

COMPLAINT AGAINST SCHOOL EMPLOYEE

It is the belief of the School Board that complaints may arise as the result of a misunderstanding which could be resolved through the mutual efforts of the person having the complaint and the employee involved. For that reason, efforts should be made by all parties involved to resolve the complaint at the lowest procedural level. It is only in those situations when the complaint cannot be resolved that the Board should be involved.

The purpose of this policy is to outline a procedure for addressing parent/student/public complaints about an employee's conduct, performance, or an employee's administration of a curricular, co-curricular or extra-curricular program. *Complaints related to sexual harassment, bullying, and instructional and library materials are addressed through other School District policies and not through this policy.*

When a complaint against a school employee is brought directly to an individual board member or the entire Board, the board member or entire Board may listen to the person's complaint but shall take no action unless there has been compliance with this Policy. The person bringing the complaint will be directed to the procedure as set forth below. The following procedure is designed to ensure the proper balance in protecting the rights of the person(s) bringing the complaint and the rights of the person against whom the complaint is made. It is only when the person having the complaint and the employee involved cannot resolve the problem, and the complaint cannot be resolved at the administrative level, will the Board and board members become involved.

COMPLAINT PROCEDURE

STEP 1: Initial Complaint

A. The person having a complaint ("Complainant") must initiate the complaint procedure within thirty (30) calendar days from the date the Complainant knew or should have known of the conduct of the Employee giving rise to the complaint. The person having the complaint related to a school employee must initiate the complaint procedure in one of the following ways:

- meet and discuss the concern with the Employee involved; OR
 - meet and discuss the concern with the Employee's Principal.
1. If the Complainant met with the Employee and the complaint was not resolved, the Complainant must meet and discuss the complaint with the Employee's Principal within ten (10) calendar days of the meeting with the Employee. The Principal shall complete a Complaint Form, Exhibit KL-E(1). The Complainant shall sign and date the Complaint Form verifying the accuracy of its content.
 2. If the Complainant initiates the complaint by meeting the Principal, the Principal shall complete a Complaint Form, Exhibit KL-E(1). The Complainant shall sign and date the Complaint Form verifying the accuracy of its contents.

- B.** Upon the Complaint Form being signed and dated by the Complainant, the Principal shall give a copy of the complaint to the Employee and schedule an informal meeting with only the Complainant, Employee and Principal present. At the meeting, the Principal shall attempt to facilitate discussion between the Complainant and Employee by seeking clarification of the issue(s) and seeking a resolution to the complaint. Should a resolution be obtained, the resolution shall be noted on the Complaint Form. Should a resolution not be obtained, the Complainant and/or the Employee may request a decision by the Principal on the merits of the complaint by making the request on the Complaint Form.
- C.** If the Principal is asked to make a decision on the merits of the complaint, the Principal has the authority to investigate the complaint beyond the information received from the Complainant and Employee during the meeting with the Complainant, Employee and Principal. The Principal shall render a decision in writing within fourteen (14) calendar days of the request for a decision on the merits of the complaint. The time frame for rendering a decision by the Principal may be extended by the Principal for good cause and upon written notification to the Complainant and Employee, which notification shall identify the reason for the extension and the date on or before which the decision shall be rendered. The Complainant and the Employee shall receive written notification of the Principal's determination/resolution.
- D.** The Principal's decision may be appealed by the Complainant or Employee to the Superintendent within (10) ten calendar days of receipt of the Principal's written decision pursuant to Step 2. If the Principal does not render a written decision within the required time frame (14 days unless extended) the Complainant or Employee may appeal to the Superintendent pursuant to Step 2.

Should the complaint be against a Principal, the Superintendent/CEO shall address the complaint through the procedure set forth in Step 1. An appeal by the Complainant pursuant to Step 1D may be filed with the School Board pursuant to Step 3.

Should the complaint be against the Superintendent/CEO (or the Principal who also is the Superintendent) the Complaint Form, Exhibit KL-E(1), shall be given to the Principal. The Principal shall give the Complaint Form to the School Board President or Chairperson. At the next School Board meeting, the School Board will designate a person who is not an Employee of the District to address the complaint through the procedure set forth in Step 1. An appeal by the Complainant pursuant to Step 1D may be filed with the School Board pursuant to Step 3.

STEP 2: Appeal to the Superintendent/CEO

The following procedure shall be used to address an appeal of the Principal's decision made in Step 1, or if the Principal failed to render a decision in the required time frame:

- A.** The appeal shall be in writing using Exhibit KL-E(2). The appealing party must attach the Complaint and the Principal's written decision, if a decision was rendered.
- B.** Upon receipt of an appeal, the Superintendent will provide a copy of the appeal to the other party. Within five (5) calendar days, the other party may submit a written response to the appeal. The Superintendent shall provide a copy of the response to the appealing party.

- C. In the Superintendent's/CEO's sole discretion, the Superintendent/CEO may (a) meet and discuss the matter with the Complainant and Employee, (b) meet and discuss the matter with the Complainant, Employee and Principal, or (c) meet and discuss the matter with the Principal.
- D. Within fourteen (14) calendar days from the date the appeal was filed with the Superintendent/CEO, the Superintendent/CEO shall render a decision in writing. The time frame for rendering a decision by the Superintendent/CEO may be extended by the Superintendent/CEO for good cause and upon written notification to the Complainant and Employee; the notification shall identify the reason for the extension and the date on or before which the decision shall be rendered. The Complainant, Employee and Principal shall receive copies of the decision. The Superintendent/CEO may uphold, reverse or modify the Principal's decision. The Superintendent/CEO may also refer the matter back to the Principal for further investigation. The Principal may uphold, modify or reverse his or her initial decision. After a matter has been referred back to the Principal, and the Principal rendered a second decision, that decision may also be appealed to the Superintendent/CEO.
- E. The Superintendent's/CEO's decision may be appealed by the Complainant to the School Board within (10) ten calendar days of receipt of the Superintendent's/CEO's written decision pursuant to Step 3. If the Superintendent/CEO does not render a written decision within the required time frame (14 calendar days unless extended) the Complainant may appeal to the School Board pursuant to Step 3.
- F. If the Employee believes the Superintendent's/CEO's decision constitutes a violation, misinterpretation or inequitable application of School Board policy or collective bargaining agreement applicable to the Employee, the Employee may file a grievance pursuant to the applicable grievance policy. A grievance filed pursuant to this provision shall be initiated at the Superintendent/CEO level.

STEP 3: Complainant's Appeal to the School Board

The following procedure shall be used to address an appeal of the Superintendent's/CEO's decision made in Step 2, or if the Superintendent/CEO failed to render a decision in the required time frame:

- A. An appeal to the School Board shall be in writing using Exhibit KL-E(3). The Complainant must attach the complaint, the Principal's written decision if a decision was rendered, the appeal to the Superintendent/CEO, the response to the appeal if any, and the Superintendent's decision if one was rendered.
- B. The appeal must be filed with the President/Chairperson of the School Board or Principal within ten (10) calendar days of Complainant's receipt of the Superintendent's/CEO's written decision, or within ten (10) days of the deadline for the Superintendent's/CEO's written decision, whichever comes first.
- C. Upon receipt by the Board President/Chairperson of an appeal by the Complainant, a copy of the appeal shall be given to the employee involved.
- D. Upon receipt of an appeal to the School Board, the School Board shall at its next meeting schedule a date, time and location for the appeal hearing.

- E. The following procedure shall be applicable at the appeal hearing before the School Board:
1. The School Board shall appoint a school board member or a person who is not an employee of the school district as the hearing officer.
 2. Within thirty (30) calendar days of an appeal being filed with the School Board, the School Board shall conduct a hearing in executive session.
 3. The Complainant, Employee and Superintendent/CEO each have the right to be represented at the hearing.
 4. The School Board shall make a verbatim record of the hearing by means of an electronic device or a court reporter. This record and any exhibits must be sealed and must remain with the hearing officer until the appeal process has been completed.
 5. The issue on appeal is whether the Superintendent's/CEO's decision should be upheld, reversed or modified by the School Board; in the absence of a decision by the Superintendent/CEO, the School Board will make a decision on the merits of the Complaint.
 6. All parties shall be given the opportunity to make an opening statement, with the Complainant being given the first opportunity, followed by the Employee and then the Superintendent/CEO.
 7. The Complainant shall present his or her case first, and the Employee shall then present his or her case. Both parties shall have the opportunity to ask questions of the other's witnesses. The hearing officer and school board members may ask questions of any witness.
 8. After the Complainant and the Employee have presented their respective cases, the Superintendent/CEO shall then present the basis of his/her decision which led to the appeal, if a decision was rendered. The Complainant and Employee shall have the opportunity to ask the Superintendent/CEO questions. The hearing officer and board members may also ask questions of the Superintendent/CEO.
 9. Unless a witness is a party to the appeal, witnesses may be present only when testifying unless the Hearing Officer rules otherwise. All witnesses must take an oath or affirmation administered by the School Board President/ Chairperson, Hearing Officer or other person authorized by law to take oaths and affirmations.
 10. The Hearing Officer shall admit all relevant evidence. The Hearing Officer may limit unproductive or repetitious evidence. The strict rules of evidence do not apply. *Moran v. Rapid City Area School Dist., 281 N.W.2d 595. 602 (S.D. 1979)* ("This [school board hearing related to teacher contract nonrenewal] does not mandate nor necessitate the use of strict evidentiary rules.").
 11. Both parties shall be given the opportunity to make a closing statement, with the Complainant having the first opportunity, followed by the Employee, and then the

Superintendent/CEO. The Complainant shall be given the opportunity for a brief rebuttal.

12. After the evidentiary hearing, the School Board shall continue to meet in executive session for deliberations. No one other than the Hearing Officer may meet with the Board during deliberations. During deliberations, the Board may seek advice from an attorney who did not represent any of the parties in the hearing. Consultation with any other person during deliberation may occur only if a representative of the Complainant, Employee and Superintendent/CEO are present. The Board may, in its sole discretion, continue the proceedings and make a final decision on the appeal at a later date.
13. Within twenty (20) calendar days of the hearing, the School Board shall render its decision and issue its written Findings of Fact, Conclusions of Law and Decision. The time frame for rendering a decision may be extended by the Board President for good cause and upon written notification to the Complainant, Employee and Superintendent/CEO. The notification shall identify the reason for the extension and the date on or before which the decision shall be rendered.

The decision of the School Board must be based solely on the evidence presented at the hearing and must be formalized by a motion made in open meeting. The Board will reconvene in open session. The Board may uphold, reverse, or modify the Superintendent's decision, or render a decision on the merits of the Complaint in the absence of a Superintendent's/CEO's decision.

Findings of Fact, Conclusions of Law and Decision, consistent with the Board motion, shall be in writing and approved by the Board. The Complainant, Employee, Principal and Superintendent will receive copies after the Findings of Fact, Conclusions of Law and Decision are approved by the School Board.

15. If the Complainant is dissatisfied with the School Board's decision, the Complainant may appeal the decision by filing an appeal to the circuit court pursuant to SDCL Ch. 13-46.

Legal References:

ARSD 24:08 Professional Teachers Ethics
ARSD 24:11 Professional Administrators Ethics
SDCL 13-10-2 General power of school boards to employ personnel
SDCL 13-32-6 Distribution of school as a misdemeanor
SDCL 13-46 Appeals in school matters
SDCL 13-8-39 Management of schools by board – general powers

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