

# Regulation GBK

## Las Cruces Public Schools

**Related Entries:** GBK, GBKA, GBKA-R  
**Responsible Office:** Associate Superintendent for Operations

### STAFF CONCERNS/COMPLAINTS/GRIEVANCES

#### I. PURPOSE

To implement the policy of the Las Cruces Public Schools Board of Education policy with regard to the filing, processing and resolution of employee complaints.

#### II. BACKGROUND

- A. This policy is not intended to supersede evaluation or personnel actions, but rather to redress charges of violation, misinterpretation or inequitable application of school district policies, regulations and procedures.
- B. The Board of Education recognizes that most personnel difficulties encountered by employees arise from a lack of communication. This procedure is designed to provide a formal mechanism for promoting or restoring such communication so that problems may be resolved before far more serious difficulties result.

#### III. DEFINITIONS AND LIMITATIONS

- A. *Grievant* shall mean an employee who is personally and directly affected by a condition for which he or she seeks a resolution.
- B. A *grievance* shall be an allegation by an employee that the treatment he or she has received from a supervisor is unfair or improper, or that there has been a violation, a misinterpretation or an inequitable application of Board policy, administrative rules, or procedures, that directly and adversely affects the grievant. A single grievance may be submitted jointly by more than one grievant.
- C. *Resolution(s)* shall be the proposed written decision by the appropriate administrator(s), grievance review committee or Board, in response to the grievance.
- D. *Parties in interest* shall be the grievant and the supervisor or other employee(s) of the School District whose conduct or actions are the subject of the grievance.
- E. The following situations are not covered by this grievance procedure and are therefore not grievable under this policy:
  - 1. the discretionary act(s) of professional judgment relating to the evaluation of the work performance of any employee by his or her immediate supervisor, including the issuance of a Professional Growth Plan to address substandard work performance;
  - 2. any personnel decision made by the Superintendent of Schools, including, but

- not limited to, a refusal to reemploy, a discharge, a demotion, or any other action directly and adversely affecting the employment of an employee;
3. any personnel decisions made by the Superintendent relating to conducting a special employee evaluation, reductions in force, issuance of a Professional Development Plan, evaluations of licensure, performance of investigations of misconduct, placement on administrative leave with pay, transfer, reassignment and assignment of duties and responsibilities;
  4. any personnel decisions made by the Superintendent related to personnel actions regarding amendments to employee's contracts, employment agreements, and/or special increments addendum;
  5. situations in which the Superintendent and Board are without authority to act;
  6. situations in which the remedy for the alleged violation exclusively resides in some person, agency, or authority other than the Superintendent or Board;
  7. situations as to which a different procedure or remedy has been provided by the Board through policy, procedure or practice;
  8. situations as to which the procedure within the school district is prescribed by state or federal authority; and
  9. situations involving a grievance by a contractor with the school district.
- F. A grievance cannot be filed by a former employee after the effective date of resignation, termination or discharge of employment.
- G. Failure of the grievant to follow the procedure in the succeeding steps as listed below, use of improper petition forms, or use of a bypass procedure through any other means not listed in this process shall render the grievance null and void at the discretion of the Superintendent.
- H. Should a grievant file a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission, the Human Rights Division of the New Mexico Department of Labor or file a complaint with the Office for Civil Rights for the U.S. Department of Education regarding the matter to be grieved, the grievance will be dismissed without further action. The seeking of other remedies permitted by law or by a union collective bargaining agreement will render a grievance under this policy null and void.
- I. Once the grievance has been resolved or rejected, it may not be reinstated by the same grievant.
- J. A grievance is interpreted to be an unresolved individual issue rather than a group complaint. At no time may the grievance procedure be used as a ploy for "grieve outs" or multiple grievances at one time period by either individuals or groups--formal or informal.
- K. At the discretion of the Superintendent, a grievance may be place into grievance process at any step appropriate due to the alleged facts of the grievance or where

the level of management would be unable to resolve the grievance.

**IV. EMPLOYEE GRIEVANCE RESOLUTION PROCEDURE**

- A. The employee should initially attempt to resolve the complaint with the immediate supervisor. If the complaint cannot be resolved with the immediate supervisor, the employee may follow the chain of command to appeal decisions made by the supervisor and continue to attempt resolution of the complaint.
- B. Mediation will always be an acceptable form of resolution at any step in this process. Mediation may be requested by either party at any time, but will only be utilized by mutual agreement of the parties. The costs of mediation shall be shared by the parties or the school district, at the discretion of the Superintendent, may bear the total costs of mediation. All efforts will be made to locate and acquire the services of a person trained in mediation to act as a mediator. The parties must agree on the selection of the mediator.

**V. GENERAL PROCEDURAL REQUIREMENTS**

- A. A grievance must be initiated at Level 1, as provided in Section D, within 10 work days of the date upon which the grievant became aware of the circumstances which gave rise to the grievance.
- B. No persons shall suffer retaliation, recrimination, discrimination, harassment, or be otherwise adversely affected because of his or her use of this grievance procedure.
- C. Whenever possible, any grievance conference or hearing at any level shall be scheduled during a mutually convenient time that does not conflict with the regularly scheduled school program.
- D. A grievant requiring the attendance and testimony of other employees shall have the right to bring such witnesses as are willing to testify in his or her behalf, and any necessary substitutes or released time shall be provided and the expense borne by the School District when hearings must be scheduled during the school day.
- E. A separate file shall be maintained by the school district for grievances. All documents produced during the processing of a grievance shall be filed therein. All parties shall maintain confidentiality with regard to the proceedings and the resolution of the grievance shall not be made public unless agreed to by the grievant and the Superintendent, or unless the grievant pursues the matter beyond this policy. Nothing in this policy shall prevent the school district from using information from a grievance in defense of any legal action initiated against the school district, its administrators or employees.
- F. Nothing contained herein shall be construed to limit in any way the ability of the school district and the grievant to resolve any grievance by informal means, and nothing herein shall be construed as requiring resort to the formal procedures when grievable problems arise.
- G. A grievant may terminate the process at any level if he or she indicates in writing a desire to do so, accepts the resolution at that level, or fails to pursue his or her

grievance by filing at the next level within the specified time limit.

- H. All grievances shall be filed and processed on grievance forms prepared by the school district and available in the office of each principal or in the school district's central office.
- I. The time limits at any level may be extended by mutual agreement between the grievant, on one hand and the supervisor, superintendent, review committee or Board on the other.
- J. Under this policy, the grievant has no right to representation at any step of the grievance process, unless specifically provided for under a collective bargaining agreement, and the grievant has no right to electronically record any of the meetings or conferences held under this policy. The Supervisor or Administrator hearing the grievance at any level may permit at his or her discretion representation of the grievant or permit the electronic recording of the meeting at their respective level of the grievance only.
- K. Except as otherwise provided herein, unless a party can demonstrate prejudice arising from a departure from the procedures established in this policy, such departure shall be presumed to be harmless error.

## **VI. PROCEDURAL STEPS**

### **A. Level 1 (Informal Conference)**

Prior to the filing of a formal written grievance, the grievant shall first discuss his or her grievance with his or her immediate supervisor in a good faith attempt to resolve the grievance prior to the filing of a formal grievance. In the case of a claim of sexual harassment in which the grievant's supervisor is the subject of the claim, the grievant may initiate the grievance at the next supervisory level above that of the subject supervisor.

### **B. Level 2 (Supervisor)**

If the grievant is not satisfied with the discussion and disposition of his or her grievance at Level 1, he or she may file a written grievance with his or her immediate supervisor within 10 work days of the disposition. The immediate supervisor shall communicate his or her proposed resolution in writing to the grievant within five work days from the filing of the written grievance. Although no hearing or conference is required at this level, the immediate supervisor shall have the discretion to require a hearing or conference and gather such evidence prior to the preparation of the decision as he or she, in his or her discretion, feels would assist in any appropriate resolution of the grievance. The hearing or conference, if any, shall be as informal as possible and shall be conducted as the immediate supervisor, in his or her discretion, feels is appropriate for a full understanding of the grievance, the position of the grievant and the evidence supporting that position.

### **C. Level 3 (Superintendent)**

If the grievant is not satisfied with the resolution of the grievance at Level 2, or if

the supervisor fails to issue a proposed resolution within the time limit set forth above, the grievant may file the grievance with the Superintendent, within five work days after the resolution was rendered or was due, if none was received. The Superintendent shall conduct a closed informal hearing with the parties in interest to the grievance within five working days after receipt of the grievance. The hearing by the Superintendent shall be as informal as possible and shall be conducted as he or she feels is appropriate for a full understanding of the grievance. The Superintendent shall have the right to ask any questions of the interested parties as he or she deems necessary. Within five work days following the hearing, the Superintendent shall render his or her written proposed resolution to the grievant. In arriving at his or her decision, the Superintendent has complete discretion in fashioning such relief, if any, as it believes is appropriate, regardless of the relief requested. In all matters related to personnel decisions, the decision of the Superintendent with regard to the grievance shall be final.

D. Level 4 (Board of Education)

In instances in which determination of the grievance turns upon interpretation or construction of a Board policy or decision, if the grievant is not satisfied with the resolution of the grievance at Level 3 with regard to the specific issues available for Level 4 review, the grievant may make a written request to the Superintendent for a hearing with the Board of Education within five work days after the Superintendent's resolution was rendered or was due, if none was received.

The Board shall schedule an informal hearing within five work days of receipt of the grievance. The procedure for the hearing shall be as follows:

1. Each party in interest to the grievance shall have the opportunity to present oral statements limited to 10 minutes each. The presentation shall be limited to a review of evidence previously presented to the Superintendent, unless the Board, in its discretion, allows new evidence to be presented during the hearing. Evidence may not be cross-examined by the other party in interest.
2. Since grievances are “personnel matters” related to the employee the hearing may be conducted in an executive session, if the grievant so requests and the Board votes to close the hearing. The grievant may demand that the hearing be held in open session, in which case the hearing must be open.
3. The Board may make such inquiries of any party in interest as it deems necessary or appropriate.

E. The Board shall render a written decision within a reasonable time. In arriving at its decision, the Board has complete discretion in fashioning such relief, if any, as it believes is appropriate, regardless of the relief requested.

F. Grievance forms may be obtained from the Human Resources Department or any school district work site.



---

*Associate Superintendent for Operations*

May 19, 2010

---

*Date Approved*

**History:** Formerly Procedure 266, Revised 11.22.95, 10.17.00, 9.01.05.19.10