

PERSONNEL-MANAGEMENT RELATIONS:  
EMPLOYEE COMPLAINTS/GRIEVANCES

DGBA  
(LEGAL)

UNITED STATES  
CONSTITUTION

The 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*

The Board may confine its meetings to specified subject matter and may hold nonpublic sessions to transact business. But when the 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. *Rosenburger 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) [See DG]

TEXAS  
CONSTITUTION

Employees 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 the Board negotiate or even respond to complaints. However, the Board must stop, look, and listen and must consider the petition, address, or remonstrance. *Professional Association of College Educators v. El Paso County Community [College] District*, 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 CFR 104.7 (b), 104.11*

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 CFR 35.107, 35.140*

TITLE IX

A district that receives federal financial assistance, directly or indirectly, shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX of the Education Amendments of 1972. *34 CFR 106.8(b); North Haven Board of Education v. Bell*, 456 U. S. 512 (1982)

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GRIEVANCES  
CONCERNING WAGES,  
HOURS, CONDITIONS  
OF WORK

The prohibition against collective bargaining and strikes [see DGA] does not impair the right of employees to present grievances concerning their wages, hours of employment, or conditions of work, either individually or through a representative that does not claim the right to strike. *Gov't Code 617.005*

The term "conditions of work" should be construed broadly to include any area of wages, hours or conditions of employment, and any other matter that is appropriate for communications from employees to employer concerning an aspect of their relationship. *Atty. Gen. Op. JM-177 (1984)*; *Corpus Christi Fed. Of Teachers v. Corpus Christi ISD*, 572 S.W.2d 663 (Tex. 1978)

GROUP GRIEVANCES

The statute protects grievances presented individually or individual grievances presented collectively. *Lubbock Prof'l Firefighters v. City of Lubbock*, 742 S.W.2d 413 (Tex. App.-Amarillo, writ ref'd n.r.e. 1987)

REPRESENTATIVE

The District cannot deny an employee's representative, including an attorney, the right to represent the employee at any stage of the grievance procedure, so long as the employee designates the representative and the representative does not claim the right to strike. *Lubbock Prof'l Firefighters v. City of Lubbock*, 742 S.W. 2d 413 (Tex. App.-Amarillo, writ ref'd n.r.e. 1987); *Sayre v. Mullins*, 681 S.W.2d 25 (Tex. 1984)

RESPONSE TO  
GRIEVANCE

The District should meet with employees or their designated representatives at reasonable times and places to hear grievances concerning wages, hours of work, and conditions of work. The right to present grievances is satisfied if employees have access to those in a position of authority to air their grievances. However, that authority is under no legal compulsion to take action to rectify the matter. *Atty. Gen. Op. H-422 (1974)*; *Corpus Christi ISD v. Padilla*, 709 S.W.2d 700 (Tex. App.-Corpus Christi, 1986, no writ)

GRIEVANCES  
CONCERNING  
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 the District's grading policy applicable to the grade, as determined by the Board of the District in which the teacher is employed.

The Board's determination is not subject to appeal.  
*Education Code 28.0214*

OPEN MEETINGS ACT

The Board is not required to conduct an open meeting to hear a complaint or charge against an employee. However, the Board may not conduct a closed meeting if the employee who is the subject of the hearing requests a public hearing. *Gov't Code 551.074* [See BEC]

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CLOSED MEETING	The Board may conduct a closed meeting on an employee complaint to the extent required or provided by law. [See BEC]
DISRUPTION	It is a criminal offense for a person, with intent to prevent or disrupt a lawful meeting, to substantially obstruct or interfere with the ordinary conduct of a meeting by physical action or verbal utterance and thereby curtail the exercise of others' First Amendment rights. <i>Penal Code 42.05; Morehead v. State, 807 S.W. 2d 577 (Tex. Cr. App. 1991)</i>
RECORD OF PROCEEDINGS	<p>An appeal of the 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. <i>Education Code 7.057 (c), (f)</i></p> <p>It is the District's responsibility to make and preserve the records of the proceedings before the Board. If the 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:</p> <ol style="list-style-type: none"><li>1. A tape recording or a transcript of the hearing at the local level. If a tape recording is used:<ol style="list-style-type: none"><li>a. The tape recording must be complete, audible, and clear; and</li><li>b. Each speaker must be clearly identified.</li></ol></li><li>2. All evidence admitted;</li><li>3. All offers of proof;</li><li>4. All written pleadings, motions, and intermediate rulings;</li><li>5. A description of matters officially noticed;</li><li>6. If applicable, the decision of the hearing examiner;</li><li>7. A tape recording or transcript of the oral argument before the Board; and</li><li>8. The decision of the Board.</li></ol> <p><i>19 TAC 157.1073(d)</i></p>
WHISTLEBLOWER COMPLAINTS	Before bringing suit, an employee who seeks relief under Government Code Chapter 554 (whistleblowers) must initiate action under the District's grievance or appeal procedures relating to suspension or termination of employment or adverse personnel

Bellevue ISD  
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action. *Gov't Code 554.005 [See DG]*