

STUDENT RIGHTS AND RESPONSIBILITIES
STUDENT AND PARENT COMPLAINTS/GRIEVANCES

FNG
(LEGAL)

**United States
Constitution**

A district shall take no action abridging the freedom of speech or the right of the people to petition the board for redress of grievances. *U.S. Const. Amend. I, XIV* [See FNA]

A board may confine its meetings to specified subject matter and may hold nonpublic sessions to transact business. But when a board sits in public meetings to conduct public business and hear the views of citizens, it may not discriminate between speakers on the basis of the content of their speech or the message it conveys. *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995); *City of Madison v. Wis. Emp. Rel. Comm'n*, 429 U.S. 167, 174 (1976); *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968)

Texas Constitution

Citizens shall have the right, in a peaceable manner, to assemble together for their common good and to apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address, or remonstrance. *Tex. Const. Art. I, Sec. 27*

There is no requirement that a board negotiate or even respond to complaints. However, a board must stop, look, and listen and must consider the petition, address, or remonstrance. *Prof'l Ass'n of College Educators v. El Paso County Cmty. [College] Dist.*, 678 S.W.2d 94 (Tex. App.—El Paso 1984, writ ref'd n.r.e.)

Federal Laws

Section 504

A district that receives federal financial assistance, directly or indirectly, and that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973. *34 C.F.R. 104.7(b)*

Americans with
Disabilities Act

A district that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Code of Federal Regulations, Title 28, Part 35 (Americans with Disabilities Act regulations). *28 C.F.R. 35.107*

Title IX

A district that receives federal financial assistance, directly or indirectly, must adopt and publish grievance procedures providing for prompt and equitable resolution of student complaints alleging any action prohibited by Title IX of the Education Amendments of 1972. *34 C.F.R. 106.8(c)* [See FB and FFH]

Grievances

A board shall provide for procedures to consider complaints that a parent's right has been denied. *Education Code 26.001(d)(1)*

A board shall adopt a grievance procedure that complies with Education Code Chapter 26A under which the board shall address

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each grievance that it receives concerning a violation of a right guaranteed by Education Code Chapter 26 (Parental Rights), of a board policy, or of a provision of Education Code Title II.

Exceptions

The board is not required by the provision above or Education Code 11.1511(b)(13) (requiring adoption of a process to hear complaints) to address a grievance concerning a student's participation in an extracurricular activity that does not involve a violation of a right guaranteed by Education Code Chapter 26, of a board policy, or of a provision of Education Code Title II. This provision does not affect a claim brought by a parent under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) or a successor federal statute addressing special education services for a child with a disability.

Notice to Teacher or Employee

The grievance procedure must require that, for a complaint filed against a teacher or other employee, the school district provide notice of the complaint to the teacher or employee against whom the complaint was filed and sufficient opportunity for the teacher or employee against whom the complaint was filed to submit a written response to the complaint to be included in the record.

Education Code 26.011

Grievance Policy

The board shall adopt a grievance policy to address grievances received by the district. *Education Code 26A.001(a)*

Levels of Review

The policy must provide for the following levels of review, except as provided below:

1. Review by the principal of the district campus at which the grievance is filed or the principal's designee or, for a grievance that arises from subject matter unrelated to a campus, an administrator at the school district's central office;
2. If established by the policy, an appeal to an administrator at the school district's central office;
3. An appeal to the superintendent of the school district or the superintendent's designee; and
4. An appeal to the board of trustees of the school district.

A review or appeal on a grievance must be conducted by a person with the authority to address the grievance unless a preliminary hearing is necessary to develop a record or a recommendation for the board of trustees of the school district.

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[For requirements for determining level of review related to recusal of a district employee or board member, see General Requirements, below.]

Education Code 26A.001(b), (c)

*General
Requirements*

The policy must:

1. Prohibit the board or a district employee from retaliating against a student or parent of a student who files a grievance in accordance with the policy;
2. Require a person involved in reviewing a grievance under the policy to recuse himself or herself from reviewing the grievance if the person is the subject of the grievance;
3. Provide for a higher level of review if the person who would otherwise review the grievance is required to recuse himself or herself;
4. Provide for the creation and retention of a record of each hearing on the grievance, including documents submitted by the person who filed the grievance or determined relevant by school district personnel and a written record of the decision, including an explanation of the basis for the decision and an indication of each document that supports the decision;
5. Allow the person who filed the grievance to supplement the record with additional documents or add additional claims;
6. Allow for a member of the board to file a grievance with the district, but prohibit the member from voting on matters related to that grievance;
7. Allow for a remand to a lower level of review to develop a record at any time, including at the board level of review;
8. Require the district to direct a grievance that is filed with the incorrect administrator to the appropriate administrator and consider the grievance filed on the date on which the grievance was initially filed;
9. Require the district to issue a decision on the merits of the concern raised in the grievance, notwithstanding procedural errors or the type of relief requested;
10. Unless otherwise required by law, allow for a hearing or meeting at which the grievance will be discussed to be open or closed at the request of the person who filed the grievance; and

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11. For a grievance before the board, require that the person who filed the grievance be provided at least five business days before the date on which the meeting to discuss the grievance will be held a description of any information the board of trustees intends to rely on that is not contained in the record; and
12. For a grievance before the board, require the meeting at which the grievance is discussed be recorded by video or audio recording or by transcript created by a certified court reporter.

Education Code 26A.001(e)

Deadlines

Parental
Grievances

For a grievance filed by a parent of a student enrolled in the school district, the policy must provide:

1. Sixty days to file a grievance from the date on which the parent knew or had reason to know of the facts giving rise to the grievance; or
2. If the parent or person engaged in informal attempts to resolve the grievance, the later of 90 days to file a grievance from the date determined above or 30 days to file a grievance from the date on which the district provided information to the parent or person regarding how to file the grievance.

Appeal

The policy must provide at least 20 days to file an appeal after the date on which a decision on the grievance was made.

Hearings

For a hearing that is not before the board of trustees of the school district, the policy must require:

1. The district to hold a hearing not later than the 10th day after the date on which the grievance or appeal was filed; and
2. A written decision to be made not later than the 20th day after the date on which the hearing was held that includes any relief or redress to be provided and information regarding filing an appeal, including the timeline to appeal under this provision and Education Code 7.057, if applicable.

For a hearing before the board, the policy must require the board to:

1. Hold a meeting to discuss the grievance not later than the 60th day after the date on which the previous decision on the grievance was made; and

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2. Make a decision on the grievance not later than the 30th day after the date on which the meeting is held.

Education Code 26A.002

Board Committee The board may delegate the authority to hear and decide a grievance to a committee of at least three members composed only of members of the board. For purposes of an appeal to the commissioner under Education Code 7.057, a decision by the committee is a decision of the board of trustees. The policy requirements above apply to the committee in the same manner as those requirements apply to the board. *Education Code 26A.001(e)*

Report on Grievances A district shall annually submit to the Texas Education Agency (TEA) a report on grievances filed in the district during the preceding year. The report must include for each grievance the resolution of the grievance and any corrective action taken. *Education Code 26A.001(g)*

Not later than December 1 of each year, TEA shall post on the agency's website a report on grievances filed in school districts during the preceding year. The report must aggregate the data statewide and state the number of grievances filed, the number of grievances resolved and the resolution of those grievances, and any corrective actions taken. *Education Code 26A.001(h)*

Filing Procedures and Forms The board shall develop, make publicly available in a prominent location on the district's website, and include in the district's student handbook the procedures for resolving grievances; standardized forms for filing a grievance, a notice of appeal, or a request for a hearing under this chapter; and the method by which a grievance may be filed electronically.

Electronic Filing A district shall ensure that a grievance may be submitted electronically at the location on the district's website at which the information described above is available.

TEA Notification A district shall submit and make accessible to TEA the location on the district's website at which the information described above is available.

Education Code 26A.003

Commissioner Enforcement If a grievance is appealed to the commissioner under Education Code 7.057, the commissioner of education may:

On Appeal

1. Investigate an alleged violation of state or federal law regarding the confidentiality of student information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.

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Section 1232g), relating to the grievance and collaborate with relevant federal agencies in such an investigation; and

2. Take any action necessary to compel the district, the district's board, or a district employee to comply with the state or federal law.

Education Code 26A.001(f)

Determination of Retaliation

If the commissioner determines that a school district educator has retaliated against a student or parent of or person standing in parental relation to a student in violation of the policy requirement, above, the commissioner of education may report the educator to the State Board for Educator Certification for investigation. *Education Code 26A.001(i)*

Superintendent Testimony

If the commissioner of education finds against a school district under Education Code 7.057 in at least five grievances to which that provision applies involving the district during a school year, the superintendent of the school district must appear before the State Board of Education to testify regarding the commissioner's findings and the frequency of grievances against the district. *Education Code 26A.004*

**Denial of Class
Credit or Final Grade**

If a student is denied credit or a final grade for a class by an attendance committee, the student may appeal the decision to the board. *Education Code 25.092(d)* [See FEC]

**Complaints Against
Professional
Employees**

A person may not file suit against a professional employee of a district unless the person has exhausted the district's remedies for resolving the complaint. *Education Code 22.0514*

"Professional employee of a district" includes:

1. A superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, school counselor, nurse, and teacher's aide employed by a district;
2. A teacher employed by a company that contracts with a district to provide the teacher's services to the district;
3. A student in an education preparation program participating in a field experience or internship;
4. A DPS-certified school bus driver;
5. A member of the board; and
6. Any other person whose employment by a district requires certification and the exercise of discretion.

Education Code 22.051(a)

Finality of Grades

An examination or course grade issued by a classroom teacher is final and may not be changed unless the grade is arbitrary, erroneous, or not consistent with a district's grading policy applicable to the grade, as determined by the board.

A board's determination is not subject to appeal. This provision does not prohibit an appeal related to a student's eligibility to participate in extracurricular activities under Education Code 33.081. [See FM]

Education Code 28.0214

Closed Meeting

A board may conduct a closed meeting on a parent or student complaint to the extent required or provided by law. *Gov't Code Ch. 551, Subch. D* [See BEC]

Record of Proceedings

An appeal of a board's decision to the commissioner of education shall be decided based on a review of the record developed at the district level. "Record" includes, at a minimum, an audible electronic recording or written transcript of all oral testimony or argument. *Education Code 7.057(c), (f)*

It is a district's responsibility to make and preserve the records of the proceedings before the board. If a district fails to create and preserve the record without good cause, all substantial evidence issues that require missing portions of the record for resolution shall be deemed against the district. The record shall include:

1. A tape recording or a transcript of the hearing at the local level. If a tape recording is used:
 - a. The tape recording must be complete, audible, and clear; and
 - b. Each speaker must be clearly identified.
2. All evidence admitted;
3. All offers of proof;
4. All written pleadings, motions, and intermediate rulings;
5. A description of matters officially noticed;
6. If applicable, the decision of the hearing examiner;
7. A tape recording or transcript of the oral argument before the board; and
8. The decision of the board.

19 TAC 157.1073(d)