EMPLOYEE GRIEVANCES AND COMPLAINTS

I. PURPOSE

The regulation explains the availability of procedures for College employees to remedy grievances and complaints.

II. BACKGROUND AND LEGAL REFERENCES

A. Background: College Position

Although the College endeavors to maintain harmony, cooperation, and understanding, complaints and misunderstandings may nevertheless occur. WCJC recognizes the need for processes to hear grievances and complaints, and has incorporated various formal and informal procedures to address grievances and complaints.

Grievances and complaints are often resolved through an informal review of the problem at the most immediate supervisory level. Free and open discussion frequently results in early resolution of the matter. Most problems can be resolved before formal steps in the process are invoked.

Many times grievances and complaints concern valid issues or problems that could result in recommended changes in policy or procedure if the appropriate College officials were made aware of the matter. Employees, therefore, should begin as early as possible the informal process with the immediate supervisor and other relevant individuals (such as a division chair).

B. Background: Legal Requirements

According to the Texas Constitution, employees have the right to seek redress of grievances with the College. Further, under Texas law, a grievant or grievants may be represented in a grievance, at any level of the grievance process and at the employee's own expense, by an attorney or by any other person or organization that does not claim the right to strike. The legal right to present a grievance is satisfied at each level when someone in a position of authority hears the concern, but the authority is not required to take action on the matter.

C. Legal References

TASB Policy Manual, DGBA, Personnel-Management Relations: Employee Complaints, 3-7-94, and other references therein, including the Texas Constitution, Article I, Section 27; the Gov't Code 617.005; and the Gov't Code 551.1382.

III. DEFINITIONS AND RESTRICTIONS

A. A grievance is an allegation by an employee claiming that the employee has been adversely affected by a violation of one of the following: (1) state or federal law or (2) College policy. An individual employee's wages, hours, or conditions of work may be the subject of a grievance only if a violation of law or College policy is alleged. The definition of grievance also includes specific allegations of unlawful discrimination in employment on the basis of sex (including sexual harassment), race, age, religion, national origin, color, or handicap, or on the basis of the employee's exercise of constitutional rights.

B. A complaint concerns an issue, situation, or action to which an employee objects that does not involve an alleged violation of law or College policy. A complaint may involve an employee’s wages, hours, or conditions of work. An employee who contests his or her treatment by the College or contests an action by the College not involving an alleged violation of College policy or law must seek redress through the College's chain-of-command. Employees may not invoke the grievance procedure to address them.
C. The *grievance or complaint* must establish the individual harm suffered.

D. In this regulation, all references to "days" refer to calendar days unless otherwise noted.

E. In all cases, initial notification of the grievance or complaint must be made within fifteen (15) calendar days of the date that the action giving rise to the grievance or complaint occurred. However, if notification is made during an extended holiday, all other time limits begin with the first day that both the employee and the supervisor or other respondent have returned to work. Untimely grievances or complaints will not be considered.

1. Notification of a grievance must be filed (a) in writing, (b) by the grievant, and (c) on the College's Grievance Report Form. All parts of the form must be completed and may not be left blank or unspecified, including, but not limited to, the following:
   - name of the person (or persons) against whom the grievance is filed,
   - description of the problem or actions giving rise to the grievance,
   - the relief or redress sought by the grievant,
   - identification of the College policy or law alleged to have been violated.

2. Submission of an incomplete or improperly completed form does not constitute adequate notification that a grievance is being filed. The clock for deadlines begins only at the point when the completed Grievance Report Form is received by the appropriate person (immediate supervisor or other respondent) specified below in Step 1 (section V.B.), with a copy to the Director of Human Resources or designee.

F. Actions to challenge or change the rules and regulations of the College are not considered matters for complaint or grievance, and must be undertaken through other channels of the College, such as the institution's governance structure.

IV. POLICY

A. The College shall provide opportunities for employees to file grievances and to seek appropriate resolution or redress through established procedures approved by the Board of Trustees.

B. An employee may lodge a grievance that alleges violation of state or federal law or College policy.

C. Grievances shall be filed in accordance with rules and regulations reviewed and adopted by the College. All time limits shall be strictly complied with. A grievance shall be considered concluded if the employee does not appeal within the stated time limits. Untimely grievances shall not be considered.

D. All grievances arising from an event or series of events shall be addressed in one proceeding.

E. An employee is precluded from bringing separate or serial grievances concerning events about which the employee has previously filed a grievance.

F. Costs of any grievance shall be borne by the party incurring them.

G. Contract and Noncontract Employee Grievances

1. Employees under contract to the college may invoke this regulation to grieve proposed demotions or disciplinary actions involving reprimand, suspension, or dismissal by the College only if they allege violations of law or College policy.

2. No employee on contract is guaranteed employment beyond the term of his or her contract, and the
The College is under no obligation to provide reasons, explanations, or justifications for allowing an employee's contract to expire without renewing that contract. Nevertheless, the College allows an employee on contract to invoke this regulation if the employee alleges violation of law or College policy as the reason for non-renewal.

3. The College may terminate the employment of employees not under contract to the College (that is, at-will employees) at any time—for no reason or any reason—so long as any proffered reason is not unlawful. Such terminations of employment are not grievable matters, unless an employee claims a policy violation by the College or a state/federal law violation.

4. Noncontract (at-will) employees may invoke this regulation to grieve conditions of employment only if violations of law or College policy are alleged.

H. "Whistleblower Provision." Employees who allege unlawful discrimination in retaliation for reporting a violation of law to an appropriate authority may invoke this policy not later than fifteen (15) days after the date the alleged violation occurred or was discovered by the employee through the use of reasonable diligence. The complaint shall begin at Step 2 (Section V.C.).

I. No employee shall be discriminated against, harassed, intimidated, or suffer any reprisal or retaliation as a result of filing a grievance or complaint or participating in the investigation of a grievance or complaint.

V. PROCEDURES

A. Informal Resolution

1. Most grievances arise from misunderstandings or disputes that can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level or other face-to-face level.

2. The employee meets with the immediate supervisor or other respondent or, if the employee desires, with the immediate supervisor or other respondent, the supervisor's/respondent's supervisor, and/or the Director of Human Resources (DHR) or designee.

3. If an agreement is reached, a written account of agreements made on this level shall be made.

4. This informal conference must occur within five (5) calendar days of the disputed action.

B. Step 1: Conference with Immediate Supervisor and/or Respondent

1. If informal resolution is not reached, the employee must file a Grievance Report Form no later than fifteen (15) calendar days after the action giving rise to the grievance. The form must be filed with the DHR or designee. An employee who files a grievance must request a meeting with his or her immediate supervisor or the respondent if the grievance is against someone other than the immediate supervisor. The supervisor or respondent may also invite the DHR or their designee. The meeting must occur within ten (10) calendar days of the filing of the Grievance Report Form, unless extended by mutual consent. A record is developed at this step. Both the grievant and supervisor will provide all relevant documentation to the situation to develop the record. A tape recording of the meeting will also be made and maintained by the DHR or designee.

2. The immediate supervisor/respondent must respond in writing to the grievance within five (5) calendar days of the conference with the employee.

3. Possible Outcomes

   a. The grievance is resolved by mutual agreement of the employee and the
supervisor/respondent. The resolution is reduced to writing, signed by each party, and each party retains a copy of the signed resolution.

b. The employee is not satisfied with the results of the conference at Step 1 and proceeds to Step 2.

C. Step 2: Conference with Cabinet-Level Supervisor

1. Within five (5) calendar days of the completion of Step 1 (the immediate supervisor's or respondent's written response), the employee must request in writing to meet with his or her cabinet-level supervisor (a dean or vice-president) at Step 2.

2. Within ten (10) calendar days of this request, the cabinet level supervisor meets with the employee. A tape recording of this meeting is made and maintained by HR.

3. Prior to or at this meeting, the employee submits to the cabinet level supervisor a copy of the original grievance, the supervisor's/respondent's response, and the record developed at Step 1, including all written documentation and the tape recording of the Step 1 meeting. The employee and/or cabinet-level employee may supplement the record developed at Step 1 by providing additional documentation.

4. The cabinet officer responds in writing to the employee within five (5) calendar days of the meeting with the employee.

5. Possible Outcomes

   a. The grievance is resolved by mutual agreement of the employee and the dean/vice-president. The resolution is reduced to writing, signed by each party, and each party retains a copy of the signed resolution.

   b. The employee is not satisfied with the results of the conference at Step 2 and proceeds to Step 3.

D. Step 3: Presentation of Case to Board of Trustees or Designee

1. Within five (5) calendar days of the completion of Step 2, the employee submits a written request to the President to proceed to Step 3. The matter may be considered by the Board of Trustees. Alternatively, the Board may designate the President or other College administrator to hear the matter as its designee.

2. The President provides the Board or designee with all written documentation and tape recordings developed at Steps 1 and 2. No additional document or evidence may be submitted at Step 3. The Board and both parties will be provided copies of the record.

3. At the meeting of the Board, the President presents a summary of the case to the members of the Board. The grievant and respondent each have the right to make a fifteen-minute presentation of the case. If the case is being decided by a Board designee, the appropriate vice-president will present summary to the designee.

4. The Board or designee, in its sole discretion, determines if any response to the grievance is warranted. The Board or designee is not required to respond or take any action on the matter.
5. Possible Outcomes
   
a. The Board or designee may decide that no action on its part is required, thus upholding the
decision of the administration.

b. The Board or designee may decide that the information in the case requires action by the
Board to sustain, modify, or overturn previous decisions or actions.

E. Complaints

   1. Complaints, as opposed to grievances, are brought by an employee through supervisory channels
(i.e., chain-of-command) beginning with the immediate supervisor and proceeding through all three
steps, up to and including the Board of Trustees or designee if the complaint remains unresolved, and
the complainant wishes to proceed to the Board or designee.

   2. All timelines specified above for grievances apply as well to complaints.

   3. All complaints must be supported and documented at the time the complaint is filed. A tape
recording of all complaint proceedings shall be made and maintained in HR.

   4. If a complaint proceeds to the level of the Board of Trustees or designee, the same procedures
described above for grievances apply to the handling of the complaint.

VI. GUIDELINES

A. Hearing officers and all other officials involved in a grievance or complaint are expected to keep tape
recordings at all meetings. The department of HR makes and maintains tape recordings at all meetings.

B. If an employee feels that he or she has been subjected to reprisal or retaliation for having filed a grievance or
for having participated in the investigation of a grievance, he or she may invoke this regulation to file a
separate grievance.

C. If the College President or designee determines that two or more individual grievances are sufficiently similar
in nature to permit their resolution through one proceeding, he or she may consolidate the grievances.

D. All information is kept in strict confidence throughout all steps in a grievance, with only those College
personnel having a right or a reason to know being advised or consulted about a grievance or being allowed to
attend a hearing, subject to the application of the Texas Public Information Act and the Texas Open Meetings
Act.

E. The President of the College or his/her designee is responsible for insuring that this regulation is administered
properly and for resolving any procedural issues that may arise.

F. Burden of Proof

   1. When the College proposes to dismiss a contract employee during the term of his or her contract, the
burden of proof rests with the College to prove cause for dismissal by a preponderance of the
evidence.

   2. In all other grievances and complaints, the burden of proof rests with the employee on a
preponderance of evidence standard.
This regulation is designed to provide an internal process to allow for discussion and conciliation between the grievant and the College or other respondent, resulting in immediate assistance or redress without the necessity for recourse to external agencies by the employee. The College intends that employees avail themselves of these internal procedures before seeking external assistance.

H. Addendum to Reg 877 (August 14, 1997)

1. If a grievance is filed against the President of the College, the grievant and the President meet to effect informal resolution (see section V.A.). If informal resolution is not achieved, the grievance may proceed directly to Step 3, Review by Board of Trustees or designee.

I. Addendum to Reg 877 (June 28, 2000)

1. If a grievance is filed against the College's Board of Trustees, the grievant submits the Grievance Report Form directly to the College President, who forwards copies to the trustees and to the DHR or designee.

2. The grievant and the President meet within five (5) calendar days of the receipt of the grievance form by the President. The President may choose to have other persons (such as the DHR or their designee or Cabinet officers) present during this meeting. The purpose of the meeting is to discuss with the grievant the nature and merit of the grievance, and to advise the grievant of his or her rights.

3. If the grievant declines the opportunity for informal resolution or if a meeting between the grievant and the President fails to effect informal resolution, the grievance moves to Step 3 and is placed on the agenda for a future meeting of the Board of Trustees or a meeting with its designee.
I. **Grievance versus Complaint: Definitions and Restrictions**

A. A *grievance* is an allegation by an employee claiming that the employee has been adversely affected by a violation of one of the following: (1) state or federal law, or (2) College policy.

An individual employee's wages, hours, or conditions of work may be the subject of a *grievance* only if a violation of law or College policy is alleged.

The definition of *grievance* also includes specific allegations of unlawful discrimination in employment on the basis of sex (including sexual harassment), race, age, religion, national origin, color, or handicap, or on the basis of the employee's exercise of constitutional rights.

B. A *complaint* concerns an issue, situation, or action to which an employee objects that does not involve an alleged violation of law or College policy. A complaint may involve an employee’s wages, hours, and conditions of work. An employee who contests his or her treatment by the College or contests an action by the College not involving an allegation of violation of College policy or law must seek redress through the College's chain-of-command, up through and including the Board of Trustees. Employees may not invoke the grievance procedure to address them, but may involve the complaint procedures.

C. The grievance or complaint must establish the individual harm suffered.

D. Actions to challenge or change the rules and regulations of the College are not considered matters for complaint or grievance, and must be undertaken through other channels of the College, such as the institution's governance structure.

II. **General Provisions**

A. A grievance hearing is posted as an item on the Board's agenda

B. The Board chair should announce to the public that the Board is convening in closed session, cite the sections of the Texas Open Meetings Act that permit the Board to convene in closed session, and read the agenda items to be considered in closed session. The following wording will be used to announce grievance hearings:

*Grievance hearing of ___________________ [insert employee's name]*

*This matter will be considered in closed session under Section 551.074 of the Government Code unless the employee bringing the grievance requests that it be held in open session. However, if the employee bringing*
the grievance complains about other employees or Board members, the Board will conduct the hearing in closed session if the employee or Board member complained of requests that the matter be heard in open session.

C. The Board may make and communicate its decision, if any, either at the conclusion of the hearing or no later than the next regularly scheduled meeting of the Board. The decision of the Board is final.

III. Conduct of Board Hearings: Grievances

A. The chair of the Board of Trustees serves as chair of the hearing. The Board may be assisted by counsel at any hearing.

B. Hearings are limited to the principals in the case (grievants and respondents), members of the Board of Trustees, the College President, witnesses, and representatives of the principals. The hearing will be based on the record developed at Steps 1 and 2. No new information will be permitted into the record at Step 3. No witnesses are permitted at Step 3.

C. The chair convenes the meeting and directs the President to introduce all participants.

D. The President describes the nature and focus of the grievance and explains the Board's hearing procedures.

E. The grievant presents the basis for his or her case first, and is permitted a maximum of 15 minutes to do so.

F. The respondent is allowed a maximum of 15 minutes to respond to the grievant. If the case involves more than one respondent, each respondent is allowed to make a statement.

G. The Board may then ask questions and engage in discussion with the principals.

H. Following this period of questioning, the respondent and the grievant may make a brief final statement not to exceed five (5) minutes.

I. If the Board has no further questions for the principals, these persons are excused.

J. The Board discusses the case until it reaches a point in its deliberation when the members are ready to take a vote or have come to general consensus on the matter. (Since law prohibits voting or final action in closed session, the Board delays any voting until it reconvenes in open session.)

K. The Board is not bound by strict rules of legal evidence. The findings and the final decision are based solely on the record and arguments provided at the hearing.

L. After reconvening in open session, the Board takes one of the following actions:

   a. The Board may vote on the case. If so, one of the trustees makes a motion for Board action (which requires a second); for example:

   "I move that, in the case of the grievance by [insert name of employee], the Board render a decision [FOR or AGAINST] the grievant."

   Discussion may then occur, if the Board desires, after which a vote is taken.

If the Board's decision is against the grievant, the matter is concluded. If, however, the Board's decision is for the grievant, then it should specify what sort of redress or corrective action it desires for the grievant, and direct the College President to take the necessary administrative action to
provide that redress, or

b. The Board may take no action.

M. Any Board action is noted in the official minutes of the meeting. The grievant will receive written notice of the decision.

N. According to Regulation 877, the Board may render its decision, if any, up to the next regularly scheduled meeting of the Board.

IV. **Conduct of Board Hearings: Complaints**

The procedure for conducting Board hearings of complaints is the same as that described above for grievances.

The primary difference between the two resides in the nature of the employee's allegations. To be sustained by the Board, a grievance must establish to the Board's satisfaction that a violation of law or College policy occurred in the treatment of the employee. A complaint, however, may be sustained by the Board on any grounds, as long as the employee can establish to the Board's satisfaction that the complainant suffered individual harm in his or her treatment.