representative, including an attorney, 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).

**Other grievants:** The commissioner has concluded that denying any grievant the opportunity to be represented by counsel before the board would deny the grievant the opportunity for a fair hearing. See James N., b/n/f Brandt N. v. Sinton Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 098-R5-498 (Aug. 6, 1999).
The administration: The district, too, may involve attorneys in the grievance process, either to offer advice about how to handle grievances or to participate in grievance hearings. Sometimes a concern may arise regarding whether the fact that the district’s attorney has advised administrators on a grievance at Levels One or Two prohibits the attorney from then advising the board regarding the grievance. But see Walker v. North East Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 035-R10-1111 (Aug. 30, 2013) (concluding that two attorneys from the same firm individually representing the administration and the school board during a grievance did not establish a violation of the OMA). If this situation arises in your district, ask the district’s attorney whether the board should retain a separate attorney for the limited purpose of advising the board at the Level Three hearing while the district’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.”

Level One

What should the administrator do after receiving the complaint form?
The administrator will hold a Level One conference and respond to the grievant in writing.

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

Conference required: TASB Policy provides that the administrator shall schedule the Level One conference within 10 business days after receipt of the written complaint. If the administrator fails to hold the conference, the district risks its opportunity to resolve the complaint at the local level prior to litigation. For example, in one case, after an employee orally reported allegedly illegal acts that had occurred at the school district, she repeatedly attempted to have a conference with her supervisor. Each time she was turned away. When she persisted, she was eventually fired. When she then sued the district under the Texas Whistleblower Act, the district claimed she had failed to initiate administrative remedies. The court found that the employee had complied with the grievance policies by making numerous attempts to meet with her supervisor. Fort Bend Indep. Sch. Dist. v. Rivera, 93 S.W.3d 315 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

Time limit permitted: TASB Policy 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 his or her concerns.

Be responsive: TASB Policy requires the administrator to 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 (as opposed to the date the grievant receives the response), so be sure the response is timely and accurately dated. If extenuating circumstances necessitate a
delay in providing the written response, the administrator should document the reasons for delay and notify the grievant. For a sample response form, see DGBA(EXHIBIT) in the TASB Regulations Resource Manual. 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 requires the administrator to include the basis of the administrator’s decision in the written response. Providing a clear and straightforward reason for the administrator’s decision may assist in the resolution of the grievance. Administrators should consult with the district’s legal counsel about the level of detail and legal review appropriate for written responses at Levels One and Two.

**To record or not to record:** TASB Policy does not specify whether Level One and Level Two conferences will be recorded by the district. The decision is left to the discretion of the relevant administrator on a case-by-case basis. Administrators should consult their district’s legal counsel for guidance on this practice.

**Employees may record:** The Texas Education Code requires districts to permit an employee who reports a grievance under the district grievance policy to make an audio recording of any meeting or proceeding at which the substance of the employee’s grievance is investigated or discussed. The district is not required to provide the employee with the recording device, and the implementation of this requirement may not result in a delay of any timelines set out in the grievance policy. Tex. Educ. Code § 11.171(b).

**Level Two**

If the person filing a grievance is not satisfied with the result of Level One, the grievant may appeal to Level Two.

**Record on appeal:** TASB Policy specifies that if a grievance 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 states that an appeal at Level Two is limited to the issues 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 maintain the chain of command. See, e.g., Koch v. Frisco Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 016-R10-12-2021 (June 14, 2022) (holding that issue may only be considered at Level III if considered at Level II).

**Written response:** TASB Policy requires the Level Two administrator to provide a written response, including the basis of the decision, within 10 days following the conference.
Level Three

If the grievant is still unsatisfied after the Level Two hearing, they may appeal to the board.

The policy requires a board hearing: TASB Policy requires the superintendent to place a Level Three grievance appeal on the agenda for an upcoming meeting. A board must allow a grievant a reasonable opportunity to present a grievance. “A board of trustees does not have the right to delegate final authority to hear or deny a grievance.” See Mata v. Edcouch-Elsa Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 021A-R10-1202, at 5 (Aug. 2, 2004) (reversing the district’s decision to dismiss a grievance as untimely without permitting a hearing as to timeliness). However, the commissioner has determined that the hearing does not have to be oral and in person and can consist of written submissions. See Doornwaard v. Socorro Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 036-R10-05-2021 (Nov. 5, 2021) (concluding that Texas Education Code § 11.1511 does not require school boards to allow grievant to appear personally before boards in grievance appeal hearings).

Complaints about participation in extracurricular activities: The board is not required to address a complaint concerning a student’s participation in an extracurricular activity that does not involve an alleged violation of parental rights guaranteed under Chapter 26 of the Texas Education Code. Tex. Educ. Code § 26.011(b). Always consult with the board’s attorney when determining whether to deny a Level Three hearing to a parent complaining about participation in extracurricular activities.

Do not unreasonably delay: TASB Policy does not specify how quickly a Level Three appeal must appear on the agenda of a board meeting. If a district waits too long, however, the commissioner may conclude that a hearing was denied. See Craig v. North Forest Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 175-R10-699 (Aug. 29, 2000) (warning that failure to provide a hearing without a good faith reason may be grounds for the grievant to prevail). See also de la Rosa v. South San Antonio Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 074-R10-504 (Jan. 31, 2006) (concluding that the board lacked substantial evidence to support its decision where the board refused to provide a hearing within a reasonable time).

Document cause for delay: If there is a good reason to delay scheduling a board hearing, including the grievant’s actions, the district should document the cause for delay. See Merla v. San Antonio Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 087-R10-801 (July 10, 2003) (concluding that district’s two-year delay before conducting a Level Three hearing was justified by the numerous delays requested by the grievant).

What information may the board consider at Level Three?

Before the hearing, the 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 Two, TASB Policy specifies the documents that will be included in the official record of the grievance.

Supplemental evidence: TASB Policy 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. The commissioner of education has indicated that 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. Thomson v. Fort Worth Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 070-R10-603 (Mar. 25, 2004).

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 board harbored bias against the superintendent).

Can the board conduct the Level Three hearing in closed session?

Before the hearing, the superintendent and board president must determine whether the hearing will take place in open or closed session.

Closed meeting exceptions: The OMA permits, but does not require, a board to conduct hearings and deliberate on certain matters in closed meetings. The OMA permits a Level Three hearing, or board discussion regarding the hearing, to take place in a closed meeting only if the topic of the grievance or discussion 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.

- Personnel and trustee matters: The OMA permits a closed meeting for the board to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer (trustee) or employee; or to hear a complaint or charge against an officer or employee. This exception does not apply if the officer or employee who is the subject of the deliberation or hearing requests a public hearing. Tex. Gov’t Code § 551.074.

- Employee-to-employee complaints: The OMA permits a closed meeting for the board to deliberate a case in which a complaint or charge is brought against a district employee by another employee and the complaint or charge directly results in the need
for a hearing. The exception does not apply if the employee against whom the complaint or charge is brought makes a written request for an open hearing. Tex. Gov’t Code § 551.082.

- **Student discipline:** The OMA permits a closed meeting for the board to deliberate in a case involving discipline of a public school child. This exception does not apply if an open hearing is requested in writing by the parent or guardian of the child. Tex. Gov’t Code § 551.082.

- **Student information:** The OMA permits a closed meeting for the board to deliberate a matter regarding a public school student if personally identifiable information about the student will necessarily be revealed by the deliberation. This exception does not apply if an open meeting about the matter is requested in writing by a parent or guardian of the student or by the student, if the student is 18 years old. Tex. Gov’t Code § 551.0821.

- **Attorney consultation:** The OMA permits a closed meeting for the board to consult with the school district’s attorney regarding pending or contemplated litigation, a settlement offer, or any matter within the attorney-client privilege. Tex. Gov’t Code § 551.071.

**Identifying the subject of the grievance:** Sometimes it is difficult to determine the true subject of a complaint for purposes of deciding which OMA exception applies. For example, in one case, after a teacher requested an open hearing of his complaint about “the principal’s and the superintendent’s actions in the evaluation process,” the board met in closed session, erroneously reasoning that the principal and superintendent, not the teacher’s evaluation, were the subjects of the complaint. The attorney general concluded that “[t]he teacher’s complaints about the principal and superintendent [were] incidental to his grievance against the school district, which necessarily acts through its agents.” Tex. Att’y Gen. Op. No. JM-1191, at 3 (1990).

**Competing OMA exceptions:** Deciding which closed meeting exception applies to a grievance, and consequently which individual has the right to request an open hearing, becomes even more complicated when more than one exception potentially applies. For example, in one case, a parent complained about the discipline imposed by a teacher; the parent wanted the complaint heard in an open meeting while the teacher did not. In such a situation, the attorney general recommended separating the two issues—the discipline issue and the personnel issue—so that the discipline issue could be heard in an open meeting and the personnel issue could be heard in closed. If this separation of issues proved to be impossible, then the parent’s request for an open meeting hearing had to be honored because the teacher had no corresponding right to request a closed hearing. Tex. Att’y Gen. LO95-082 (1995).

**Board’s choice:** One commissioner’s decision suggests that the board’s selection of which exception to rely on to justify a closed meeting determines which party to the grievance may request an open hearing. For example, when a teacher complained about an administrator and requested an open hearing under Texas Government Code section 551.074, the board refused
to hear the grievance in an open meeting. The board relied instead on Texas Government Code section 551.082, which gave the administrator, not the teacher, the right to request an open hearing, which he did not do. The teacher claimed that the board violated the OMA by holding the hearing in a closed meeting. The commissioner considered the competing exceptions to the OMA and concluded that the teacher’s election under Section 551.074 did not trump the board’s choice to meet in a closed meeting pursuant to Section 551.082. Conroy v. Nacogdoches Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 066-R10-503 (May 11, 2004). See also C.M.G. v. Mercedes Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 074-R5-603 (Sept. 27, 2006) (concluding board appropriately heard cheerleading grievance in closed session over the objection of the complaining student because it was necessary to protect the confidentiality of the other students).

Both hearing and deliberation in open: When a valid request for an open meeting is submitted, the board must conduct a public hearing and also deliberate about the matter in an open meeting, unless the officer, employee, or parent consents to the board’s deliberating in private. Corpus Christi Classroom Teachers Ass’n v. Corpus Christi Indep. Sch. Dist., 535 S.W.2d 429 (Tex. Civ. App.—Corpus Christi 1976, no writ).

However, the board may move from an open hearing to deliberate in closed meeting if the grievant fails to object. See United Indep. Sch. Dist. v. Gonzalez, 911 S.W.2d 118 (Tex. App.—San Antonio 1995), writ denied, 940 S.W.2d 593 (Tex. 1996) (per curiam) (no violation of OMA when student who demanded expulsion hearing be conducted in open session did not object to board deliberation in closed session); Bowen v. Calallen Indep. Sch. Dist., 603 S.W.2d 229 (Tex. Civ. App.—Corpus Christi 1980, writ ref’d n.r.e.) (teacher with right to demand open meeting had burden to object when board moved in to closed session and failure to do so constituted waiver).

Consultation with attorney: Even if a grievance presentation and deliberation at Level Three is held in an open meeting, the board may seek legal advice about the grievance from its attorney in a closed meeting. If this is likely to occur, the meeting agenda should specify that the board may go into closed session to consult with its attorney in accordance with Texas Government Code section 551.071, cited above. While in closed session to provide legal advice, the district’s attorney may not act as an advocate for either party to the grievance. Walker v. North East Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 035-R10-1111 (Aug. 30, 2013).

Superintendent in closed session: Unlike attorneys, there is no exception to the OMA that specifically allows superintendents to attend closed sessions. However, the attorney general has held that a school board may include individuals in executive session whose participation is necessary to the matter under consideration. “Given the superintendent’s pivotal role in the district, we believe a board of trustees may reasonably conclude that its superintendent’s presence is necessary at all executive sessions.” Tex. Att’y Gen. Op. No. JC-0375, at 2 (2001). The commissioner, however, has concluded that “[u]nless it can be shown that a superintendent’s presence is necessary in a closed board meeting where a grievance is being deliberated, the superintendent should not be in the closed meeting.” Walker v. North East Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 035-R10-1111, at 10 (Aug. 30, 2013).
How should the Level Three hearing be conducted?

TASB Policy provides the person filing a grievance to state their case and the administration a chance to respond at the hearing.

Limited process is due in a grievance: The vast majority of grievances and complaints do not involve the deprivation of a property or liberty interest. As a result, a district processing a grievance is usually not required to comply with the procedural requirements of the due process clause of the U.S. Constitution, including the right to present and examine evidence, call witnesses on the grievant’s behalf, and cross-examine adverse witnesses. Normally, the right to present a grievance is satisfied if the grievant has a chance to air his complaints to those in a position of authority. The district is obligated to hear the complaints (to “stop, look and listen”), but not necessarily to take action to rectify the matter. Corpus Christi Indep. Sch. Dist. v. Padilla, 709 S.W.2d 700, 704 (Tex. App.—Corpus Christi 1986, no writ) (quoting Prof’l Ass’n of Coll. Educators v. El Paso County Cnty. Dist., 678 S.W.2d 94, 96 (Tex. App.—El Paso 1984, writ ref’d n.r.e.)); Op. Tex. Att’y Gen. No. H-422 (1974).

No mini-trial required: A school board need not employ a formal procedure during its Level Three hearings. “The grievance process was made to be flexible. A board can make the process as informal or formal as it believes is appropriate as long as the required record is made.” Reeves v. Aledo Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 106-R10-496, at 9 (Aug. 6, 1999). Nevertheless, due to their adversarial nature, many Level Three hearings do take on a formal tone.

Administration’s response: In light of the “stop, look, and listen” standard articulated by the courts, one might conclude that the administration need not offer any response at the grievance hearing. While the grievant’s legal right to state their complaint would be satisfied without any response from the administration, the administration should nevertheless respond on the record. Why? Because, if the grievance is appealed, the commissioner will search the record for “substantial evidence” in support of the board’s decision. Tex. Educ. Code § 7.057(c). If the board upholds the administration’s decision, but the record contains nothing to support the decision, the board’s decision may be overturned for lack of substantial evidence.


In writing or in a hearing? Texas law does not guarantee the right to present a grievance to the board in both oral and written form. Eller v. Beaumont Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 194-R10-393 (Sept. 24, 1993). However, virtually all school districts’ grievance policies require that complaints be put in writing and that the district provide an opportunity for oral presentation at each level of the complaint.
Must the board record the Level Three hearing?

The board must make a recording of the Level Three hearing.


Hearing record: A record includes, at a minimum, an audible electronic recording or written transcript of all oral testimony or argument. Tex. Educ. Code § 7.057(f). In addition to the tape or transcript, “the record should include all correspondence between the district and the grievant concerning the grievance, and all documents or exhibits presented by either the grievant or administration to the board.” *Reeves v. Aledo Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 106-R10-496, at 7 (Aug. 6, 1999).

Reversal on appeal: Without a proper tape or transcript, the commissioner may decide that the record lacks substantial evidence to support the board’s decision and may automatically reverse the board on appeal. For example, in one case, a teacher appealed the denial of assault leave to the board, but the board failed to prepare a recording or transcript of the teacher’s Level Three grievance. Without a record, the commissioner could not engage in the substantial evidence review required by statute, so the commissioner ruled in the teacher’s favor. *Taylor v. Marshall Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 130-R10-297 (Dec. 11, 1997). *See also Castaneda v. Robstown Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 101-R10-702 (Apr. 6, 2004) (holding if the local record is incomplete and not sufficient to address the issues raised on appeal, barring exceptional circumstances, the commissioner must rule in grievant’s favor on those issues); *Reeves v. Aledo Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 106-R10-496 (Aug. 6, 1999) (holding district’s failure to provide a complete local record meant district’s decision was not supported by substantial evidence).

Technical issues: In some cases, the commissioner has chosen to remand, rather than reverse, a grievance for which there is not an adequate record based on extenuating circumstances, including the fact that a tape recorder malfunctioned. *Madigan v. Victoria Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 072-R10-06-2014 (Feb. 5, 2014) (remanding case with order to re-open record and conduct a second hearing due to good faith failure to record Level Three hearing). *See also Phillips v. Chapel Hill Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 002-R10-903 (May 14, 2010) (remanding case with instructions to hold another hearing because portion of record was inaudible not due to any intentional act of district). To avoid the need to hear a grievance twice a district that employs an audio recorder for its Level Three hearings is wise to test the equipment and use back up equipment to ensure a proper recording.

Records made in closed session: A district’s recording of a grievance proceeding in closed session is likely to contain highly sensitive personnel or student information; as a result, the tape recording should be treated as confidential and stored securely, similar to the certified agenda of the closed session. *See Tex. Gov’t Code §§ 551.103-104*. By law, it can be released to
the commissioner on appeal. Tex. Educ. Code § 7.057(c). If another party asks for a copy of the tape, consult legal counsel to determine which, if any, exceptions to the Public Information Act allow or require the district to withhold the recording. See, e.g., Fairchild v. Liberty Indep. Sch. Dist., 466 F. Supp. 2d 817 (E.D. Tex. 2006) (mem. op.) (ordering release of an audiotape of a closed meeting grievance under a protective order).

**What must the board do after the Level Three hearing has concluded?**

The board then considers and decides the grievance.

**What are the options?** Following the grievance hearing, the board may take one of several possible actions:

1. Grant the grievance and reverse the administration’s decision. If the decision underlying the grievance was one typically made by the administration, best practice may be to defer to the administration’s judgment unless the decision was made in a way that violated law, policy, or procedure. Consult your school district’s attorney as needed;

2. Deny the grievance and uphold the administration’s decision; or

3. Grant the grievance in part and modify the administration’s decision.


**Tough calls:** TASB Policy indicates that the board will reach a conclusion and communicate its answer to the grievant. If the board does not reach a decision, the lack of a decision upholds the administration’s decision at the preceding level. See Wilson v. Dripping Spring Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 006-R10-1011 (Dec. 19, 2013) (by taking no action within time period set in policy, the board denied grievance and affirmed Level Two decision).

**Appeals & Employee Protections**

**Can a grievance be appealed to the commissioner?**

Yes, in some cases. The commissioner of education’s jurisdiction over grievance appeals is limited by law.

**Subjects for appeal:** A grievant may appeal the school board’s decision to the commissioner of education if the person is aggrieved by actions or decisions of any school district board of trustees that violate: (1) the school laws of this state; or (2) a provision of a written employment contract between the school district and a school district employee, if a violation causes or would

**Time for appeal:** The grievant must file a petition for review with the commissioner within 45 calendar days of the date the board’s decision is first communicated to the grievant. When a decision is announced in the presence of the grievant or the grievant’s representative at the hearing, the announced decision constitutes communication to the grievant. 19 Tex. Admin. Code § 157.1049(a).

**Relief on appeal:** The commissioner’s authority to award relief in an appeal under Section 7.057 is limited. By rule, when deciding an appeal, the commissioner may only affirm, reverse, or remand a school board’s decision. 19 Tex. Admin. § 157.1073(h)(1), (2). State law does not authorize the commissioner to take independent action to remedy school board actions. Parent v. North East Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 023-R10-03-2022 (Sept. 15, 2022).

**Can a grievance be appealed to district court?**

If the commissioner lacks jurisdiction over the appeal, the grievant may attempt an appeal to district court. For example, in one case, an employee accused a school district of wrongful termination in retaliation for filing a workers’ compensation claim. After the school district denied the employee’s grievance, the employee filed suit in district court. The court ruled that the suit was proper because the commissioner of education lacked jurisdiction over complaints under the Texas Labor Code, as opposed to the Texas Education Code. Van Indep. Sch. Dist. v. McCarty, 162 S.W.3d 254 (Tex. App.—Tyler 2003), rev’d on other grounds 165 S.W.3d 351 (Tex. 2005).

**Are employees protected from retaliation for filing grievances?**

Employees are protected from retaliation by both law and policy.

**Policies prohibit retaliation:** TASB Policy 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. See, Kaplan v. City of Arlington, 184 F. Supp. 2d 553 (N.D. Tex. 2002), aff’d, 48 F. App’x 916 (5th Cir. 2002) (per curiam) (holding that 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.) (holding employee could bring retaliation claim founded on article I, section 27 of the Texas Constitution against district). 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)).
Grievance Checklist
Preparing for the Grievance Presentation at Level Three

- Confirm that the hearing date is reasonably acceptable to the trustees, parties, witnesses, and representatives. Try to resolve any scheduling problems by agreement.

- Ask the parties to estimate the amount of time they will need to present their evidence, then schedule appropriately. Try to reach an agreement as to appropriate time limits well before the hearing.

- Determine ahead of time whether the Texas Open Meetings Act (OMA) authorizes a closed meeting for this particular grievance. Identify which OMA exception applies and, therefore, which party to the grievance may have the legal right to opt for an open session. Consult your school attorney in making these decisions.

- With the advice of your school attorney, decide early on whether the board needs to retain another attorney for the limited purpose of advising the board during its hearing and deliberations on the grievance. Plan ahead, as scheduling may take several weeks.

- Post the meeting notice in compliance with the OMA notice requirements.

- Make sure that the trustees have received adequate documentation of the Level One and Level Two grievances in the board packet in time to review the material prior to the hearing.

Several days prior to the board meeting, confirm that the superintendent has arranged to have either: (1) reliable audio or audio/video recording equipment and adequate supplies or (2) a court reporter available to accurately record the grievance hearing. When using recording equipment, test the equipment the day of the hearing. If the board usually makes its official meeting record by audio recording, be sure to make a separate recording of only the grievance proceeding, in case it is necessary to send the recording to the commissioner on appeal.
Script for Grievance Presentation to Board

This guide reflects a relatively informal procedure for hearing grievances and can be used under most circumstances. In situations where the issues in a grievance are more complex, or if circumstances call for a more thorough hearing procedure, consult with your school district’s attorney before proceeding.

Begin either in open session or in a properly convened closed session, as appropriate. Begin making an audio recording or transcript of the hearing.

Board president or presiding officer: The next item on the agenda is the grievance presentation by [Grievant’s name], a [parent, student, employee, citizen] of the district. In order to provide an accurate record of this presentation, a recording is being made [by audio recorder, audio/video recorder, or certified court reporter]. For the record, the date is ________ and the time is ________.

(If appropriate) During this presentation, [Grievant] will be represented by __________. The administration will be represented by _____________.

On [date] [Grievant] filed this grievance. At Level One, the grievance was heard by [Administrator, e.g., the campus principal] on [date]. [Administrator, e.g., the campus principal] denied [Grievant’s] grievance on [date]. [Grievant] appealed that decision on [date].

At Level Two, the appeal was heard by [Administrator, e.g., the superintendent or designee] on [date]. [Administrator, e.g., the superintendent or designee] denied the appeal on [date]. [Grievant] appealed that decision to the board on [date].

The board has received copies of the complaint form and supporting documentation, the administration’s responses at Levels One and Two, the notices of appeal to Levels Two and Three, and any other documents or correspondence submitted in the course of this grievance.

This presentation will be conducted in the following manner. [Grievant or Representative] will have ___ minutes in which to make a presentation. This time limit includes all the time to present evidence, testimony, and argument in favor of [Grievant’s] position. The administration will then have ___ minutes to respond. Following the presentations, board members may ask questions of the parties or any witnesses. Any witnesses other than the grievant and the representative of the administration must appear voluntarily, and will remain outside the boardroom until called to testify. Are there any questions?

[Grievant or Representative], please introduce yourself and begin your presentation. The time is ___; you have until ___. (Presentation is made. If necessary, stop at time limit.) Thank you.
[Representative of the administration], please introduce yourself and begin your presentation. The time is ____; you have until ____. (Presentation is made. If necessary, stop at time limit.) Thank you.

Board members, do you have any questions? (Allow questions of the parties and any witnesses. Take care to keep questions and answers on point and to prevent either party from grandstanding or making more arguments to the board.) The presentations are now over. The time is _____. The board will now deliberate this grievance. (If you are in closed session, both parties and witnesses should be excused. If the hearing was held in open session, the board must deliberate in open session unless the party who opted for open session consents to a closed session deliberation. The board’s deliberation need not be recorded.)

(After returning to open session, if deliberation was in closed) Is there a motion regarding the disposition of the grievance of [Grievant]? (Board members may offer a motion and a second.) Is there any discussion on the motion? (After any discussion on the motion, a vote is taken and announced.) The motion has [passed/failed]. The grievance of [Grievant] is [granted/denied]. For the record, this announcement of the board’s decision is made in the presence of the grievant [and representative].

(Or, if no motion is made) Hearing no motion from the board, the board takes no formal action on the grievance.
Grievance Checklist
After the Grievance Presentation at Level Three

☐ If the board reached a decision, but the decision was not announced in the presence of the grievant, notify the grievant and/or the grievant’s representative in writing as soon as possible. The grievant’s deadline to appeal to the commissioner of education begins to run as soon as they receive notice of the decision.

☐ If no decision was reached, the board may consider the grievance and announce a decision at any time through the next regular board meeting. If no decision is reached by the end of the next regular board meeting, inform the grievant that the deadline to appeal begins to run at that time.

☐ If the presentation was held in closed session, be sure that the certified agenda accurately reflects the action taken by the board in open session.

☐ Securely maintain the record of the proceeding—including the audio or video recording, the court reporter’s transcript if any, the documents offered by the parties during the hearing, and the meeting minutes—in case the decision is appealed to the commissioner.

☐ Consult your school attorney if the employee or the parent requests a copy of the recording. Be sure that no one in the district inadvertently violates the Texas Open Meetings Act by disclosing any part of a closed meeting record.

When approving the minutes at the next board meeting, confirm that the minutes accurately reflect the decision made by the board, including, if applicable, that the decision was announced in the presence of the grievant.

For more information on this and other school law topics, visit TASB School Law eSource online at schoollawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the district’s own attorney in order to apply these legal principles to specific fact situations.

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