

# SCHOOL DISTRICT OF WAUPACA

**SERIES 500 PERSONNEL**

**CODE: 527R1**

## Employee Grievance Procedure

The purpose of this procedure is to provide for an internal method for resolving grievances under the terms of the *Employee Handbook* and any grievances related to employee discipline, termination, or workplace safety. A determined effort shall be made to resolve any grievance at the lowest possible level in the grievance procedure.

### Definitions

**Grievance:** A "grievance" is defined as any complaint that arises underneath the *Employee Handbook* regarding the interpretation, application or violation of the *Handbook*, including complaints related to employee discipline, termination or workplace safety.

**Grievant:** A "grievant" may be any employee or group of employees.

**Days:** The term "days" as used in this procedure shall mean the regularly scheduled workdays that the main District Office is open for business, unless otherwise indicated.

### **Grievable**

- Events:**
- (1) The first occurrence of a grievable event as to employee discipline is the employee's receipt of verbal or written notice of the imposition of specific discipline by the District; or, if no express notice of discipline is received, the occurrence of the event alleged by the employee to constitute disciplinary action. An investigation into a potentially disciplinary matter is not a grievable disciplinary event.
  - (2) The first occurrence of a grievable event as to employee termination means the employee's receipt of any written or verbal notice of termination of an individual's employment with the District. The effective date of the employee's termination is not a separate or new grievable event.
  - (3) A grievable event as to a workplace safety issue is the presence of an alleged safety issue in the workplace, whether ongoing, imminent, or reasonably likely to reoccur, that has not previously been grieved under this grievance procedure and determined not to be a safety hazard by a decision of a hearing officer or the School Board.

## **Termination, Discipline, and Workplace Safety:**

The terms "termination," "discipline" and "workplace safety" are intended to have only the limited meaning given to them under the state statutes that require the Board to create a grievance system addressing those issues. For purposes of clarity and as examples of issues that either are, or are not, grievable to an impartial hearing officer under this grievance procedure, the following shall apply:

- (1) "Discipline" refers to adverse employment actions taken due to misconduct, negligence, gross incompetence, or violations of law or policy. The term "discipline" shall not be interpreted to include a supervisor's performance evaluation of an employee; a performance improvement plan; any verbal or written notice of performance expectations; any verbal warning; or the placing of an employee on administrative leave with pay pending an investigation.
- (2) The term "termination" does not encompass all events that lead to a separation from employment. For example, the following personnel actions are not to be deemed "terminations" under the grievance procedure: (a) any voluntary quit, including resignation or retirement; (b) a job transfer or change in assignment; (c) a reduction in hours or in full-time equivalency; (d) non-reappointment to an extra-curricular or co-curricular assignment where other employment remains on-going; or (e) completion of assignment by any temporary, substitute, or similar limited-term employee. However, "termination" shall be construed to include instances where the District initiates an involuntary, complete and permanent severance of the employment relationship as a result of some type of affirmative misconduct (e.g., infractions of the rules or policies of the school district), negligence, job abandonment, or incompetence. Where separation from employment results from the District's use of specific statutory procedures for the nonrenewal of a fixed-term employment contract, such separation via nonrenewal is grievable as a "termination" only to the extent required by law.
- (3) The term "workplace safety" means a hazardous condition in the workplace, whether ongoing, imminent, or reasonably likely to reoccur, that an employee alleges (a) constitutes a violation of a workplace health or safety code, regulation, or standard; or (b) poses a recognized hazard likely to cause death or serious physical harm to the employee. It may include conditions of employment affecting an employee's physical health or safety, the safe operation of workplace equipment and tools, the safety of the physical work environment, personal protective

equipment, workplace violence, and training related to same. Further, a grievance over an alleged workplace safety issue under this grievance procedure is appropriate only if the grievance is filed by an employee who is presently affected by the issue, or who might reasonably in the future be affected by the issue (i.e., an employee otherwise lacking any interest in the issue may not file a grievance on behalf of another employee), and the issue presented by the grievance must be under the reasonable control of the District.

### **Time Limits**

The time limits set forth herein shall be considered as substantive, and failure of the grievant to file and process the grievance within the time limits set forth in the procedure shall be deemed a waiver and a settlement of the grievance. The number of days indicated at each level should be considered a maximum. The time limits specified may, however, be extended by the mutual consent of the District and the grievant.

If the grievance is initially brought forward in a timely manner pursuant to the timelines set forth below, the grievant and the District Administrator may, through voluntary mutual consent, agree to (1) start the grievance at a higher step than otherwise called for (e.g., in the case of a termination); or (2) skip a step.

### **Grievance Processing Procedure**

Grievances shall be processed in accordance with the following procedure:

#### ***Informal Resolution***

An earnest effort shall first be made to settle the matter informally between the employee and the immediate supervisor. The employee-grievant may initiate the process by submitting a written (or an email) request to his/her immediate supervisor for an informal meeting and discussion. Except for a current and ongoing workplace safety issue, the request shall be submitted within *10 days* after the facts upon which the grievance is based first occurred or should have reasonably become known. The request shall state at least the general issue that will be presented and discussed at the meeting, with the employee providing such further clarification as the immediate supervisor may request in order to prepare for the meeting. The informal meeting and discussion shall normally occur within *10 days* of the request, and may be attended by the employee and the employee's designated labor representative (if any) and at least by the immediate supervisor on the District side. The immediate supervisor shall notify the grievant and (if applicable and appropriate) the employee's representative of his/her proposed resolution of the matter within *10 days* of the meeting. If the matter cannot be resolved to the grievant's satisfaction or if no answer is provided in the above timeframe, the grievant(s) may file a formal written grievance.

(NOTE TO EMPLOYEES: Although a condition giving rise to a "workplace safety" grievance may be an ongoing condition that could be the basis for a grievance so long as the alleged condition persists, employees are expected to report dangerous conditions of which they have knowledge to a supervisor as soon as reasonably practical, even if they do not wish to pursue a grievance under these procedures.)

### **Step One – Formal Written Grievance**

If the grievance is not resolved informally, the grievant(s) shall file a formal written grievance with the immediate supervisor within *10 days* of the informal response above or after the facts upon which the grievance is based first occurred or should have reasonably become known. The written grievance shall include the requirements outlined in policy 527. The immediate supervisor shall respond to the grievance in writing within *10 days*. However, if there is an ongoing investigation related to the subject matter of the grievance, the immediate supervisor shall have until *10 days* after completion of the investigation to respond to the grievance. If the matter cannot be resolved or if no answer is provided in the above timeframe, the grievant(s) may file an appeal to the District Administrator.

If the grievant's immediate supervisor is the District Administrator, the grievant shall skip Step Three and proceed directly to Step Four if he/she is not satisfied with the response of the District Administrator at Step Two (or if no answer is provided in the above timeframe).

### **Step Two – Appeal to District Administrator**

If the grievance is not resolved at Step One, the grievant may appeal the written grievance to the District Administrator within *5 days* after the response at Step One or if no response is provided within *5 days* of the deadline for the response. The District Administrator, or his/her designee, shall meet with the grievant(s) and/or the employee's designated representative and the building principal or immediate supervisor within *10 days* after receiving the written grievance. The District Administrator, or designee, shall respond to the written grievance within *10 days* of the meeting or at a later date as determined by the District Administrator if further investigation is warranted. The District Administrator shall indicate in writing the disposition of the grievance and forward it to the grievant and (if applicable and appropriate) the grievant's representative. If a matter that involves discipline, termination or workplace safety cannot be resolved or if no answer is provided in the above timeframe, the grievant(s) may file an appeal to an impartial hearing officer in Step Three. Grievances involving any other issue may be appealed directly to the Board under Step Four, and the Board shall review the decision that the District Administrator issued.

### **Step Three – Appeal to Impartial Hearing Officer**

If a grievance related to discipline, termination or workplace safety is not resolved in Step Two, the employee must notify the District Administrator, within *10 days* after receipt of the District Administrator's answer or if no response is provided within *10 days* of the deadline for the response, if he/she intends to process the grievance to the designated impartial hearing officer. The impartial hearing officer will be selected and appointed by the Board unless the Board has pre-approved a list of one or more possible hearing officers and the Board President or the Clerk in the President's absence is able to confirm the availability of one of the pre-approved hearing officers.

If there is a dispute over the timeliness or the ability to use the grievance procedure on the issue, the administration shall have the discretion to bifurcate the hearing for the purpose of deciding those issues (e.g., address whether the grievance was filed in a timely manner before hearing the merits of the grievance or address whether the content of the grievance is properly before the impartial hearing officer).

The hearing officer shall meet with the parties at a mutually-agreeable date to review the evidence and hear testimony relating to the grievance. The hearing officer shall not be required to abide by the rules of evidence that would apply in civil or criminal court cases. For instance, he/she may choose to admit hearsay evidence and accord it such weight that it may be due. Upon completion of this review and hearing, the hearing officer shall render a written decision to the administration, the grievant, and (if applicable and appropriate) the grievant's representative.

A decision of the hearing officer shall be limited to the subject matter of the grievance. The hearing officer shall not modify, add to, or delete from the express terms of any policy or the *Employee Handbook*. The hearing officer may deny the grievance or conclude that the grievance should be sustained in whole or in part and recommend a remedy. The decision of the hearing officer and any recommendations contained therein are subject to review by the Board via a Step 4 appeal. If the hearing officer's decision is not appealed to the Board, it shall be implemented as the final decision in the matter.

### **Step Four – Appeal to School Board**

If the grievance is not resolved at Step Three (*or Step One or Two as applicable*), the grievance may be appealed to the Board within ten (*10 days*) after the decision at the prior step. The School Board shall, within thirty (30) days after submission of the appeal, schedule the review of the IHO's decision. Either the administration or the grievant may appeal an impartial hearing officer's decision to the Board. In the event that the District Administrator elects not to appeal an adverse decision of a hearing officer to the Board, the District Administrator shall provide the Board with notice of the hearing officer's decision and the reason(s) that the District Administrator decided against pursuing an appeal.

Generally, the Board's review of the grievance will be based upon (1) the record created through the immediately prior step; and (2) the presentation of argument to the Board via letter briefs and/or in-person statements at any meeting that may be scheduled for that purpose. The Board President shall have authority to establish any briefing schedule and coordinate the scheduling of any meeting that may involve the attendance of the parties. If either party wishes to present an exhibit or other evidence to the Board that was not presented at a prior step of the grievance process, the party must provide advance notice of such intent to the other party. Upon receiving a request for the consideration of additional evidence, the Board will decide at its discretion whether to accept and consider such additional evidence.

The Board's review of any factual findings and its review of any interpretation or application of law/policy from the preceding step of the process shall have distinct standards of review. The Board shall accord some deference to findings of fact submitted following an investigation or, if applicable, a hearing. However, the Board may (1) modify any such findings if, after reviewing the record and consulting with fact-finder to the extent the Board deems necessary, the Board concludes that the more reasonable view of the record calls for modification of one or more of the findings; or (2) remand the case for further factual development and (if necessary) revised conclusions/applications of law/policy; or (3) call for an additional hearing before the Board. In terms of any interpretation or application of law/policy and decisions as to appropriate remedies (if any), the Board shall apply a *de novo* standard of review, meaning that the decision(s) being appealed shall be accorded no particular deference.

The Board shall render a written decision that affirms, reverses, or modifies the prior decision. Such decision shall be rendered in a timely manner, usually within *20 days* following the last session scheduled for review. A copy of the decision shall be provided to the administration, the grievant, and (if applicable and appropriate) the grievant's representative. The Board's decision is final and is not subject to further appeal via this grievance procedure.

All Board actions throughout this process shall comply with requirements of Wisconsin's Open Meetings Law.

### **Grievances Filed by the District Administrator**

In the event a grievance is filed by the District Administrator, it shall be initially filed with the Board President and Board Clerk as a formal written grievance. Except for a current and ongoing workplace safety issue, the formal written grievance shall be submitted within *ten (10) calendar days* after the facts upon which the grievance is based

first occurred. The Board's initial determination of the grievance shall be considered a Step 2 decision and shall be made within *thirty (30) days* of the filing unless an investigation remains pending. All other notices provided by the District Administrator acting as a grievant shall similarly be filed with the Board President and Board Clerk.

### **Grievant's Right to Representation**

Any grievant who belongs to a labor organization may be represented at all stages of the grievance procedure by a labor representative of his/her own choosing, provided that arranging such preferred representation does not unduly delay the processing of the grievance. A grievant, at his/her own expense, shall also be permitted to be represented by a personal attorney at Steps 3 and 4 of the grievance process. The purpose of such representation is not to engage in any form of collective bargaining over any prohibited subjects.

### **Consolidation of Grievances**

Grievances of the same type, and with similar fact situations, may be consolidated at the discretion of the administration.

### **Group Grievances**

Group grievances are those that involve more than one employee and any of the following:

1. More than one work site;
2. More than one supervisor; or
3. An administrator other than the immediate supervisor.

Such grievances may be initially filed with the District Administrator; however, they shall follow the initial timelines for filing the grievance at Steps One and Two above (i.e., the District Administrator shall receive and process a timely request for informal consideration and any formal written grievance). The decision of the District Administrator regarding the formal written grievance, following any investigation deemed necessary by the District Administrator, shall be considered the Step 2 decision.

ADOPTED: 031417

REVISED:

REVIEWED:

LEGAL REFERENCE:

CONTRACT REFERENCE:

CROSS REFERENCE:

The School District of Waupaca is an Equal Opportunity Employer. The School District of Waupaca does not discriminate on the basis of sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional or learning disability.