

### **D.3.3.1 (Procedure) Employee Complaints**

Responsible Department: Human Resources, Legal

Based on Board Policy: [D.3.3 - Employee Complaints](#)

Approved: 4-28-09

Last Amended: 1-13-10

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#### **Purpose and Scope**

The purpose of this procedure is to provide an orderly process for the prompt and equitable resolution of employee complaints pursuant to Policy [D.3.3](#). This procedure applies to all benefited College District employees.

#### **Human Resources**

In this procedure "Human Resources" means the Associate Vice Chancellor for Human Resources or designee, or the Employment/Employee Relations Manager ("E/ER Manager") or designee, unless otherwise specified.

#### **General Provisions**

The College District intends that, whenever possible, complaints be resolved at the supervisory level closest to the situation. The College District encourages employees to discuss their concerns and complaints through informal conferences with their supervisor or other appropriate administrator. Even after initiating the grievance process, employees are encouraged to seek informal resolution of their concerns. An employee whose concerns are resolved may withdraw a grievance at any time.

In this procedure "grievance" means a written expression of dissatisfaction with the terms and conditions of work. For the purpose of this procedure, the terms "complaint" and "grievance" are the same and can be used interchangeably. A grievance under this procedure must clearly identify an issue regarding:

1. An employee's compensation for number of hours worked and overtime, compensatory time owed, and pay deductions;
2. Conditions of work other than dismissal and nonrenewal of contract employees;
3. Specific unlawful discrimination in employment decisions based on the employee's race, color, religion, gender, national origin, age, disability or veteran status; and
4. Specific adverse personnel actions based on the employee's good faith report to an appropriate law enforcement authority of a violation of a law by the College District or a College District employee. These are often called "whistleblower complaints" (see [D.3.2](#) and [D.3.2.2](#)).

The complaint may not involve a challenge to an existing policy.

This procedure does not apply when there is no law providing the right to grieve, or to situations for which the College District has established a separate internal appeal process. These situations include but are not limited to:

1. Violations of Title IX or ADA/Section 504 (see [D.2.1](#) and [D.2.1.1](#)).
2. Termination of tenured faculty and other term contract employees during the contract term (see [D.10.2.2](#) and [D.10.2.5](#)).

### **D.3.3.1 (Procedure) Employee Complaints**

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---

3. Nonrenewal of non-tenured term contract employees (see [D.10.2.3](#)).
4. Salary placement or pay grade classification or reclassification as the result of a compensation study (appeals procedures for compensation study implementations may vary, and will be announced in conjunction with the applicable implementation).
5. Complaints against a College District commissioned peace officer who is an employee of the College District related to conduct within the course and scope of his/her duties (contact the College District Police Department).
6. Harassment, including sexual harassment (see [D.4.5.1](#)).
7. Retaliation not covered by whistleblower laws (see D.3.2 and [D.3.2.1](#)).
8. Performance evaluations (see [D.7.1](#) and Human Resources [D.7.1.1](#)).

Personal problems, personality conflicts, or similar matters between employees will be addressed by appropriate administrative personnel rather than through the grievance procedure.

Complaints arising out of any event or a series of related events shall be addressed in one complaint. Employees shall not bring separate or serial complaints arising from any event or series of events that have been or could have been addressed in a previous complaint unless deemed appropriate by Human Resources.

When two or more complaints are sufficiently similar in nature and remedy sought to permit their resolution through one proceeding, the College District may consolidate the complaints.

The process described in this procedure does not create new or additional rights beyond those granted by law or policy, nor does the process require a full evidentiary hearing or "mini-trial" at any level.

#### **Freedom from Retaliation**

The College District shall not tolerate any form of retaliation against a person for bringing a concern or complaint ("grievant") or for cooperating with or participating in the grievance process ("participant"). The College District reserves the right to decline to indemnify or defend any employee who retaliates against another person in violation of this procedure. In the event an employee perceives retaliatory behavior, the employee, whether the grievant, participant, or observer, shall notify Human Resources immediately.

However, nothing in this procedure limits or delays the College District's right to take appropriate disciplinary actions, up to and including termination, when an employee's behavior warrants the action. Such action will not be stayed or put aside as a result of the employee filing a complaint.

Retaliatory behavior against a grievant or a participant (for example, a witness who is interviewed, or someone present at a grievance meeting to provide "moral support" to the employee filing the grievance) may include, but is not limited to, the following actions based on the filing of a complaint or participating in or cooperating with the grievance process: creating a

### **D.3.3.1 (Procedure) Employee Complaints**

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---

hostile work environment; making false, malicious or damaging comments about the grievant or participant; taking adverse personnel action against the grievant or participant; or threatening or intimidating the grievant or participant.

#### **Representatives**

The employee may designate a representative through written notice to the College District at any level of this process by submitting a completed Designation of Representative Form to Human Resources.

"Representative" means any person who or an organization that does not claim the right to strike and is designated by the employee to represent him/her in the grievance process.

If the employee designates legal representation with fewer than three days' notice to the College District before a scheduled conference or hearing, the College District may reschedule the conference or hearing to a later date in order to include the College District's counsel without forfeit of the conference or hearing because of timeliness. A College District employee, if named as the designated representative, shall be allowed to participate in the proceedings only if that employee is on approved vacation or personal leave, on approved leave without pay, or if the proceedings take place outside of the employee's duty hours.

#### **Whistleblower Complaints**

Employees shall file "whistleblower complaints" (for adverse personnel actions based on the employee's good faith report to an appropriate law enforcement authority of a violation of a law by the College District or a College District employee) within the time specified by law. Such complaints shall first be filed in accordance with *Level Three*. Time lines for the employee and the College District set out in this procedure may be shortened to allow the Board to make a final decision within 60 days of when the employee files the complaint (see [D.3.2.2](#)).

#### **Forms and Responses**

All forms required for the grievance process are available in the Human Resources office. The grievant shall submit the appropriate forms at each level of the grievance process, and shall attach copies of any documents that support the complaint or appeal. If the employee does not have copies of these documents at the time of filing, they should be presented as "new evidence" up to and including Level Three (see *New Evidence*).

"Response" means a written communication to the employee from the appropriate supervisory level. Hearing officers shall forward all responses to Human Resources for review. Human Resources shall send all responses and notices to the employee's address of record by certified U.S. Mail. As long as the grievance is pending, the employee who files a grievance agrees to, and shall accept, certified mail from the College District. Responses are timely filed if they are postmarked by U.S. Mail on or before the deadline.

As a condition of filing a grievance, an employee shall provide an address of record for grievance requests to be processed under this procedure.

### **D.3.3.1 (Procedure) Employee Complaints**

Responsible Department: Human Resources, Legal

Based on Board Policy: [D.3.3 - Employee Complaints](#)

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---

#### **Timelines**

"Days" means College District business days unless specified otherwise. In calculating time lines under this procedure, the day a document is filed is "day zero," and all deadlines are determined by counting the following day as "day one."

The timelines set forth at each level are maximums and, whenever possible, the decision maker should render a decision or resolution within a shorter period of time. Both the College District and the employee including the employee's representative shall strictly follow all time limits unless these are modified upon mutual written consent of the employee and Human Resources before the original time limit has expired. Time limits may be extended for circumstances such as unavailability of key personnel due to leave, absence or emergency closures, holidays, or semester breaks. When a mutual agreement cannot be reached, the Chancellor or designee may extend the time limits. In the event that verbal notice of such extension is the only practicable way to notify the employee of the extension, Human Resources shall send a written confirmation of the verbal notice to the employee as soon after giving verbal notice as practicable.

If a complaint form or appeal request is not timely filed, the complaint may be dismissed, on written notice from Human Resources to the employee sent by certified U.S. Mail to the employee's mailing address of record, at any point during the grievance process. Within 10 days after receiving notice of the dismissal, the employee may appeal the dismissal by submitting a completed Timeliness Appeal Form to Human Resources, starting at the level at which the complaint was dismissed. The employee shall limit the grounds for appeal to the issue of timeliness.

The College District shall make every practicable attempt to process grievances timely. Should it fail to do so, however, its untimeliness shall not constitute a violation of the employee's rights unless the action in question occurs more than 10 days after the time when, under this procedure and Policy [D.3.3](#), it should have occurred. By filing a grievance, a grievant accepts that the College District's failure to process the grievance timely cannot be used against the College District to resolve any ultimate matter of fact.

At Levels One, Two, and Three of the complaint process, if a decision or resolution has not been rendered within the allotted timeline, an employee may appeal to the next level of the complaint process.

A complaint shall be considered withdrawn if the grievant fails to pursue the complaint within the timelines specified in this procedure or agreed to by all parties.

The employee shall timely submit all complaints and appeals under this procedure in writing to Human Resources, using the approved Grievance Request and Appeal forms by hand-delivery or U.S. Mail. Hand-delivered filings are timely if received by Human Resources by the close of business on the deadline. Mail filings are timely if they are postmarked by U.S. Mail on or before the deadline.

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---

#### **New Evidence**

Either party may add new evidence at Levels Two and Three, provided the following conditions are met: (1) the party introducing the new evidence identifies it as “New Evidence,” and (2) the party introducing the evidence introduces it no later than three days prior to the conference with the appropriate hearing officer.

#### **Costs Incurred**

Each party shall pay its own costs incurred in the course of processing the grievance. The same rules shall apply as under the Texas Public Information Act for information requested from the College District by the employee or the employee’s designated representative. Those rules can be found at 1 Texas Administrative Code Part 5 C, [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=4&ti=1&pt=5&ch=111](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=5&ch=111).

#### **Withdrawal of Grievance**

The employee may withdraw the grievance at any point in the process by: (1) not filing a timely appeal to Human Resources for the next level hearing, or (2) providing written notification to Human Resources saying he/she wishes to withdraw the grievance. Human Resources shall confirm closure of the complaint by certified U.S. Mail to the employee’s address of record.

#### **Informal Resolution**

An employee wishing to initiate the grievance process shall request an informal resolution conference by submitting a completed Informal Resolution Conference Request form to Human Resources within 90 calendar days of the date the employee first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance.

The grievant shall be released from regular duties to attend scheduled conferences and shall suffer no loss of pay or other benefits. However, in no instance shall regular classroom instruction be interrupted.

Human Resources shall review the form. Human Resources may reject or return a form on the grounds that it does not identify a valid dispute for which this procedure applies or because no requested remedy has been identified. If Human Resources determines that the form identifies a valid dispute for which this procedure applies and a requested remedy has been identified, within five days after receiving the form Human Resources shall designate the informal resolution hearing officer ("hearing officer" means the supervisor or administrator designated to review the complaint, and to meet with and provide a response to the grievant) and send the form to the informal resolution hearing officer. The informal resolution hearing officer will normally be the employee's immediate supervisor, but may be the next managerial level closest to the situation.

### **D.3.3.1 (Procedure) Employee Complaints**

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---

Within three days after receiving the form from Human Resources, the informal resolution hearing officer shall send a copy of the form to the college President, or if the employee is a district services employee, to the appropriate Vice Chancellor or the Chancellor.

Within five days after receiving the form, the informal resolution hearing officer shall meet with the employee, and within five days after the meeting shall send a written response to Human Resources, with copies to the college President, Vice Chancellor, or Chancellor, as appropriate. Human Resources shall send the response to the employee within five days after receiving the response.

#### **Conference with Human Resources**

If the complaint was not resolved as a result of the informal resolution conference, within 10 days after receiving the informal resolution conference response from Human Resources, the employee may request a conference with the E/ER Manager or designee. The E/ER Manager or designee shall review the employee's concerns. After consultation with the college President or designee, or if the employee is a district services employee, the appropriate Vice Chancellor/designee or the Chancellor/designee, the E/ER Manager shall provide guidance to the employee on how to proceed, whether through the next level of the grievance process or referral for mediation.

#### **Mediation**

When both the College District and the employee agree that meeting face-to-face with the help of an experienced mediator, at no cost to the employee, may help resolve issues presented in the grievance, mediation may be used at any point in the grievance process. The College District shall incur ordinary costs associated with the mediation, including the cost of mediator services and the meeting location.

Once the employee and the College District have signed an agreement to mediate the dispute underlying the grievance, and as long as both sides are actively involved in trying to reach a resolution through mediation, all filing and action deadlines shall be put into suspense. If the mediation process does not result in an agreement, then the employee may resume the grievance process at the same step where he/she left it before agreeing to mediate the dispute. The business day following the mediation shall resume the filing "days."

To start the mediation process, either the employee or the E/ER Manager may request mediation. The E/ER Manager, in consultation with the Associate Vice Chancellor for Human Resources and General Counsel, will coordinate the mediation process. The employee and the College District shall jointly select the mediator from the list of certified mediators posted at <http://www.alamo.edu/district/legal/mediation.htm>.

### **D.3.3.1 (Procedure) Employee Complaints**

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The mediator serves as a neutral facilitator in the negotiation between the parties, helping them to develop a mutually acceptable resolution of the dispute. Mediation is intended to help reconcile the parties in conflict, not to perform an investigation or arrive at a “verdict” or assign blame. Mediation may continue as long as both parties think that progress is being made. If progress seems unlikely, the mediator may declare an impasse and call the proceedings to a close. Regardless of the outcome, the mediator shall report the results of the mediation to the E/ER Manager, while preserving the legal confidentiality of the mediation session.

If the mediation helps the parties to reach an agreement, then the employee may withdraw the complaint, concluding the grievance. All records of the mediation shall be kept as confidential documents in the Office of Legal Affairs.

#### **Level One**

If the informal level or mediation fails to resolve the complaint, the employee may initiate the formal grievance process by submitting a completed Level One Appeal form and any supporting documentation to Human Resources within 10 days after the conference with the E/ER Manager/designee or the mediation conference. Human Resources shall use all forms and documentation submitted to track and document the progress and resolution of the complaint.

Within five days after receiving the form, the E/ER manager or designee shall designate the Level One and Level Two hearing officers, notify the hearing officers, send the form to the Level One hearing officer, and follow the process beginning with "*Level One*" in this procedure.

The Level One hearing officer shall be at least one managerial level above the informal resolution hearing officer.

The Level One hearing officer shall review the employee's complaint and hold a conference with the employee within five days of receiving the Level One Appeal form, and shall provide a written response to Human Resources within 10 days after receiving the form. Human Resources shall send the response to the employee within five days after receiving the response.

#### **Level Two**

If the Level One response does not resolve the grievance, the employee may request a conference with the Level Two hearing officer to appeal the Level One decision by submitting a completed Level Two Appeal form and any supporting documentation to Human Resources within 10 days after receiving the Level One response. Human Resources shall send the form to the Level Two hearing officer within five days after receiving the form. The employee shall identify any new evidence to be considered at this level as "*New Evidence*" and shall submit the evidence to the Level Two hearing officer no less than three days prior to the conference.

1. The Level Two hearing officer shall hold a conference with the employee within five days after receiving the form, and shall provide a written response to Human Resources within five days after the conference. Human Resources shall send the response to the employee within five days after receiving the response.

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---

#### **Level Three**

If the Level Two response does not resolve the grievance, the employee may request a conference with the Chancellor or designee by submitting a completed Level Three Appeal form to Human Resources within 10 days after receiving the Level Two response. Human Resources shall send the completed form to the Chancellor or designee within five days after receiving the form. The employee shall identify any new evidence to be considered at this level as "New Evidence" and shall submit the evidence to the Chancellor or designee no less than three days prior to the conference.

The Chancellor or designee shall review the complaint and hold a conference with the grievant within 10 days after receiving the Level Three Appeal form. The Chancellor or designee shall have 10 days following the conference to provide a written response to Human Resources. Human Resources shall send the response to the employee within five days after receiving the response.

#### **Level Four**

If the Level Three response does not resolve the grievance, the employee may appeal the decision to the Board by submitting a completed Level Four Appeal form to Human Resources within 10 days after receiving the Level Three response.

Within 15 days of receiving the completed form Human Resources shall inform the employee in writing of the date, time, and place of the Board meeting at which the complaint will be on the agenda for presentation to the Board.

The Chancellor or designee shall provide the Board with copies of the complaint form, all responses, all appeal requests, and all written documentation previously submitted by the employee and the administration. The Board shall consider only those issues and documents presented at the preceding levels and identified in the appeal request.

The Board Chairperson or designee may set reasonable time limits and guidelines for the presentation. The Board shall hear the complaint and may request that the administration explain its previous decisions. The Board shall hear the complaint in executive (closed) session unless the employee requests that the complaint be heard in open session.

In addition to any other record of the Board meeting required by law, the Board shall prepare a separate record of the Level Four presentation. The Level Four presentation, including the presentation by the employee or the employee's designated representative, any presentation from the administration, and questions from the Board with responses, shall be recorded by audio recording, video/audio recording, or court reporter.

The Board shall then consider the complaint. It may give notice of its decision orally or in writing at any time up to and including the next regular Board meeting. The Board shall be the final authority in grievable matters.

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If for any reason the Board fails to reach a decision regarding the complaint by the end of the next regular meeting, the lack of a response by the Board upholds the administrative decision at Level Three.

#### **Records**

All forms, documents, correspondence and recommendations, and all video, audio, and written records of proceedings pertaining to the complaint and appeals, if any, shall remain the property of the College District and shall be maintained in the Human Resources file for the applicable retention period.

#### **Notice to Employees**

Human Resources shall inform employees of this procedure and Policy [D.3.3](#).

*Legal Reference - TACC Policy Reference Manual*

DGBA(LEGAL) - Personnel-Management Relations: Employee Complaints