

POLICY 3.31

5-D I recommend the Board approve the proposed revisions to Policy 3.31, entitled "Grievance Procedure for Employees."

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Development

- The DOE's Educational Equity Monitoring Work Plan requested that this Policy allow 60 days for initial reporting of alleged discrimination or harassment, reflecting the recent recommendations of the federal Office for Civil Rights.
- The new Section (4) is based on the employee-related portions of Policies 5.001 and 5.81 and provides a procedure tailored to resolving discrimination and harassment complaints, including the requested 60-day limit.
- Retaliation is prohibited at line 345.
- Based on the Board's recent discussion about procedures for investigation of its direct reports (the Superintendent, the Chief Counsel, and the District Auditor), Section (7) has been expanded to cover grievances by or about such direct reports or the employees they supervise. Paragraph (7)(c) is based on discussions with school board attorneys in three other large districts.

CONSENT ITEM

PROPOSED REVISIONS TO POLICY 3.31

GRIEVANCE PROCEDURE FOR EMPLOYEES

1
2 1. ~~A. DEFINITIONS~~**Purpose.--** The purpose of this procedure is to secure, at the
3 lowest administrative level, equitable solutions to claim(s) arising from a violation,
4 misapplication, or misinterpretation of School Board Policies or Administrative
5 Directives, which may include harassment prohibited by Policy 3.19, and to
6 establish an orderly succession of procedures wherein these solutions may be
7 pursued.

8 2. ~~B. PURPOSED~~ **Definitions.--** As used herein, the following terms have these
9 meanings:

10 ~~The purpose of this procedure is to secure, at the lowest administrative level,~~
11 ~~equitable solutions to claim(s) arising from a violation, misapplication, or~~
12 ~~misinterpretation of School Board Policies and Administrative Directives and to~~
13 ~~guarantee an orderly succession of procedures wherein these solutions may be~~
14 ~~pursued.~~

15 a. A "grievance" is a complaint which alleges a violation, misinterpretation, or
16 misapplication of School Board Policy or Administrative Directives, including
17 discrimination or harassment prohibited by Policy 3.19.

18 b. The term "employee" includes every employee, instructional or non-
19 instructional, of the School Board of Palm Beach County.

20 c. The terms "grievant" and "complainant" refer to an employee (including an
21 applicant as defined in Section (2)(e)) who alleges that he/she has been
22 subjected to discrimination or harassment as prohibited by Policy 3.19.

23 d. "Accused/employee" refers to an employee who is alleged to have subjected
24 another employee to discrimination or harassment as prohibited by Policy
25 3.19.

26 e. The term "applicant," as used herein, means a *current District employee* who
27 applies for another instructional or non-instructional position within the District.

28 ~~f. The term "days" in this procedure shall mean work days.~~

29 g. The term “supervisor” means the Pprincipal, Ddirector, Aarea Executive
30 Director superintendent, Assistant Superintendent, Deputy Superintendent,
31 Superintendent of Schools or other Ddepartment Administrator who has the
32 direct responsibility of supervising or managing the aggrieved employee and
33 who has the authority to take action necessary to resolve the grievance. For
34 purposes of this Policy, this term may also include a consultant retained by the
35 Board to provide interim management assistance.

36 h. The term “superior” as used herein refers to the supervisor of the aggrieved
37 employee's immediate supervisor.

38 i. A "chief officer" is the Chief Academic Officer or the Chief Operating Officer.

39 j. The term “days” in this Policy shall mean work days unless calendar days are
40 specified.

41 3. G. Procedure for Grievances (Other than Alleged Harassment or
42 Discrimination).-- The following grievance procedure applies when the grievance
43 is based on an allegation other than discrimination or harassment under Policy
44 3.19. (If the grievance is based on allegations of discrimination or harassment as
45 prohibited by Policy 3.19, the procedures of Section (4) shall apply, instead.)

46 a. Level One: Informal Conference

47 Within ten (10) work days after the employee first knows or reasonably should
48 have known, of the grievable incident, the employee shall initially discuss the
49 matter with the immediate supervisor with the objective of informally resolving
50 the matter.

51 A. ~~For an allegation of discrimination by one's supervisor, an employee~~
52 ~~may refer a complaint to the District's Equal Employment Opportunity~~
53 ~~(EEO) office in the Division of Personnel Services.~~

54 b. Level Two: Filing a Written Grievance

55 i. Within ten (10) work days after the informal conference described in Level
56 One, if no satisfactory disposition is made, the employee may file a
57 written grievance with the supervisor. The written grievance shall set
58 forth specifically the event(s) upon which the grievance is based, citing
59 the Policy and/or Directive alleged to be violated, the date the alleged

60 infraction took place, and grounds upon which the grievance is made.
61 The employee must sign and date the grievance.

62 ii. Within ten (10) work days after receiving the written grievance, the
63 supervisor shall schedule another meeting with the employee. Within ten
64 (10) work days of the second meeting, and after investigating the
65 allegations, the supervisor shall issue a written decision to the employee.

66 c. Level Three: Review by the Supervisor's Superior or Chief Officer

67 i. Within ten (10) work days after the supervisor's decision, if the employee
68 is not satisfied with the supervisor's decision or if no decision has been
69 ~~made~~ issued, the employee may forward the grievance and the
70 supervisor's decision to the superior or to the applicable chief
71 officer Department of Employee relations. The written grievance shall set
72 forth the event(s) upon which the grievance is based. If the grievance is
73 not forwarded to the superior or chief officer within the designated time,
74 the grievance is considered withdrawn from the grievance process and
75 shall be so noted in the grievance file.

76 ii. Within ten (10) work days after receiving the grievance, the superior or
77 chief officer Department of Employee relations will schedule a meeting
78 with the employee. Within ten (10) work days of the said that meeting,
79 meeting, and after further investigating the allegations as appropriate, the
80 superior or chief officer Department of Employee Relations shall issue a
81 written decision to the employee. A copy shall be provided to the
82 supervisor.

83 d. Level Four: Appeal to the Superintendent

84 i. Within ten (10) work days after the superior or chief officer Department of
85 Employee issues it's a written decision, if the employee is not satisfied
86 with the decision (or if no decision ~~is~~ has been issued within ten (10) work
87 days of the meeting), the employee may appeal the decision, in writing, to
88 the Superintendent, ~~or to the decision of the Department of Employee~~
89 ~~Relations.~~ If the grievant does not pursue the grievance past Level
90 three, the grievant is encouraged to forward written correspondence to
91 the Department of Employee Relations indicating that he/she is
92 withdrawing the grievance from the grievance process. If the grievance is
93 not forwarded to the Superintendent within the designated time, the

94 grievance is considered withdrawn from the grievance process and shall
95 be so noted in the grievance file.

96 ii. The Superintendent/~~or~~ designee, shall appoint an ad hoc Grievance
97 Review Committee. The chair of the committee will be the highest-
98 ranking District official on the committee. The committee will consist of

99 A. one (1) member from District management, selected by the
100 Superintendent;

101 B. one (1) member selected by the grievant; and

102 C. ~~the a~~ third member selected by agreement of the first two (2)
103 members. If the third member is not selected by the other committee
104 members within seven (7) calendar days, the
105 Superintendent/~~designee~~, shall appoint a third member to serve on
106 the committee.

107 iii. ~~The highest ranking official in the District among the three (3) committee~~
108 ~~members shall be the Committee Chairperson. In an effort to resolve~~
109 ~~the grievance, within ten (10) work days after the Committee is~~
110 ~~designated, the Committee shall meet with the grievant and the~~
111 ~~supervisor or superior of the person alleged to have violated,~~
112 ~~misinterpreted, or misapplied a Policy or Directive. in an effort to resolve~~
113 ~~the grievance.~~ Other persons may be presented as witnesses at the
114 meeting by either the grievant or the supervisor/superior. The committee
115 shall issue a written decision recommendation within ~~five (5)~~ ten (10) work
116 days after the meeting, determining whether any violation has occurred,
117 and if so, an appropriate remedy. A copy of the ~~decision~~
118 recommendation shall be provided to the grievant, supervisor or superior,
119 the Director of Employee Labor Relations, and the Superintendent.

120 iv. ~~The decision of the Committee shall be final and binding. The~~
121 ~~recommendation of the committee shall be forwarded to the~~
122 ~~Superintendent for review. The Superintendent/designee shall review the~~
123 ~~recommendation of the committee and the record of the grievance. If the~~
124 ~~Superintendent/ designee finds that a meeting with the grievant would~~
125 ~~assist in the final determination, the Superintendent/ designee may~~
126 ~~schedule a meeting for the purposes of this review. The~~
127 Superintendent/designee's decision is the final and binding decision of

128 the District.

129 **4. Reporting and Resolving Allegations of Harassment or Discrimination.--**

130 When the cause for the grievance is an allegation of discrimination or harassment
131 of an employee (including an applicant, as defined in Section (2)(e)), the following
132 procedures shall apply:

133 **a. Level One: Reporting to the Supervisor or EEO Coordinator and**
134 **Investigation by the EEO Coordinator/Designee**

135
136 **i. Reporting Discrimination or Harassment.--** Any employee (including
137 an applicant as defined in Section (2)(e)) who believes he/she is a victim
138 of discrimination or harassment as prohibited by Policy 3.19, may report
139 the incident(s) in writing to the principal or other immediate supervisor, as
140 applicable. Due to the sensitive nature of sexual harassment complaints,
141 or in the event of an allegation of harassment or discrimination by one's
142 supervisor, the complaint may be filed in writing directly with the District's
143 Equal Employment Opportunity Coordinator ("EEO Coordinator"). The
144 EEO Coordinator is located at: 3370 Forest Hill Boulevard, Suite A-115,
145 West Palm Beach, Florida, 33406; Telephone: (561) 434-8637.

146
147 **ii. Complaints should be filed as soon as possible after the alleged incident,**
148 **but must be filed within sixty (60) calendar days after the employee**
149 **(including an applicant as defined in Section (2)(e)) first knows or should**
150 **have known of the grievable incident. Failure on the part of the**
151 **complainant to initiate and/or follow up on a complaint in a timely manner**
152 **may result in the complaint being deemed abandoned.**

153
154 **iii. The principal/designee or other immediate supervisor (as applicable) or**
155 **EEO Coordinator may assist the individual in putting the complaint in**
156 **writing, if its has not yet been recorded in writing; reviewing it with the**
157 **complainant; and obtaining the complainant's signature. The complainant**
158 **will be requested to provide signed, specific information regarding the**
159 **alleged discrimination or harassment, the alleged offender(s), witnesses,**
160 **and other relevant information. All complaints filed with the**
161 **principal/designee or other supervisor must be reported to the area**
162 **superintendent (if applicable) and the EEO Coordinator.**

163

164 iv. It is the responsibility of the principal, or other supervisor as applicable, to
165 forward all harassment or discrimination complaints to the area
166 superintendent (if applicable) and EEO Coordinator.
167

168 **b. Investigation by EEO Coordinator.--** The EEO Coordinator/designee shall
169 document and promptly and thoroughly investigate all complaints of
170 harassment or discrimination, including the following steps:
171

172 i. promptly talk with the complainant. The complainant shall have an
173 opportunity to describe the incident, present any evidence, name
174 witnesses, and put his/her complaint in writing, if he/she has not already
175 done so;
176

177 ii. talk with any witnesses or others who may have relevant information; and
178

179 iii. conduct an investigative meeting with the accused/employee, and the
180 accused/employee's representative, if applicable, to discuss the
181 allegations and allow the accused/employee to respond to the allegations.
182

183 iv. During the investigation, the EEO Coordinator may recommend to the
184 Chief Personnel Officer/designee any action deemed necessary to protect
185 the complainant or other employees, consistent with the requirements of
186 applicable laws.
187

188 v. When necessary to carry out the investigation or for other good reasons,
189 and consistent with federal and state privacy laws, the EEO Coordinator
190 should discuss the complaint with any of the following persons, as
191 appropriate:
192

193 A. Superintendent/designee;
194

195 B. chief officer;
196

197 C. area superintendent/designee ;
198

199 D. associate superintendents;
200

201 E. Chief of School Police;

- 202
- 203 F. Chief Personnel Officer;
- 204
- 205 G. Director of Labor Relations;
- 206
- 207 H. another employee whose knowledge of the persons involved may
- 208 help determine the truth;
- 209
- 210 I. legal counsel for the Board;
- 211
- 212 J. the exclusive bargaining representative(s) or their legal counsel, if
- 213 appropriate; and
- 214
- 215 K. the accused/employee.
- 216
- 217 c. **Decision of the EEO Coordinator.**--Upon completion of the investigation, the
- 218 EEO Coordinator/designee shall make a decision about the validity of the
- 219 allegations in the complaint. The EEO Coordinator shall discuss the
- 220 determination and any recommended corrective action with the
- 221 principal/designee or other immediate supervisor, as applicable. In reaching a
- 222 decision about the complaint, the following should be taken into account:
- 223
- 224 i. statements made by the persons identified above Section (4)(b);
- 225
- 226 ii. the details and consistency of each person's account;
- 227
- 228 iii. evidence of how the complainant reacted to the incident;
- 229
- 230 iv. evidence of past instances of harassment or discrimination by the
- 231 accused/employee (provided that, if evidence of past harassment/
- 232 discrimination is to be considered, the principal/designee must review in
- 233 their entirety the files regarding those past incidents);
- 234
- 235 v. evidence of past harassment or discrimination complaints that were found
- 236 to be untrue (provided that, if evidence of past accusations or complaints
- 237 is to be considered, the principal/designee/supervisor must review in their
- 238 entirety the files regarding those past incidents); and
- 239

- 240 vi. case law, state and federal laws and regulations, and Board Policies
241 prohibiting harassment and discrimination.
242
- 243 d. To determine the severity of the harassment or discrimination, factors such as
244 the following may be considered:
245
- 246 i. how the misconduct affected an employee's work;
247
- 248 ii. the type, frequency, and duration of the misconduct;
249
- 250 iii. the number of persons involved;
251
- 252 iv. the subject(s) of harassment or discrimination;
253
- 254 v. the place and situation where the incident occurred; and
255
- 256 vi. other incidents at the site.
257
- 258 e. The recommendations for action(s) to be taken, consistent with any applicable
259 collective-bargaining agreement provisions, to resolve a complaint of
260 harassment or discrimination by an employee may include, but are not limited
261 to, the following:
262
- 263 i. no action, if the complaint is unsubstantiated;
264
- 265 ii. training requirements for the accused/employee;
266
- 267 iii. oral reprimand of the accused/employee;
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- 269 iv. written reprimand of the accused/employee;
270
- 271 v. suspension of the accused/employee; or
272
- 273 vi. termination of the accused/employee.
274
- 275 f. **Level Two: Appeal to the Chief Operating Officer/Designee.--** If the
276 complainant or accused/employee wishes to appeal the action taken in
277 resolution of the complaint, such appeal shall be filed in accordance either with

278 this Policy or relevant collective bargaining agreement, as applicable. For
279 those employees not in a bargaining unit, the appeal shall be filed in
280 accordance with the following procedures:

281
282 i. If the grievant or accused/employee desires to appeal the EEO
283 Coordinator's decision, it may be appealed in writing to the Chief
284 Operating Officer/designee within ten (10) work days after receipt of the
285 decision.

286
287 ii. If the Chief Operating Officer is directly involved with a complaint or with
288 the parties to the complaint complainant or accused/employee, then the
289 Chief Academic Officer shall be asked to review the matter.

290
291 iii. Notice of the appeal shall be given to the opposite party within two (2)
292 work days of receipt of appeal.

293
294 iv. The Chief Operating Officer/designee shall review the written complaint,
295 the accused/employee's response to the complaint, and all
296 documentation pertaining to the alleged sexual harassment or
297 discrimination, including the EEO Coordinator's decision.

298
299 v. The Chief Operating Officer/designee, in his/her discretion, may request
300 additional information. The Chief Operating Officer/designee shall issue a
301 written decision to the parties within twenty (20) calendar days of request
302 of the appeal.

303
304 **g. Level Three: Appeal to the Superintendent.-- Within ten (10) work days**
305 **after the Chief Operating Officer/designee issues a written decision, if a party**
306 **is not satisfied with the decision (or if no decision has been issued within ten**
307 **(10) work days of the meeting), the party may appeal the decision in writing to**
308 **the Superintendent. If the grievance is not forwarded to the Superintendent**
309 **within the designated time, the grievance is considered withdrawn from the**
310 **grievance process and shall be so noted in the grievance file.**

311 i. Notice of the appeal shall be given to the opposite party within two (2)
312 work days of receipt of appeal.

313 ii. The Superintendent/designee shall appoint an ad hoc grievance review
314 committee as specified in Section (3)(d)(ii), above.

315 A. In an effort to resolve the grievance, within ten (10) work days after
316 the committee is designated, the committee shall meet with the
317 appealing party and, if deemed appropriate, may also meet with the
318 opposite party. Other persons may be presented as witnesses at the
319 meeting by either the appealing party or the opposite party.

320 B. The committee shall issue a written recommendation within ten (10)
321 work days after the meeting, determining whether any violation has
322 occurred, and if so, recommending an appropriate remedy. A copy
323 of the recommendation shall be provided to both parties, the
324 grievant's supervisor and the Director of Labor Relations (if
325 appropriate), and the Superintendent.

326 iii. The Superintendent/designee shall review the recommendation of the
327 grievance review committee and the record of the grievance. If the
328 Superintendent/designee finds that a meeting with the grievant and/or
329 accused/employee would assist in the final determination, the
330 Superintendent/ designee may recommend scheduling a meeting for the
331 purposes of this review. The Superintendent/designee's decision is the
332 final and binding decision of the District.

333 h. If the complainant is not satisfied with the results of the procedures contained
334 in this Section, he/or she may utilize other means for resolution as provided by
335 law, including seeking recourse through the federal Office for Civil Rights
336 ("OCR") or Equal Employment Opportunity Commission ("EEOC").

337 5. **Rights of Employees (Including Applicants as Defined in Section (2)(e))**

338 a. During any of the grievance levels, the employee (including an applicant as
339 defined in Section (2)(e)) may be represented by a person of the
340 employee's/applicant's choice once the grievance is filed with the supervisor.
341 Department of Employee Labor relations-For grievances governed by Section
342 (3) that are filed by employees/applicants who choose to be represented by
343 legal counsel, the process will begin at the chief officer phase of Level 3 under
344 Section (3)(c).

345 b. **No retaliation or reprisals of any kind** shall be taken by any member of the
346 administration or other employee against the employee, representative, or any
347 other participant in the grievance procedure by reason of such participation.

348 **6. General Provisions**

- 349 a. Grievance report forms for filing a grievance shall be available in the
350 Department of Employee Labor Relations. Employees are to be notified of the
351 procedures in this Policy through the Policy's distribution to schools and
352 departments and its posting on the School Board Policies web site.
- 353 b. Failure of the employee/applicant to advance the grievance through the
354 procedure within the time lines designated will result in immediate dismissal of
355 the grievance.
- 356 c. All records pertaining to a grievance shall may be filed in a separate grievance
357 file and will may not be kept in the official "personnel file" of the
358 employee/applicant, but this grievance file will be treated as provided by Fla.
359 Stat. §§ 119.07 and 231.291(4). All decisions of management are to be
360 forwarded to the labor relations department, which is designated as the
361 custodian of those records for grievances involving a bargaining unit member.
362 However, said The grievance file is subject to disclosure pursuant to the Public
363 Records law and Fla. Stat. § 231.291(4).
- 364 d. If a grievance is filed under the grievance procedure in a collective bargaining
365 agreement, the employee may not pursue a the grievance under this
366 procedure.
- 367 e. The grievant is precluded from processing a grievance when the subject of the
368 grievance and/or the relief requested has been, or currently is, the subject of
369 another administrative action or appeal before a governmental body or agency
370 or a court proceeding.
- 371 f. The filing of a grievance shall not interfere with the right of the School Board to
372 carry out its responsibilities, subject to the final decision on a grievance.

373 **7. Superintendent, Chief Counsel, and District Auditor**

- 374 a. When the Grievant is a Direct Board Report.-- Employees who report
375 directly to the Board (Superintendent, Chief Counsel, and District Auditor)
376 shall file any grievance in writing with the Board Chair. The Chair should
377 request appropriate District personnel to begin the investigation/ resolution
378 process set forth in Section (3) or (4) above, as applicable.

- 379 b. **When the Grievant is an Employee in the Office of a Direct Board**
380 **Report.** -- Employees of the Office of Superintendent, Office of District Auditor,
381 and Office of Chief Counsel should file any initial grievance with their direct
382 supervisor (or the EEO Coordinator, if the allegation is based on harassment
383 or discrimination) pursuant to Section (3) or (4) above (unless the grievance is
384 against a direct Board report, in which case subsection (c) below shall apply).
385 If the grievance is not resolved at this level, the grievance may be appealed as
386 set forth under Section (3) or (4), as applicable.
- 387 c. **When the Accused is a Direct Board Report.** -- When a direct Board report
388 (the Superintendent, Chief Counsel, or District Auditor) is the accused, the
389 grievant shall file the complaint in writing with the Board Chair, who shall take
390 prompt action as specified below:
- 391 i. First, the Chair shall notify the accused of the complaint.
- 392 ii. Second, the Chair shall notify the Board of the complaint. The Board
393 shall determine if the complaint appears to merit formal investigation.
- 394 iii. If the Board deems the complaint to merit formal investigation, the Board
395 shall set the parameters for the investigation. The investigation should
396 seek the accused/employee's response as well as the statements of the
397 grievant and witnesses.
- 398 iv. If a preliminary investigation is begun, the written complaint and
399 documents relating to the investigation are confidential, pursuant to Fla.
400 Stat. §§ 119.07(3)(p) & (u), 231.291(3)(a)1, and 231.262(1)(a), until the
401 investigation is either concluded or ceases to be active.
- 402 v. To conduct the investigation, the Board may consider:
- 403 A. retaining outside special counsel (which should be an attorney or law
404 firm that is not currently retained by the Board and has not handled
405 any matters for or against the Board within the past five years):
- 406 B. requesting the personnel-investigation department of another Florida
407 school district to conduct the inquiry;
- 408 C. contracting with the DOE Office of Inspector General; or

Legal Signoff:

The Legal Department has reviewed the proposed revisions to Policy 3.31 and finds them legally sufficient for development by the Board.

Attorney

Date