

SECTION 116 GRIEVANCE PROCEDURE**EMPLOYEE GRIEVANCE POLICY AND PROCEDURE****Grievance Procedure****1. Purpose**

The purpose of this Grievance Procedure is to provide a way for employees of the Portage Community School District (employer) to resolve grievances concerning discipline, termination, or workplace safety.

This Grievance Procedure is intended to comply with Wis. Stat. § 66.0509(1m). This procedure does not create a contract of employment, and does not change an employee's employment status. Employment disputes that are covered by state or federal statutes and/or administrative enforcement mechanisms are not covered by this Procedure.

2. Definitions

“Grievance” means a written complaint related to the discipline or termination of an employee or to “workplace safety.”

“Days” means calendar days.

“Employee termination” shall be narrowly construed to mean a separation from employment by the employer for disciplinary or performance reasons. “Employee termination” does not include layoff, failure to be recalled from layoff, furlough or reduction in workforce, administrator or teacher nonrenewal for the purpose of the elimination of a position or a reduction in staff, job transfer, non-disciplinary demotion, reduction in or elimination of position, resignation, voluntary quit, abandonment, end of employment due to disability, retirement, or death, and end of employment and/or completion of assignment of limited term, temporary, seasonal, substitute, or part-time employees, including co-curricular contracts.

“Employee discipline” shall be narrowly construed to mean a suspension without pay, or a demotion or reduction in rank, pay, or other benefits, imposed by the employer for disciplinary reasons. “Employee discipline” does not include oral or written reprimands, performance evaluations, performance improvement plans, termination, non-renewal of teacher contracts under Wis. Stat. §118.22, non-renewal of administrator contracts under Wis. Stat. §118.24, layoff, failure to be recalled from layoff, furlough or reduction in workforce, administrative leave or suspension with pay, or any other employment action such as wage, benefit or salary adjustments, or change in assignment, which are taken for a nondisciplinary reason.

“Workplace safety” shall be narrowly construed to refer to (1) an existing condition that substantially endangers an employee’s health and safety; or (2) any workplace policy or procedure established by state or federal law or the Board to protect the safety and health of employees in the District which is alleged by an employee to have been violated and to have substantially adversely affected the employee’s safety at a District workplace.

3. Time Limits

If the grievant fails to comply with any time periods or other procedures of this policy, the grievance will be deemed resolved and the grievant shall have no further right to pursue or appeal a grievance decision. If the employer fails to comply with any time periods or other procedures of this policy, the grievant may advance the grievance to the next level, and there shall be no other consequence or remedy for the employer’s failure to comply with any time periods or other procedures. A grievance may be withdrawn by the employee at anytime. Once a grievance is withdrawn, it cannot be reopened or re-filed. The parties may mutually agree to extend any time deadline. Such extensions shall be non-precedential.

4. Termination of an Employee with a Contract for a Definite Term

A. Termination of an Employee with a Contract for a Definite Term. The procedure for terminating an employee where there is an expectation of continued employment, because of the existence of a contract for a definite term, a “cause” standard or another basis in law or fact, is as follows:

1. The District Administrator or designee (or in the case of the termination of the District Administrator, an individual designated by the Board President) shall notify the employee, in writing, that he/she intends to recommend that the Board terminate the employee’s contract and the basis for that recommendation.
2. The Board shall provide the employee with such due process as is required by law in making its decision on the termination recommendation.
3. In making its decision on the recommendation, the Board shall apply the standard established in contract for termination of the contract or, if no standard is set forth in the contract, shall determine whether good and sufficient cause exists for termination of the contract. "Good and sufficient cause" is defined to include, but not be limited to, incompetence or substantial negligence in the performance of job duties or obligation; failure or refusal to perform job duties or obligations; a material violation of state or federal law; violation of Board policies or the employee’s job description; dishonest, immoral, fraudulent or criminal conduct or any similar conduct.

3. The Board shall inform the employee in writing of its decision regarding the termination recommendation. If the employee wishes to appeal a termination decision, the employee must file an appeal requesting an “Impartial Hearing” at Step 5.D. of this Grievance Procedure by filing a grievance form with the Board President within seven (7) days of receiving written notice of termination. If no appeal is filed, the Board’s decision shall be final.
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- B. Non-Renewal of a Teacher or Administrator Contract Governed by §§ 118.22 or 118.24. The procedures for non-renewal of a teacher or administrator contract set forth in Wis. Stat. §§ 118.22 and 118.24, respectively, shall be followed, if applicable. If the Board non-renews the contract of a teacher or administrator for reasons other than the elimination of the position or a reduction in staff, pursuant to Wis. Stat. §§ 118.22 or 118.24, and the teacher or administrator wishes to appeal the non-renewal decision, the teacher or administrator shall file an appeal requesting an “Impartial Hearing” at Step 5.D. of this Grievance Procedure by filing a grievance form with the Board President within seven (7) days of receiving final, written notice of non-renewal from the Board. If no appeal is filed, the Board’s decision shall be final.

5. Process

- A. Written Grievance Submission. Only the employee who is subject to the discipline or termination or directly impacted by the issue of workplace safety may file a grievance. The employee must file a grievance within seven (7) days of the date the employee knew or reasonably should have known of the termination, employee discipline or workplace safety issue. The grievance must be in writing on the Employee Grievance Form. On the form, the grievant shall: (1) identify the category of grievance (i.e., termination of an employee without a contract with a definite term, discipline, or workplace safety); (2) identify the facts supporting the grievance; (3) specify the policy, rule, regulation, or law alleged to have been violated, and the rationale supporting the grievance; and (4) describe the relief requested. The grievance must be given to the District Administrator. If the grievant is the District Administrator, the grievance must be given to the Board President.
- B. Representatives. Any party involved in the grievance may have a representative present at all levels once the grievance has been filed in writing.
- C. Administrative Decision. The District Administrator shall act on the grievance within fourteen (14) days of receipt of the written grievance, unless the District Administrator is the Grievant in which case the response shall be provided by the Board. The written response shall contain a statement of the basis for the decision to sustain or deny the grievance, and, if denied, the deadline for the Grievant to appeal the grievance to an Impartial Hearing Officer (“IHO”).

- D. Impartial Hearing. If the grievant wishes to appeal the administrative decision or Board decision described in section 4. A. or B. above, the grievant must file a written appeal with the Board President within seven (7) days of receipt of the administrative decision or Board decision requesting a hearing before an IHO. The hearing shall take place within a reasonable time. The IHO shall file a written decision within thirty (30) days after the hearing is concluded, including any post-hearing briefing period, unless the IHO notifies the parties that more time is needed and provides the reasons for the extension. Additional information regarding the Impartial Hearing process is found in section 6 below.
- E. Appeal of IHO's Decision. If either party is aggrieved by the decision rendered by the IHO, the aggrieved party may file a written appeal with the Board within ten (10) days of receiving the IHO's decision. If no appeal is filed within ten (10) days, the decision of the IHO shall become final. Additional information regarding the Board's review on appeal of an IHO's decision is found in section 7 below.

6. Procedure for Impartial Hearing.

- A. Standard of Review. The standard of review to be applied by the IHO to an administrative/Board decision, including a Board decision under Section 4. A. or B., above, shall be based on the following:
 - 1. The review of a Board decision to terminate an employee under Section 4.A., above, shall require deference to the Board's decision and be upheld if it has a reasonable basis in fact.
 - 2. The review of an administrative decision to terminate or discipline an employee under any other circumstance or to non-renew an employee's contract under Section 4.B., above, shall require deference to the administrative/Board decision. The administrative/Board decision shall be upheld if it is not "arbitrary and capricious," which shall be defined as an action which is either so unreasonable as to be without rational basis or the result of unconsidered, willful, or irrational choice.
 - 3. The review of an administrative decision concerning a workplace safety grievance shall require deference to the administrative decision. The decision shall be upheld if it is not "arbitrary and capricious," which shall be defined as an action which is either so unreasonable as to be without rational basis or the result of unconsidered, willful, or irrational choice.
- B. Impartial Hearing Officer. The IHO shall not be an officer, agent or employee of the Board at the time of appointment. The Board shall appoint the IHO.
- C. IHO Responsibilities and Authority. The IHO shall do the following:

1. Screen the grievance and determine whether it falls within one of the categories subject to the Grievance Procedure and whether it has been timely filed.
2. Provide reasonable notice to the parties of the time and location for the hearing.
3. When requested by either party, subpoena witnesses as necessary to ensure their testimony.
4. Make evidentiary findings and conclusions. In the case of a grievance related to a termination or discipline, the IHO shall determine whether a full evidentiary hearing is needed to afford the employee the requisite due process, and, if so, shall allow the grievant to present evidence, call and question witnesses, cross-examine adverse witnesses, obtain copies of evidentiary materials and argue his or her case. The rules of evidence shall not apply at any hearing; however, depending on the nature of the hearing, a material fact may not be supported solely by hearsay evidence. Additionally, the IHO may exclude or limit irrelevant, repetitive, or redundant evidence or any evidence lacking probative value. The IHO shall act so as to provide a speedy and inexpensive resolution of any appeal brought before the IHO.
5. If the grievance is sustained in whole or in part, determine the appropriate remedy, provided, however, that the IHO may not award attorneys fees or litigation expenses against the Board at any time.
6. The IHO shall only consider the precise issue(s) submitted on the grievance form and letter of appeal, if applicable, shall apply the applicable standard of review, and shall have no authority to determine any other issue.
7. The IHO has no authority to make any decision which requires the commission of an act prohibited by law.
8. The hearing shall be recorded. The IHO shall consider whether to engage a court reporter in lieu of recording the hearing. The grievant may request the opportunity to have the hearing conducted in open session, subject to such other legal requirements relating to confidentiality or privacy which may apply to the subject matter of the hearing.
9. The IHO shall issue a written decision no more than thirty (30) days after the hearing is concluded, including any briefing period, unless the IHO notifies the parties that more time is needed and the reasons therefore.

10. The IHO shall inform the parties that an appeal of the decision may be taken to the Board if filed within ten (10) days of the receipt of the IHO's decision, and that if no timely appeal is filed, the IHO's decision shall become final.

7. Procedure for Board Review on Appeal of IHO's Decision.

- A. If either party is aggrieved by the IHO's decision, either party has the right to file a written appeal with the Board within ten (10) days of receiving the IHO's decision. If no timely appeal is filed, the IHO's decision shall become final.
- B. The Board President shall provide the parties with ten (10) days notice of any meeting scheduled by the Board to hear the appeal.
- C. The Board shall review the grievance on the record established by the IHO. Each party may make a brief oral presentation to the Board to summarize the party's position as to whether the IHO decision should be sustained, modified or reversed. No factual evidence or argument not presented to the IHO for consideration shall be presented to the Board for review. The appeal meeting shall be held in closed session. If the Board determines more information is necessary to make a decision, it may remand the matter to the IHO for further proceedings.
- D. The Board may affirm, reverse, or modify the IHO's decision. The IHO's decision may be reversed or modified if the decision was:
 1. In excess of the district's statutory authority or jurisdiction;
 2. Based upon improper application or interpretation of Board policies or handbook provisions;
 3. Unsupported by relevant evidence to support the conclusion or is otherwise erroneous;
 4. So unreasonable as to be without a rational basis or the result of unconsidered, willful or irrational choice;
 5. The result of an inappropriate application of the standard of review by the IHO;
 6. Beyond scope of review of IHO; or,
 7. In contravention of public policy considerations.
- E. Procedural errors, which do not have a substantial effect on the rights of the parties, shall not be grounds for reversal of any decision.

- F. The Board's decision shall be final. The Board shall send the grievant and the District Administrator a written statement of its decision within a reasonable time after hearing the appeal.

LEGAL REFERENCE: Wis. Stat. § 66.0509(1m)
Wis. Stat. § 118.22
Wis. Stat. § 118.24

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EMPLOYEE GRIEVANCE FORM

Employee Name: _____ Date: _____

Please identify the category of your grievance (circle one):

Termination Discipline Workplace Safety

Are you an employee with a contract? Yes No

Describe your attempts to resolve your complaint informally (if applicable).

Identify the facts that support your grievance.

Specify the policy(ies), rule(s), regulation(s), and/or law(s) that you believe has/have been violated.

Describe the relief that you are requesting.

If you require additional space, please attach additional sheets to this form.