

## CHAPTER 10: PROBLEM SOLVING PROCEDURE

### 10.1 PROBLEM SOLVING PROCEDURE (Bargaining Unit Employees Refer to Contract)

#### 10.1.1 Terms and Conditions

- A. Problem - an alleged misapplication, misinterpretation or violation of existing rules and regulations of the Ocean View School District.
- B. A decision rendered at any step in the procedure becomes final unless appealed within time limits specified or any extension mutually agreed upon.
- C. There is an obligation on the part of the employee having a problem to make known the existence of any complaint and the facts pertaining to it within twenty (20) working days of a specific or documented incident or at the earliest possible date after recognition of a non-specific occurrence.
- D. Exclusions: Matters excluded from the problem solving procedure shall be:
  - 1. Written charges recommending suspension, demotion, or dismissal.
  - 2. Performance evaluations the employee deems unjust or unfair.
  - 3. Accusatory charges relating to the moral or professional fitness of an employee.
  - 4. Complaints about subject matter of a rule, policy, or administrative procedure (rather than administration or interpretation). Employees with such complaints should direct any suggestion for change to the appropriate authority.
  - 5. Matters subject to the grievance procedure set forth in any collective bargaining agreement between the District and its classified employees.

#### 10.1.2 Informal Procedure

In order to promote harmonious relationships, open communications, and prompt response to employee concerns, every effort shall be made to resolve problems as promptly as possible and at the first level of supervision through the informal procedure.

- A. STEP I  
Informal complaints, written or oral, shall be submitted to the employee's immediate supervisor.

An informal discussion between the supervisor and the employee shall take place no later than five (5) working days after submission of the problem.

B. STEP II

If the problem has not been resolved at the immediate supervision level, the employee may, within five (5) working days, request either orally or in writing that an informal review be made by the Department Head.

The Department Head shall attempt to hold a conference with the parties concerned within five (5) working days after receipt of the request for informal review. After the conference, the Department Head shall render a decision within five (5) working days.

10.1.3 **Formal Procedure**

A. STEP III

If the problem is not settled through informal discussion or at the Department Head level, the employee may formally submit a complaint in writing within five (5) working days after receipt of decision from the Department Head, requesting a review of the problem by the Assistant Superintendent, Human Resources.

The written request shall contain the following:

1. A clear, concise statement of the complaint.
2. Act or condition on which it is based.
3. Course of action that has been followed.
4. Reasons why the decision, if any, is being appealed.
5. Persons involved.
6. Remedy desired.
7. Copies of any documents considered appropriate to the problem.

The Assistant Superintendent, Human Resources shall hold a conference with all interested parties within five (5) working days of receipt of the letter unless there is mutual agreement that more time shall be allowed.

The Assistant Superintendent, Human Resources following a review of the problem shall render a decision within 15 days unless there is mutual agreement that more time shall be allowed.

B. STEP IV

If the employee is dissatisfied with the decision from the Assistant Superintendent, Human Resources the employee may submit a written request for a review to the Superintendent. If after a review by the Superintendent, the employee is still dissatisfied, the employee may appeal directly to the Board of Trustees for review and/or hearing.

After the Board has reviewed the problem, it shall notify the Superintendent and the individual as soon as possible. The decision of the Board shall be final and conclusive.

## **10.2 PROCEDURES FOR VIOLATION OF PERSONNEL COMMISSION RULES AND REGULATIONS**

### **10.2.1 Violations of Rules**

#### **A. Filing**

A charge that the District, an employee organization or its representatives or members, individually or in concert with others, has engaged in or is engaging in any violation of Commission rules or Education Code provisions applicable to merit system districts may be filed by a management representative, by a representative of any employee organization, or by an individual employee or group of employees. Such charge shall be filed in writing in a manner prescribed by the Commission, shall be signed, and shall contain a declaration by the person signing, under penalty of perjury, that its contents are true and correct to the best of his/her knowledge and belief. The charging party will be expected to support its charge.

A charge shall be deemed untimely and subject to dismissal to the extent that it is filed with the Commission in excess of thirty (30) days following occurrence or discovery of the alleged act or acts on which the charge is based. This rule shall not be subject to the waiver of time requirements.

#### **B. Contents**

Such charge shall contain, insofar as is known, the following information:

1. The full name, address, and affiliation, if any, of the charging party, and the title of any representative filing the charge.
2. The full name and address of each charged party(respondent).
3. A clear and concise statement of the facts constituting the charge, including the time and place of concurrence of each particular act alleged, names of persons who allegedly engaged therein, and the sections (including subsections) of the rules alleged to have been violated.

#### **C. Service of Charge**

Upon filing a charge, the charging party shall be responsible for service of a copy thereof, within three (3) calendar days, upon the party against whom such charge is made. Proof of service shall be furnished to the Commission.

The Commission will not take any action concerning the charge until a minimum of five (5) days has expired since service of the charge on the charged party(ies).

### **10.2.2 Preliminary Investigation of Charge**

After a charge is filed, the Commission may refer the charge to its Director, Classified Personnel or other designated Commission agent, who shall investigate the charge and report thereon to the Commission. Such report may be oral or written and shall remain confidential.

10.2.3 **Commission Action**

Upon receiving such preliminary investigation report, the Commission may dismiss the charge in whole or in part, may order a further investigation or may direct that a charge and notice of hearing be scheduled and shall notify the respondent(s) and all other parties involved, or the Commission may take such other action as it deems appropriate. The notice of hearing, if issued, shall set forth the charge. Such notice of hearing shall also fix the place of hearing at a time not less than fourteen (14) calendar days from issuance thereof, and shall specify whether the hearing will be conducted by the Commission, or by a hearing officer, or an individual Commissioner authorized to act on behalf of the Commission (hereinafter referred to as a hearing officer).

10.2.4 **Answer to Charge Contained in Notice of Hearing**

- A. A respondent shall file an answer within fourteen (14) calendar days after service of the charge and notice of hearing, and at the same time shall serve a copy of the answer on the charging party.
- B. In the event a respondent files with the Commission a motion for a bill of particulars addressed to the charge, the time for filing an answer to the charge shall be extended by order of the Commission, but not more than fourteen (14) days following the denial of the motion, or fourteen (14) days following receipt of a charge amended in response to the granting of such motion.
- C. The respondent shall specifically admit, deny, or explain each of the allegations in the charge, unless the respondent is without knowledge, in which case the respondent shall so state, and such statement shall operate as a denial.
- D. If no timely answer is filed, all allegations in the charge shall be deemed admitted.
- E. If any allegation in the charge is not denied or explained, that allegation shall be deemed admitted.
- F. The answer may include a specific, detailed statement of any defense.
- G. This section (10.2.4, A through F) does not apply to cases involving discharges, suspensions, or demotions.

10.2.5 **Hearings**

(See Section 8.6.5 (B) Conduct of Hearings

10.2.6 **Investigations**

In accordance with the Education Code, the Commission or its Director, Classified Personnel by direction of the Commission, may conduct investigations. Pursuant to an investigation, the Director, Classified Personnel may, at will, inspect any records of the governing board that may be necessary to ensure that Commission procedures have been followed. Upon conclusion of an investigation, the Commission's designee shall make a confidential report to the Commission. The Commission may schedule an evidentiary hearing as a result of the report. If such a hearing is scheduled, the procedures in Section 8.6.5, Hearing Procedures, shall apply, except that the provisions of Section 8.6.5(B) 4 and 8 shall not apply. During an investigation or subsequent hearing by the Commission, the Commission or its Director, Classified Personnel may subpoena district employees to require their attendance. The payment of mileage and/or witness fees shall not apply to district employees who are subpoenaed to appear during their regularly scheduled work shift. Witness fees for district employees shall be calculated at the straight-time hourly rate rounded upward to the nearest half hour. Witness fees for non-district employees shall be fifteen (\$15) dollars per day. Mileage fees shall be calculated from home to hearing and return at the rate of approved IRS rate per mile.

10.2.7 **Final Order**

- A. Upon the conclusion of a hearing conducted by a hearing officer pursuant to these rules, and only after consideration of the hearing officer's report, the Commission shall act either to adopt, modify, or reverse the report, or any part thereof, filed by the hearing officer.
- B. Upon the conclusion of a hearing conducted by the Commission as a whole, the Commission shall issue, within a reasonable period of time, its written findings.
- C. In all cases, upon the conclusion of any hearing conducted pursuant to these rules, the Commission shall render a decision and appropriate written order dismissing or sustaining the charge in whole or in part, or directing the respondent to take such corrective action as the Commission may deem appropriate, or such other action as the Commission deems necessary to effectuate its rules, including, but not limited to, the issuance of a cease and desist order.
- D. If remedial action is ordered, the respondent shall advise the Commission when the required remedial action has been effected.

10.2.8 **Waiver of Time Requirements**

Either the Commission or the hearing officer may act to modify or waive any of the specific time requirements set forth in these rules upon showing of good cause, except that the hearing officer shall not be empowered to extend the time for filing his/her report.