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**Apples and Oranges:
Responding to Complex Grievances
Covered By More Than One Policy**

Celynda L. Brasher and Michelle H. Basi
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Overview

- Grievance policy basics
- Can we make it better?
- What to do when someone actually uses the policy(ies)
- Other considerations

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Grievance Policies

- Quick!!
 - Does your district have a grievance policy and procedure?
 - How many different grievance policies and/or procedures does it have?
 - Have you ever used it/them?
 - How did you feel about that experience?

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Grievance Policies

- Where might one find a grievance procedure in policy?
 - Staff grievance policies
 - Non-discrimination policies – Title VII, Title IX, Title VI, Section 504, ADA, etc.
 - Student grievances (are you kidding?)
 - Homeless students
 - Public “grievances”

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Grievance Policies

- Do I care about other types of grievances if my focus is on employees? Or students?
 - Need to be aware of them
 - Sometimes complaints implicate more than one policy and procedure
 - Consistency of definitions, procedure, and timelines is helpful when possible

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Grievance Policies

- Are grievance policies required by law?
 - General grievances
 - No
 - But they are expected by employees
 - Non-Discrimination
 - May not be explicitly required by statute
 - Practically, to establish compliance – yes

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	<h2 style="margin: 0;">Grievance Policies</h2>
	<ul style="list-style-type: none"> ■ Are multiple grievance procedures a problem? <ul style="list-style-type: none"> – They can be – Definitions, procedures, and deadlines may conflict – Grievances may involve multiple policies and procedures – Multiple policies may still be necessary <p style="font-size: small; margin-top: 10px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	<h2 style="margin: 0;">Grievance Policies</h2>
	<ul style="list-style-type: none"> ■ How could this conflicting grievance scenario arise? <ul style="list-style-type: none"> – A teacher is reassigned from middle school to high school. She files a grievance alleging that Board policy pertaining to involuntary transfer was not followed and that she was treated differently because of gender in violation of non-discrimination policy <p style="font-size: small; margin-top: 10px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	<h2 style="margin: 0;">Grievance Policies</h2>
	<ul style="list-style-type: none"> ■ How could this conflicting grievance scenario arise? (The saga continues) <ul style="list-style-type: none"> – The grievance is filed under the ordinary grievance policy <u>and</u> under the non-discrimination policy – The grievance policy makes a hearing before the Board discretionary – The non-discrimination policy makes a hearing mandatory upon the employee's request <p style="font-size: small; margin-top: 10px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

Grievance Policies

- How could this conflicting grievance scenario arise? (More saga)
 - The grievance policy requires final resolution in 20 days; the non-discrimination grievance must be resolved in 30 days
 - "Days" are defined differently in the two policies
 - The grievance policy provides for numerous levels; the non-discrimination policy provides for investigation by a single compliance officer

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Grievance Policies

- What is a right-thinking administrator to do in this case? (How close is retirement?)
 - You may have to mix and match (fashionistas have an advantage here)
 - Lean toward more process, rather than less, for the employee (sorry!)
 - Choose the longer timelines (and provide notice of this up front)
 - Notify the complainant in writing of the procedures that will be used – and why!

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Grievance Clauses - Suggestions

- Shameless promotion of a favorite grievance provision
 - Strong, strong preference for making all hearings before the Board optional – at the discretion of the Board – unless otherwise required by law!!
 - We will come back to this again! (and again and again!)

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	<h2>Grievance Clauses - Suggestions</h2>
	<ul style="list-style-type: none"> ■ Definition of Grievance <ul style="list-style-type: none"> - <i>Bad – very bad!</i> <ul style="list-style-type: none"> ■ "Grievance" shall mean a complaint by one or more teachers and/or the association that (1) this agreement or (2) a district policy, regulation, procedure, or practice (whether written or unwritten) has been violated, misinterpreted, inequitably applied, or implemented in manner that adversely affects salary, benefits, or any other term or condition of employment <p style="text-align: center; font-size: small;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	<h2>Grievance Clauses - Suggestions</h2>
	<ul style="list-style-type: none"> ■ Definition of Grievance <ul style="list-style-type: none"> - <i>Good! (just one BRIEF example)</i> <ul style="list-style-type: none"> ■ "Grievance" shall mean a complaint by an individual teacher alleging that (1) this agreement or (2) a specific, written, district policy or regulation, has been violated or misinterpreted. <p style="text-align: center; font-size: small;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	<h2>Grievance Clauses - Suggestions</h2>
	<ul style="list-style-type: none"> ■ Exclusions from Definition of Grievance <ul style="list-style-type: none"> - Common <ul style="list-style-type: none"> ■ This policy shall not apply to complaints for which the opportunity for a hearing is required by law (e.g., termination of a tenured teacher; true RIFs) <ul style="list-style-type: none"> - (Reminder to self – digress regarding RIFs!) ■ This policy shall not apply to evaluations unless they result in loss of pay <p style="text-align: center; font-size: small;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	<h2>Grievance Clauses - Suggestions</h2>
	<ul style="list-style-type: none"> ■ Exclusions from Definition of Grievance <ul style="list-style-type: none"> - Personal favorites <ul style="list-style-type: none"> ■ This policy shall not apply to the content of performance evaluations or remedial documents (including but not limited to notices of deficiencies, job targets, professional development plans, professional improvement plans, and other assessments of employee performance); to decisions regarding non-renewal, termination, or reduction-in-force; or to decisions for which state or federal law requires a hearing or provides another means of resolving disputes. <p>TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	<h2>Grievance Clauses - Suggestions</h2>
	<ul style="list-style-type: none"> ■ Exclusions from Definition of Grievance <ul style="list-style-type: none"> - Personal favorites (companion provision) <ul style="list-style-type: none"> ■ This policy shall not apply to the exclusions set forth above or to complaints for which state or federal law establishes a procedure for obtaining a Board hearing. In addition, complaints about official Board action shall be directed to the Board; and unless otherwise required by law, a hearing regarding the complaint, shall be discretionary with the Board. <p>TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	<h2>Grievance Clauses - Suggestions</h2>
	<ul style="list-style-type: none"> ■ Definition of Grievant <ul style="list-style-type: none"> - Hard <ul style="list-style-type: none"> ■ "Grievant" means a teacher, groups of teachers, and/or the association ■ Really? <ul style="list-style-type: none"> - Do you want group grievances? - Do you want the association to be able to file a grievance? <p>TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	<h2 style="margin: 0;">Grievance Clauses - Suggestions</h2>
	<ul style="list-style-type: none"> ■ Definition of Grievant <ul style="list-style-type: none"> - Hard (continued) <ul style="list-style-type: none"> ■ Watch out for imbedded terms ■ Purpose is to simplify and prevent disputes ■ Remember, you may be dealing with a legally enforceable contract! ■ E.g., "teacher" <ul style="list-style-type: none"> - All full-time certificated employees - Really - what about certificated support staff? <p style="font-size: small; margin-top: 10px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	<h2 style="margin: 0;">Grievance Clauses - Suggestions</h2>
	<ul style="list-style-type: none"> ■ Definition of Grievant <ul style="list-style-type: none"> - Easy (really easy) <ul style="list-style-type: none"> ■ "Grievant" means an individual teacher who has filed a complaint alleging the teacher has been adversely affected by a violation or misinterpretation of (1) this agreement or (2) a specific, written, district policy or regulation. <p style="font-size: small; margin-top: 10px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	<h2 style="margin: 0;">Grievance Clauses - Suggestions</h2>
	<ul style="list-style-type: none"> ■ Definition of "Days" <ul style="list-style-type: none"> - Causes difficulty <ul style="list-style-type: none"> ■ Shall mean calendar days ■ Shall mean school days ■ Shall mean work days ■ Shall mean days on which school is in session ■ Shall not include days on which school is not in session <p style="font-size: small; margin-top: 10px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	<h2 style="margin: 0;">Grievance Clauses - Suggestions</h2>
	<ul style="list-style-type: none"> ■ Definition of "Days" <ul style="list-style-type: none"> - Promotes clarity <ul style="list-style-type: none"> ■ Shall be defined as calendar days, whether occurring during the regular school year or during the summer <p style="text-align: right; margin-top: 10px;">(keep reading!)</p> <p style="font-size: small; margin-top: 20px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	<h2 style="margin: 0;">Grievance Clauses - Suggestions</h2>
	<ul style="list-style-type: none"> ■ Definition of "Days" <ul style="list-style-type: none"> - Promotes clarity (here is the rest!) <ul style="list-style-type: none"> ■ The following will <u>not</u> be included in the calculation of days: weekends; district-designated holidays (whether on the original school calendar or designated thereafter); winter, spring, or other Board designated breaks; closings due to inclement weather, illness, natural disaster, or other emergencies <p style="font-size: small; margin-top: 20px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	<h2 style="margin: 0;">Grievance Clauses - Suggestions</h2>
	<ul style="list-style-type: none"> ■ Deadlines <ul style="list-style-type: none"> - The Bad and the Ugly <ul style="list-style-type: none"> ■ Failure by the grievant to appeal to Level II within 10 days of receiving the principal's decision may be excused by the superintendent ■ Failure by the superintendent to respond to the Level II grievance within 10 days of receiving the appeal will result in granting the relief requested by the employee <p style="font-size: small; margin-top: 20px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	Grievance Clauses - Suggestions
	<ul style="list-style-type: none"> ■ Deadlines <ul style="list-style-type: none"> - More Bad and Ugly <ul style="list-style-type: none"> ■ The deadlines established under this policy may be extended by mutual agreement of the complainant and the district representative at the relevant Level ■ The parties agree that time is of the essence for grievances submitted under this policy and that the deadlines established herein may not be modified <p style="font-size: small; margin-top: 10px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	Grievance Clauses - Suggestions
	<ul style="list-style-type: none"> ■ Deadlines <ul style="list-style-type: none"> - The Good <ul style="list-style-type: none"> ■ The deadlines established under this policy may be extended upon the written request of the grievant or the district, subject to the following restriction. ■ The final decision regarding any extension requested under this policy shall be made by the superintendent, in his/her judgment and at his/her sole discretion <p style="font-size: small; margin-top: 10px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	Grievance Clauses - Suggestions
	<ul style="list-style-type: none"> ■ Random and/or Nefarious Provisions <ul style="list-style-type: none"> - The grievant will be provided with all information necessary for the processing of the grievance - Every effort will be made to resolve the grievance through informal means - No adverse action will be taken against an employee who has filed a grievance <p style="font-size: small; margin-top: 10px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	Grievance Clauses - Suggestions
	<ul style="list-style-type: none"> ■ Random and/or Nefarious Provisions <ul style="list-style-type: none"> - If the grievance is against an individual, the employee is required to discuss the complaint with the individual before initiating the grievance process - A grievant may add new, additional, or different information at any level of the grievance process <p style="text-align: center; font-size: small;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	Grievance Clauses - Suggestions
	<ul style="list-style-type: none"> ■ Random and/or Nefarious Provisions <ul style="list-style-type: none"> - A Level 1 grievance must be discussed orally before proceeding to Level 2; no written record is to be made of the Level 1 discussion (WHAT?) - The employee shall receive release time as may be necessary to prosecute the grievance; such leave shall not be charged to sick, personal, vacation, or other leave (Show me to the grievance forms!) <p style="text-align: center; font-size: small;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	Grievance Clauses - Suggestions
	<ul style="list-style-type: none"> ■ Random and/or Nefarious Provisions <ul style="list-style-type: none"> - When a complaint is subject to more than one grievance policy or procedure, the grievant shall designate the procedure to be used <p style="text-align: center; font-size: small;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	Considerations
	<ul style="list-style-type: none"> ■ Grievance Documents <ul style="list-style-type: none"> - Investigation file <ul style="list-style-type: none"> ■ Confidential ■ Sometimes attorney-client privilege and/or work product - Report to grievant <ul style="list-style-type: none"> ■ Does not get to see investigation file ■ Does get written response or report <p style="text-align: center; font-size: small;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	Considerations
	<ul style="list-style-type: none"> ■ More Grievance Documents <ul style="list-style-type: none"> - Report to individuals against whom complaints are filed - Sometimes the grievance is about the actions of an individual - The individual does <i>not</i> have a right to review the grievance file or the report to the grievant!! <p style="text-align: center; font-size: small;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	Appeals
	<ul style="list-style-type: none"> ■ Board Hearings – Questions <ul style="list-style-type: none"> - Does the Board really want to hear all grievances over even the most trivial complaints? - Does the Board really want to hear the same employee's fifth grievance in two years? - Does the Board want to hear the same complaint under 3 different grievance procedures? - Is there a way to avoid this nightmare? <p style="text-align: center; font-size: small;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	Appeals
	<ul style="list-style-type: none"> ■ Board Hearings – Answers <ul style="list-style-type: none"> – No, no, no, yes! – It is appropriate to include a provision similar to the following: <ul style="list-style-type: none"> ■ Notwithstanding any other provision of this policy or any other District policy, regulation, or procedure, a hearing before the Board shall be discretionary with the Board, unless otherwise required by law. <p style="font-size: small; margin-top: 10px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	Appeals
	<ul style="list-style-type: none"> ■ Grieving the Final Decision (NOT!) <ul style="list-style-type: none"> – A final decision is just that – FINAL! – And I am not talking about the grievant, here – The grievant knows that the final decision is final – And may have options, depending upon the nature of the grievance (OCR, MHR, EEOC, court, etc.) <p style="font-size: small; margin-top: 10px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	Appeals
	<ul style="list-style-type: none"> ■ Grieving the Final Decision (NO WAY!) <ul style="list-style-type: none"> – What I am talking about here, is the “guilty” individual grieving the outcome of the grievance – Example: Teacher alleges principal failed to evaluate four times during year. Grievance upheld. Principal is given PIP for failing to comply with evaluation policy. Principal grieves PIP. – NO! NO! NO! <p style="font-size: small; margin-top: 10px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	Appeals
	<ul style="list-style-type: none"> ■ Grieving the Final Decision (Not JK!) <ul style="list-style-type: none"> - Question: What about truth, justice, fairness, the principal's "due process", and the American way? - Answer: The principal already had it!! Remember the grievance? That is a two-way street. The grievance process is intended to be a neutral, fact-finding, decision-making process that takes into consideration <u>all</u> versions of the events at issue. <p style="text-align: center; font-size: small;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	Appeals
	<ul style="list-style-type: none"> ■ Grieving the Final Decision (NOPE!) <ul style="list-style-type: none"> - Permitting the principal to grieve the action taken in response to the grievance would be like this: Teacher sues principal for discrimination on basis of age. Teacher wins at all levels and is awarded big \$\$\$. Principal sues teacher to recover money. - Ridiculous you say? - Same as grieving the PIP – trust me on this! <p style="text-align: center; font-size: small;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	Considerations
	<ul style="list-style-type: none"> ■ What about collective bargaining? <ul style="list-style-type: none"> - If part of a collective bargaining agreement, is a <i>binding contract</i> - Must be followed or breach of contract - If not bargained for, now is opportunity to modify troublesome language - If in bargaining process need to be alert! <p style="text-align: center; font-size: small;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	What to Do
	<ul style="list-style-type: none"> ■ Advice from your friendly attorney <ul style="list-style-type: none"> - Review all grievance policies - Look for ambiguous, tricky, or inconsistent language - Modify if necessary and possible - Comply with binding language – or else! - Don't agree in bargaining to language you can't live with - You can always ACCEPT, REJECT, or MODIFY any proposal!!!! - Document carefully when taking adverse action against a recent grievant - Consult with your attorney as appropriate <p style="text-align: center; margin-top: 10px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>

	<p>by:</p> <p>Celynda L. Brasher Michelle H. Basi</p> <p>Tueth, Keeney, Cooper, Mohan & Jackstadt, P.C. 34 N. Meramec Avenue, Suite 600 St. Louis, MO 63105 314.880.3600 - main 314.880.3601 - facsimile cbrasher@tuethkeeney.com mbasi@tuethkeeney.com</p> <p style="text-align: center; margin-top: 10px;">TUETH • KEENEY • COOPER • MOHAN • JACKSTADT P.C.</p>
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