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DIVISION 1

PROCEDURAL RULES

- 586-001-0000** Giving Reasonable Notice to Interested Persons on Any Proposal by the Fair Dismissal Appeals Board to Adopt, Amend, or Repeal Any Rule
- Prior to the adoption, amendment, or repeal of any rule, other than a temporary rule which shall be adopted in accordance with

ORS 183.335(5) the Fair Dismissal Appeals Board shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to the effective date of the intended action.

(2) By mailing a copy of the notice to persons on the Fair Dismissal Appeals Board's mailing list established pursuant to ORS 183.335(7).

(3) By mailing or furnishing a copy of the notice to the following persons, organizations, or publications:

- (a) Associated Press;
- (b) Confederation of Oregon School Administrators;
- (c) Oregon Education Association;
- (d) Oregon Federation of Teachers;
- (e) Oregon School Board's Association;
- (f) Teacher Standards and Practices Commission.

Stat. Auth.: ORS 183 & ORS 342.805 - ORS 342.934

Hist.: FDA 8, f. 4-5-76, ef. 4-15-76; FDA 2-1980, f. & ef. 3-27-80; FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1992, f. & cert. ef. 3-5-92

586-001-0005

Model Rules of Procedure

Pursuant to ORS 183.341(2), the Board adopts the Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedures Act, as amended subsequent to the 1991 session of the Legislative Assembly, except those rules pertaining to contested cases.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Fair Dismissal Appeals Board.]

Stat. Auth.: ORS 183 & ORS 342.805 - ORS 342.934

Stats. Implemented:

Hist.: FDA 1, f. 5-5-72, ef. 5-15-72; FDA 3, f. 1-18-74, ef. 2-11-74; FDA 7, f. 4-2-76, ef. 4-15-76; FDA 1-1978, f. 3-16-78, ef. 3-20-78; FDA 1-1980, f. & ef. 3-18-80; FDA 3-1982, f. 11-4-82, ef. 11-5-82; FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1986, f. 11-7-86, ef. 11-12-86; FDA 1-1992, f. & cert. ef. 3-5-92

DIVISION 10

POLICY

586-010-0005

Purpose

The purpose of these rules is to implement and give effect to the provisions of state law and to facilitate the organization and operation of the Fair Dismissal Appeals Board.

Stat. Auth.: ORS 183

Stats. Implemented:

Hist.: FDA 2(Temp), f. & ef. 1-4-74; FDA 4, f. 3-11-74, ef. 4-11-74; FDA 1-1985, f. 3-25-85, ef. 3-27-85

586-010-0010

Membership

Members shall be appointed by the Governor, as provided in ORS 342.930.

Stat. Auth.: ORS 342

Stats. Implemented:

Hist.: FDA 2(Temp), f. & ef. 1-4-74; FDA 4, f. 3-11-74, ef. 4-11-74; FDA 1-1985, f. 3-25-85, ef. 3-27-85

586-010-0015

Officers

The officers of the Board shall be chairperson and vice-chairperson:

(1) The vice-chairperson succeeds to the chairperson.

(2) The vice-chairperson position shall rotate each year in the order of teacher, board member, non-affiliated member, and administrator.

(3) Each year the vice-chairperson shall be nominated by a chairperson-appointed three member nominating committee made up of Board members from the members not eligible to serve that year.

(4) The vice-chairperson shall be elected at the annual October meeting by a simple majority of the members present and

voting. The term of office shall be from the annual October meeting to the next October annual meeting.

(5) New officers shall be installed at the close of the annual meeting at which they were elected.

Stat. Auth.: ORS 342.805 - ORS 342.934

Stats. Implemented:

Hist.: FDA 2(Temp), f. & ef. 1-4-74; FDA 4, f. 3-11-74, ef. 4-11-74; FDA 1-1982, f. & ef. 4-13-82; FDA 1-1992, f. & cert. ef. 3-5-92

586-010-0020**Board Chairperson**

The Board chairperson shall be eligible to vote on all motions.

Stat. Auth.: ORS 183 & ORS 342.805 - ORS 342.934

Stats. Implemented:

Hist.: FDA 2(Temp), f. & ef. 1-4-74; FDA 4, f. 3-11-74, ef. 4-11-74; FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1992, f. & cert. ef. 3-5-92

586-010-0025**Board Meetings**

The Board shall hold public meetings at such times and places as are specified by the chairperson, or at the request of five members of the Board. Seventy-two hour notice of the time and place of each meeting shall be given to each member and the general public. Notice to the general public shall be made by telephone to the Associated Press at least 48 hours prior to the meeting of the Board. A majority of the members of the Board shall constitute a quorum for doing business. The notice shall state if the meeting is to be held by telephone or other means of voice transmission and a location where members of the public may listen to the meeting.

Stat. Auth.: ORS 183 & ORS 342.805 - ORS 342.93

Stats. Implemented:

Hist.: FDA 2(Temp), f. & ef. 1-4-74; FDA 4, f. 3-11-74, ef. 4-11-74; FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1992, f. & cert. ef. 3-5-92

586-010-0030**Annual Meetings**

The Board shall hold one regular meeting each year, at the State Department of Education in Salem, beginning at 9 a.m. on the fourth Monday in October.

Stat. Auth.: ORS 183 & ORS 342.805 - ORS 342.934

Stats. Implemented:

Hist.: FDA 2(Temp), f. & ef. 1-4-74; FDA 4, f. 3-11-74, ef. 4-11-74; FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1990, f. 8-29-90, cert. ef. 10-1-90; FDA 1-1992, f. & cert. ef. 3-5-92

586-010-0035**Record of Meetings**

The minutes of all meetings and proceedings of the Board shall be prepared and maintained by the executive secretary and shall be approved by the Board. Minutes of the Board shall be available for inspection by any person at the office of the executive secretary during regular business hours. Copies may be obtained upon written request to the executive secretary.

Stat. Auth.: ORS 183

Stats. Implemented:

Hist.: FDA 2(Temp), f. & ef. 1-4-74; FDA 4, f. 3-11-74, ef. 4-11-74; FDA 1-1985, f. 3-25-85, ef. 3-27-85

586-010-0040**Official Records**

The official records of the Fair Dismissal Appeals Board shall be maintained in the office of the executive secretary. The executive secretary shall be the custodian of records.

Stat. Auth.: ORS 183

Stats. Implemented:

Hist.: FDA 2(Temp), f. & ef. 1-4-74; FDA 4, f. 3-11-74, ef. 4-11-74; FDA 1-1985, f. 3-25-85, ef. 3-27-85

586-010-0045**Executive Secretary**

The Superintendent of Public Instruction shall appoint an executive secretary from the staff of the State Department of Education who will serve as administrative officer. The executive secretary shall serve at the pleasure of the Board.

Stat. Auth.: ORS 183 & ORS 342.805 - ORS 342.934

Stats. Implemented:

Hist.: FDA 2(Temp), f. & ef. 1-4-74; FDA 4, f. 3-11-74, ef. 4-11-74; FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1992, f. & cert. ef. 3-5-92

586-010-0050**Adoption and Amendment of Rules**

Board rules shall be adopted and amended in conformance with provisions of ORS Chapter 183.

Stat. Auth.: ORS 183

Stats. Implemented:

Hist.: FDA 2(Temp), f. & ef. 1-4-74; FDA 4, f. 3-11-74, ef. 4-11-74; FDA 1-1985, f. 3-25-85, ef. 3-27-85

586-010-0055**Parliamentary Procedure**

Roberts Rules of Order shall be the parliamentary procedure for the conduct of all meetings of the Board except as amended by these policies.

Stat. Auth.: ORS 342

Stats. Implemented:

Hist.: FDA 2(Temp), f. & ef. 1-4-74; FDA 4, f. 3-11-74, ef. 4-11-74; FDA 6-1980, f. 10-31-80, ef. 11-3-80

586-010-0060**Compensation and Expenses of Board**

Members shall be entitled to compensation and travel expenses as provided in ORS 292.495 in the performance of their duties pursuant to the Fair Dismissal Law. Such expenses shall be paid upon submission of signed vouchers furnished by the State Department of Education and shall be billed to the appropriate district school board or the State Department of Education as provided in ORS 292.495 or 342.930(5).

Stat. Auth.: ORS 342.805 - ORS 342.934

Stats. Implemented:

Hist.: FDA 2(Temp), f. & ef. 1-4-74; FDA 4, f. 3-11-74, ef. 4-11-74; FDA 14, f. 3-3-77, ef. 3-5-77; FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1992, f. & cert. ef. 3-5-92

586-010-0065**Expenses for Professional and Other Special Assistance**

The Board shall be furnished by the State Department of Education at the Department's expense appropriate professional and other special assistance reasonably required in the performance of the Board's duties.

Stat. Auth.: ORS 342.805 - ORS 342.934

Stats. Implemented:

Hist.: FDA 2(Temp), f. & ef. 1-4-74; FDA 4, f. 3-11-74, ef. 4-11-74; FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1992, f. & cert. ef. 3-5-92

586-010-0070**Fair Dismissal Appeals Board Case Digest, Completion, and Distribution**

(1) The Board's case record for every case filed under the Fair Dismissal Law and Accountability to Schools for the 21st Century Law, shall include the notice of appeal, every order and ruling issued in the case by the panel appointed for the case and a copy of every appellate court decision issued upon judicial review of any order in the case.

(2) The Executive Secretary shall furnish to each new board member, within 30 days after Senate confirmation, a cumulative list of appeals to the Board since enactment of the Fair Dismissal Law and Accountability to Schools for the 21st Century Law showing the name of each case, the docket number of the case and the date the appeal was filed; a copy of all orders issued in each case; and a copy of all appellate court decisions issued upon judicial review of any order in a case. An up-to-date cumulative list of appeals shall be prepared annually by the Executive Secretary and furnished to each member of the Board. A copy of every newly issued order or appellate court decision issued in any case filed with the board shall be furnished to each member of the board. A copy of every newly issued order or appellate court decision issued in any case filed with the Board shall be furnished by the Executive Secretary to each member of the Board within 30 days after issuance of the order or decision.

(3) The Executive Secretary shall compile and distribute to each Board member at least annually annotations, digests or syn-

opies of decisions in Board cases to assist panels in adjudication of cases heard by them.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 1997 (Eff. 8-15-97)

Hist.: FDA 1-1991, f. 3-27-91, cert. ef. 3-28-91; FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

DIVISION 30

CONDUCT OF HEARINGS

586-030-0015

Notice of Appeal, Service

When an appeal is filed a notice shall be served personally or by registered or certified mail on all parties by the Executive Secretary. The notice shall include:

(1) A statement that the parties shall immediately confer to select a hearings officer in accordance with the process set forth in OAR 586-030-0020.

(2) A statement of the authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes and rules involved;

(4) A short and plain statement of the matters asserted or charged;

(5) A statement that the party may be represented by counsel at the hearing; and

(6) A statement that each party to the hearing will be given the information on the procedures, right of representation and other rights of the parties relating to the conduct of the hearing as required under ORS 183.413(2).

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 1997 (Eff. 8/15/97)

Hist.: FDA 6, ef. 3-11-75(Temp), 4-11-75(Perm); FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

586-030-0020

Selection of Hearings Officer

(1) When an appeal is filed the Appellant shall also notify the Employment Relations Board and request that the list of not fewer than 10 hearings officers be forwarded by the ERB to the legal representatives for both parties.

(2) The parties shall select the hearings officer within 5 days of receipt of the ERB list, using the following procedure:

(a) A coin toss shall determine the order of selection.

(b) The parties shall then alternately select names from the ERB list with all names being compiled in rank order.

(3) The parties shall contact the first hearings officer selected to determine if that individual is available to hold a hearing within 30 days of the receipt by the teacher of the Notice of Dismissal or within 35 days of the receipt by the teacher of Statement of Reasons in the case of contract non-extension. If the hearings officer is not available the parties shall then proceed to the next ranked hearings officer and continue in this manner until a hearings officer is available who can conduct the hearing within the time lines so specified by statute.

(4) The parties may mutually agree to select a hearings officer not on the ERB list so long as the individual selected can hold a hearing within the time lines specified by statute.

(5) The parties shall notify the Executive Secretary of the selection and the dates scheduled for the hearing as soon as practicable by telephone. This shall be followed with a written confirmation. The Executive Secretary shall then send official notice of the hearing to the teacher and the school district by personal service, or by registered or certified mail which shall include a copy of the notice sent to the Executive Secretary.

(6) The hearings officer may contact the Executive Secretary for guidance on any aspect of the process, at any stage of the proceedings, as long as there is no substantive discussion of the hearings officer's decision making on the proposed findings of fact. In the discretion of the Executive Secretary, an Assistant Attorney General may be authorized to respond to an inquiry from the hear-

ings officer concerning relevant Board sources of information and confer on any procedural questions from the hearings officer with the same limitation on discussion of any decision making on the proposed findings of fact.

Stat. Auth.: ORS 342.805 - ORS 342.934

Stats. Implemented: ORS 864, OL 1997 (Eff. 8-15-97)

Hist.: FDA 6, ef. 3-11-75(Temp), 4-11-75(Perm); FDA 11, f. 3-3-77, ef. 3-5-77; FDA 1-1981, f. & ef. 3-20-81; FDA 2-1982, f. & ef. 4-13-82; FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1992, f. & cert. ef. 3-5-92; FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

586-030-0023

Rights of Parties in Fair Dismissal Appeal Hearings

(1) The written or oral information required to be given under ORS 183.413(2) before commencement of a contested case hearing shall include:

(a) If a party is not represented by an attorney, a general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence;

(b) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties;

(c) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the panel;

(d) Whether an attorney will represent the panel in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney;

(e) The title and function of the panel presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the panel presiding at the hearing are reviewed and the effect of the panel's determination;

(f) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights;

(g) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the panel and the hearing reopened;

(h) Whether there exists an opportunity after the hearing and prior to the final determination or order of the panel to review and object to any proposed findings of fact, conclusions of law, summary of evidence or determinations of the panel;

(i) A description of the appeal process from the determination or order of the panel.

(2) The information required in section (1) of this rule may be given in writing or orally before the commencement of the hearing.

Stat. Auth.: ORS 183

Stats. Implemented:

Hist.: FDA 4-1980, f. 10-31-80, ef. 11-3-80; FDA 1-1985, f. 3-25-85, ef. 3-27-85

586-030-0024

Hearing Procedures

(1) A panel of three members of the Board will conduct the hearing. The panel shall be selected in accordance with the provisions of subsection (3) of ORS 342.905. The panel will select one of its members as presiding officer to conduct and preside over the hearing. All witnesses shall be heard only upon oath or affirmation to tell the truth.

(2) The hearing will proceed as follows:

(a) Preliminary motions if any, made pursuant to OAR 586-030-0065, may be heard by the panel. These could include motions which challenge the Board's jurisdiction, motions which challenge the sufficiency of the reasons for dismissal or of the reasons for appeal, etc. Other motions could ask for dismissal of the appeal or delay of the proceedings for appropriate reasons. Persons who have requested party status or limited party status pur-

suant to OAR 586-030-0031(2) will have their petitions considered by the panel as a preliminary matter;

(b) If the parties wish to make opening statements, the panel will determine the order thereof;

(c) The district will present its evidence in support of the charges it alleged in the letter sent to the appellant at least 20 days before the school board acted to dismiss;

(d) Persons admitted to party or limited party status will present their evidence;

(e) The appellant will present evidence relevant to the matters charged;

(f) The district may present evidence in rebuttal to evidence given by any other party;

(g) Persons admitted to party or limited party status may present evidence in rebuttal to evidence given by any other party;

(h) The appellant may present evidence in rebuttal to evidence given by any other party;

(i) The district may make closing arguments;

(j) Persons admitted to party or limited party status may make closing arguments;

(k) The appellant may make closing arguments.

(3) The panel may rule on motions when made or may reserve ruling until later. Party or limited party status may be given to persons which the panel determines either have an interest in the outcome of the panel's proceeding or represent a public interest in the outcome.

(4) The general procedure and conduct of the hearing will be similar to a court proceeding, but not as formal.

(5) Any party may examine his own witnesses and may cross examine any other party's witnesses. The panel may question any witness.

(6) The panel presiding officer may recess or adjourn the hearing at appropriate times for the purpose of taking additional testimony or for reasons found sufficient by the panel.

(7) The burden of presenting evidence to support a fact or position rests on the proponent of the fact or position.

(8) Objections can be made to evidence that is irrelevant, immaterial or unduly repetitious.

(9) Proceedings at the hearing will be recorded by a hearings reporter by manual or electronic means. A copy of the transcript of the proceeding may be obtained from the reporter at cost.

(10) The record will be made available to the parties if the final order is appealed to the Court of Appeals as provided by ORS 183.482. The record shall include:

(a) All pleadings, motions and intermediate rulings;

(b) Evidence received or considered;

(c) Stipulations;

(d) A statement of matters officially noticed;

(e) Questions and offers of proof;

(f) Objections and rulings thereon;

(g) A statement of any ex parte communications on a fact in issue made to a panel member;

(h) Findings of fact, conclusions of law and final order.

(11) The panel will be represented by an Assistant Attorney General. Parties are customarily represented by counsel.

(12) The panel will receive and rule on admissibility of evidence and will make the final determination in the matter.

(13) If not represented by an attorney the appellant may request a recess prior to presenting the case, if the appellant decides that representation by an attorney is necessary to the protection of the appellant's rights.

(14) After the hearing is completed the panel will decide the matter and prepare a final order including findings of fact and conclusions of law.

(15) A party may file a petition for reconsideration or rehearing on a final order with the panel in accordance with OAR 586-030-0060.

(16) Any party may appeal the final order of the panel by filing a petition in the Court of Appeals within 60 days following the date the final order is served or within 60 days after denial of a petition for rehearing or petition for reconsideration.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented:

Hist.: FDA 3-1980, f. 10-31-80, ef. 11-3-80; FDA 1-1981, f. & ef. 3-20-81; FDA 2-1982, f. & ef. 4-13-82; FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1992, f. & cert. ef. 3-5-92

586-030-0025

Preliminary Matters

(1) All motions concerning the presentation of evidence or any facet of the hearing process shall be filed with and heard first by the hearings officer. All other preliminary motions shall be filed with the Executive Secretary to be heard initially by the panel.

(2) Preliminary motions which challenge the Board's jurisdiction or which request dismissal of the appeal without a hearing shall be filed with the Executive Secretary at the earliest possible time, but not less than 10 days before the date set for hearing on the appeal. Any opposition memorandums must be submitted to the Executive Secretary within 5 days of the filing of the motion. The panel may schedule oral argument and shall consider and provide the parties with an oral ruling on the motion at the earliest time practicable. If the motion is denied, then the hearings officer shall continue with the hearing on the date previously scheduled. If the parties are orally advised that the panel has tentatively granted the motion, the matter shall be scheduled for oral argument with appropriate briefing after which time the panel shall produce a final order within 30 days of the oral argument.

(3) If the panel, in consultation with the Executive Secretary and legal counsel, determines an evidentiary hearing is necessary to decide the motion, the Executive Secretary shall notify both parties and the hearings officer and order a hearing on the facts to be scheduled before the hearings officer either on the date set for hearing on the merits or a separate date for hearing on the motion prior to any date for hearing on the merits.

(4) The Executive Secretary may direct the parties to respond to inquiries or to submit affidavits, before scheduling an evidentiary hearing, in order to determine if factual issues raised by the motion are not in dispute.

(5) At any evidentiary hearing on the motion the proponent of any assertion of fact has the obligation to present evidence of the fact unless the fact is already established in the record by admissible evidence or is admitted by the opposing party.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 1997 (Eff. 8-15-97)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

586-030-0026

Exhibits

When written or photographic evidence is offered, the original or authenticated copy shall be provided for the record, four (4) copies shall be provided for the panel and a copy shall be provided for the opposing party.

Stat. Auth.: ORS 342

Stats. Implemented:

Hist.: FDA 1-1982, f. & ef. 4-13-82; FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1991, f. 3-27-91, cert. ef. 3-28-91; Renumbered from 586-030-0029

586-030-0027

Evidentiary Rules

(1) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(3) All offered evidence, not objected to, will be received by the presiding officer subject to the power to exclude irrelevant, immaterial, or unduly repetitious matter.

(4) Evidence objected to may be received by the presiding officer with ruling on its admissibility or exclusion to be made at the time a final order is issued.

(5) The panel shall give effect to the rules of privilege recognized by law.

Stat. Auth.: ORS 183 & ORS 342.805 - ORS 342.934

Stats. Implemented:

Hist.: FDA 6, ef. 3-11-75(Temp), 4-11-75(Perm); FDA 11, f. 3-3-77, ef. 3-5-77; FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1991, f. 3-27-91, cert. ef. 3-28-91; Renumbered from 586-030-0030; FDA 1-1992, f. & cert. ef. 3-5-92

586-030-0028

Testimony of a Witness not Present at Hearing

(1) With the consent of all parties testimony of a witness not present at the hearing may be given by telephonic or other electronic means of voice transmission.

(2) If one party refuses consent, the party seeking to present testimony in this manner shall file a written request with the executive secretary for permission to present the testimony at the hearing by telephonic or other electronic means of voice transmission. The request shall be filed and served on opposing parties at least 15 days before the hearing day in which the testimony is to be presented and shall state the name and address of the witness, whether attendance can be compelled by subpoena, the date the party plans to present the testimony, a description of the evidence to be presented by the witness and the reasons why the witness will not be present at the hearing. If circumstances prevent compliance with the 15-day requirement the request shall be filed and served as soon as possible after the 15th day before the date the testimony is to be presented. Where, because of residence outside the State of Oregon, sabbatical leave outside the state or other circumstances, a subpoena cannot be used to compel attendance at the hearing and attendance would be unlikely or would be burdensome to the witness or the party calling the witness, the request shall be granted unless the executive secretary or the panel concludes that the detriment to an opposing party from the failure of the witness to appear in person at the hearing would deprive the opposing party of a fair hearing. Where the witness is subject to the board's subpoena power, the executive secretary or the panel shall deny the request unless the circumstances excuse attendance of the witness and detriment to opposing parties from the failure of the witness to appear in person would not deprive any opposing party of a fair hearing. Notice that the request is being granted, or that the request is being denied, as the case may be, shall be communicated to all parties by either the executive secretary or the board's counsel before the date for presentation of the testimony.

(3) Nothing in this rule is intended to remove the discretion of the panel to continue the hearing or to make other arrangements that will enable personal appearance of the witness at the hearing.

(4) The panel shall determine the weight to be given to testimony presented by telephonic or other electronic means of voice transmission.

Stat. Auth.: ORS 342.805 - ORS 342.934

Stats. Implemented:

Hist.: FDA 1-1991, f. 3-27-91, cert. ef. 3-28-91; FDA 1-1992, f. & cert. ef. 3-5-92

586-030-0031

Request to Participate as Party or in Limited Party Status

(1) When the panel gives notice that it intends to hold a contested case hearing, interested persons who the panel has determined have an interest in the outcome of the panel's proceeding or who represent a public interest in such result shall be given the opportunity to become parties or participate in a limited party status.

(2) Persons requesting to participate as a party or in a limited party status shall file a petition, with sufficient copies for service on the parties, with the panel at least ten days prior to the date set for hearing. Petitions untimely filed shall not be considered unless the panel determines that good cause has been shown for failure to file timely.

(3) The petition requesting to participate as a party or in a limited party status shall set forth the following:

(a) Name and address of the petitioner, and of any organization which the petitioner represents;

(b) Name and address of the petitioner's attorney, if any;

(c) If the petitioner is seeking party or limited party status to protect an alleged personal interest in the outcome of the panel's proceeding, a detailed statement of the petitioner's interest and of

how such interest may be affected by the results of the proceeding;

(d) If the petitioner purports to be representing a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and of the petitioner's qualifications to represent such public interest;

(e) A statement of the reasons why existing parties to the proceeding cannot represent adequately the interest identified in subsection (3)(c) or (d) of this rule;

(f) If the petition is for limited party status, the precise area or areas in which participation is requested.

(4) The panel shall serve petitions for party status on all parties personally or by mail. All parties shall be notified of the decision of the panel on the petition.

(5) If a person is granted participation as a party or in a limited party status, the panel may postpone the hearing to a later date when it appears that commencing or continuing the hearing would jeopardize or unduly burden one or more of the parties in the case.

(6) In granting limited party status petitions, the panel shall set forth the area or areas of participation.

(7) A panel ruling on a petition to participate as a party or in a limited party status shall be in writing and served promptly on the petitioner and all parties.

Stat. Auth.: ORS 183

Stats. Implemented:

Hist.: FDA 4-1980, f. 10-31-80, ef. 11-3-80; FDA 1-1981, f. & ef. 3-20-81;

FDA 2-1982, f. & ef. 4-13-82; FDA 1-1985, f. 3-25-85, ef. 3-27-85

586-030-0032

Request to Participate as Party or in Limited Party Status

(1) When notice is given that a hearings officer intends to hold a contested hearing, interested persons who the hearings officer has determined have an interest in the outcome of the proceeding or who represented public interest in such results shall be given the opportunity to become parties or participate in a limited party status.

(2) Persons requesting to participate in a party or limited party status shall file a petition, with sufficient copies for service on the parties, with the Executive Secretary of the FDAB at least ten (10) days prior to the date set for hearing. Absent good cause, untimely filed petitions shall not be considered.

(3) The petition shall set forth the following:

(a) Name and address of the petitioner, and of any organization which the petitioner represents;

(b) Name and address of the petitioner's attorney, if any;

(c) If the petitioner is seeking party or limited party status to protect an alleged personal interest in the outcome of the proceeding, a detailed statement of the petitioner's interest and of how such interest may be affected by the results of the proceeding; and

(d) If the petition purports to be representing a public interest in the results of the proceeding, a detailed statement describing:

(A) The public interest;

(B) The manner in which that interest will be affected by the results of the proceeding;

(C) The petitioner's qualifications to represent the public interest; and

(D) Reasons why existing parties cannot adequately represent the identified public interests.

(4) A petition for limited party status shall identify the precise area or areas in which participation is requested, in addition to the items set forth in paragraph 3 above.

(5) Petitions for party status shall be delivered to all parties by the Executive Secretary either by fax or mail. Objections must be delivered by facsimile or other method and received at the Executive Secretary's office within 48 hours of service of the petition.

(6) The panel shall consider the rights of the existing parties, the delay, if any, caused by granting a party or limited party status to petitioner and any impact on due process considerations.

(7) The panel shall promptly serve its written decision concerning this matter on all parties and the hearings officer. If status

is granted, the order shall designate those areas in which it is to apply.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 1997 (Eff. 8-15-97)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

586-030-0033

Ex Parte Communications to the Panel

(1) The panel shall place on the record during its hearing or review of a contested case a statement of the substance of any written or oral ex parte communications on a fact in issue made to any member of the panel.

(2) The panel shall give notice to all parties of ex parte communications. The notice shall include:

(a) The substance of the communication if oral; if in writing a copy of the communication;

(b) Whether or not the panel will consider the ex parte communication in deciding the case.

(3) If the panel gives notice that the ex parte communication will be considered in deciding the case, the panel at its discretion shall:

(a) Set a date when the other parties may rebut the substance of the ex parte communication in writing; or

(b) Schedule a hearing for the limited purpose of receiving evidence relating to the ex parte communication.

Stat. Auth.: ORS 183

Stats. Implemented:

Hist.: FDA 4-1980, f. 10-31-80, ef. 11-3-80; FDA 1-1981, f. & ef. 3-20-81;

FDA 1-1985, f. 3-25-85, ef. 3-27-85

586-030-0036

Ex Parte Communication Record

If an ex parte communication is made to a panel member the record shall include:

(1) The ex parte communication if in writing;

(2) A statement of the substance of the ex parte communication if oral;

(3) The presiding officer's notice to the parties of the ex parte communication;

(4) Rebuttal documents; and

(5) If a hearing is held the evidence, exhibits and transcripts of the proceeding.

Stat. Auth.: ORS 183

Stats. Implemented:

Hist.: FDA 4-1980, f. 10-31-80, ef. 11-3-80; FDA 1-1981, f. & ef. 3-20-81

586-030-0037

Duty of Cooperation, Subpoenas and Discovery

(1) The timelines required by statute impose upon all parties in these proceedings the affirmative obligation to cooperate to the fullest extent possible in advance of and during the hearing. Each side shall designate a lead counsel for these purposes. The most expeditious means of communication possible will be used including telephone, fax or other form of transmission for exchange of information and discussion of issues affecting case presentation. The parties shall mutually cooperate to voluntarily make witnesses and physical evidence available for the hearing when they, in good faith, have the ability to do so.

(2) The parties shall make written request to the hearings officer with a copy to the opposing party, for the issuance of subpoenas, including to nonparties, for the production of physical evidence prior to the hearing. All fees authorized by a statute and a service cost shall be the responsibility of the party requesting the subpoena. The hearings officer may require an explanation of the testimony expected from the witness and or the nature of the physical evidence expected to be produced by subpoena and whether the opposing party has been requested to voluntarily produce the person or items sought before deciding whether to issue the subpoena.

(3) Appellant may make written request for access to all physical evidence (e.g. documents, tape recordings or other stored data) relied upon by the district in making the decision at issue or of potential relevance to the matter in dispute. The district shall

promptly respond by making available for inspection the information requested. Copies of the materials shall be made at cost, payable by the appellant's representative.

(4) The district may make written request for any physical evidence that is in explanation of the conduct at issue, is reasonably understood to be a defense or relates to the issues identified in the case. Copies of the materials shall be made at cost, payable by the district.

(5) Neither party has an obligation to produce any evidence that will be used solely for impeachment purposes during the hearing.

(6) The parties shall confer and cooperate concerning any objections or questions on the scope of the request or the manner of inspection or providing copies. If the parties can not agree then they shall in good faith and cooperatively schedule an oral telephone conference before the hearings officer to resolve the issue.

(7) Both parties are entitled to all privileges recognized by law, including but not limited to attorney-client and work product.

(8) Discovery depositions are not permitted.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 1997 (Eff. 8-15-97)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

586-030-0040

Testimony of Witness Not Present at Hearing

(1) With the consent of all parties testimony of witnesses may be by telephonic or other electronic means of voice transmission.

(2) If one party refuses consent, the other party shall file a written request with the hearings officer for permission by telephonic or other electronic means of voice transmission. The request shall be filed and served on the opposing parties at least 10 days before the scheduled commencement of the hearing and shall provide the following information:

(a) Name and address of witnesses whose testimony is sought in this manner;

(b) A brief description of the nature of the evidence to be presented; and

(c) Reasons why the witness will not be present at the hearing.

(3) If circumstances prevent compliance with the 10-day requirement set forth above, the request shall be filed and served as soon as possible after the party learns of the specific situation.

(4) The hearings officer shall consider factors such as:

(a) Whether the witness is located outside the State of Oregon or is currently working outside the state;

(b) A subpoena cannot be used to compel attendance; and

(c) Attendance would be unlikely or burdensome to the witness or the party calling the witness.

(5) The request shall be granted unless the hearings officer concludes that the party opposing the request would be deprived of a fair hearing under all circumstances. The ruling of the hearings officer shall be communicated to all parties by the most expeditious means possible, including telephone, fax or other form of transmission.

(6) The hearings officer has the discretion to consider continuance of the hearing, in order to enable personal appearance of a witness, based upon the following factors:

(a) The statutory requirement to conclude the hearing within 30 days;

(b) The due process rights of the party requesting the continuance; and

(c) Available alternatives to preserve the witness' testimony or the use of alternative evidence such as prior sworn testimony.

(7) Perpetuation of testimony may be ordered by the hearings officer upon a showing of good cause as consistent with the factors listed above.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 1997 (Eff. 8-15-97)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

586-030-0044**Rights of Parties in Fair Dismissal Appeal Hearings**

(1) The written or oral information the hearings officer is required to give under ORS 183.413.

(2) before commencement of a contested case hearing shall include:

(a) If a party is not represented by an attorney, a general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence;

(b) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties;

(c) The function of the record-making with respect to the perpetration of the testimony and evidence and with respect to any appeal from the determination or order of the panel;

(d) The names of the panel selected for final determination in the proceeding and whether an attorney will represent the panel in the course of its review and whether the parties ordinarily and customarily are represented by an attorney;

(e) The title and function of the hearings officer presiding at the hearing with respect to the decision making process, along with an explanation of the manner in which the testimony and evidence shall be taken by the hearings officer along with a description of how the panel shall review and the standard for review by the panel following close of the hearing;

(f) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights;

(g) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the hearings officer and the hearing reopened;

(h) A description of the process for oral argument before the panel after which a final decision shall be rendered by the panel; and

(i) A description of the appeal process from the determination or order of the panel.

(2) The information required in section (1) of this rule may be given in writing or orally before the commencement of the hearing.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 1997 (Eff. 8-15-97)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

586-030-0050**Exhibits**

(1) The parties shall provide the hearings officer with an exhibit list at the commencement of the hearing. Appellant shall designate and make exhibits "A-1" et seq and the school district "D-1" et seq. The list shall provide identification by exhibit designation, a brief description, and columns for number of pages, offering and whether received.

(2) Exhibits shall be arranged in a chronological or other logical order by the parties. Notebooks to hold the exhibits shall be provided where the number and/or size would otherwise make it difficult to retain.

(3) When physical evidence is offered, the original or authenticated copy shall be provided for the record and four (4) copies shall be provided to the hearings officer for submission to the panel. The parties and hearings officer may take time at the end of the hearing to arrange the copies so as not to slow down the taking of testimony. All exhibits offered and not withdrawn shall remain in the record even if not received by the hearings officer.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 1997 (Eff. 8-15-97)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

586-030-0055**Evidentiary Rules**

(1) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(3) All offered evidence, not objected to, will be received by the hearings officer subject to the power to exclude irrelevant, immaterial, or unduly repetitious matter.

(4) Evidence objected to may be received by the hearings officer with ruling on its admissibility or exclusion to be made as part of the recommended findings of fact.

(5) The panel shall review rulings that a party preserves by way of objections filed with the panel and make a ruling at the time a final order is prepared. The panel, in its discretion, may review any ruling that is consistent with its duty to conduct de novo review.

(6) The hearings officer and panel shall give effect to the rules of privilege recognized by law.

(7) All factual determinations by the hearings officer and panel shall be based on the preponderance of the evidence standard.

(8) The burden of presenting evidence to support a fact or position rests on the proponent of the fact or position.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 1997 (Eff. 8-15-97)

Hist.: FDA 6, ef. 3-11-75(Temp), 4-11-75(Perm); FDA 1-1981, f. & ef. 3-20-81; FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

586-030-0060**Hearing Procedures**

(1) A hearings officer shall conduct the hearing. All witnesses shall be heard only upon oath or affirmation to tell the truth.

(2) The hearing will proceed as follows:

(a) If the parties wish to make opening statements, the hearings officer will determine the order thereof;

(b) The district will present its evidence in support of the charges it alleged in the letter;

(c) Person admitted to party or limited party status will present their evidence;

(d) The appellant will present evidence relevant to the matters charged;

(e) The district may present evidence in rebuttal to evidence given by any other party;

(f) Persons admitted to party or limited party status may present evidence in rebuttal to evidence given by any other party;

(g) The appellant may present evidence in rebuttal to evidence given by any other party; and

(h) The parties may make oral closing arguments.

(3) The hearings officer shall rule on all evidentiary matters at the time they are raised or within the body of the proposed findings of fact.

(4) The general procedure and conduct of the hearing will be similar to a court proceeding, but not as formal.

(5) Any party may examine their own witnesses and may cross examine any other party's witnesses. The hearings officer may question any witness.

(6) The hearings officer may recess or adjourn the hearing at appropriate times for reasons found to be sufficient.

(7) Objections can be made to evidence that is irrelevant, immaterial or unduly repetitious.

(8) Proceedings at the hearing will be recorded by manual or electric means by a designated hearings reporter. A copy of the transcript of the proceeding or a duplicant of any electronic recording may be obtained from the reporter at cost.

(9) The hearings officer shall declare the hearing closed, prepare a proposed findings of fact and submit it to the Executive Secretary, with proof of service on each party, no later than 30 days after the hearing is closed. In addition to the proposed findings of fact, the hearings officer shall at the same time deliver the

exhibits (including copies) and exhibit lists from each party to the Executive Secretary, who will distribute to the panel members.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: OL 1997 (Eff. 8-15-97)

Hist.: FDA 6, ef. 3-11-75(Temp), 4-11-75(Perm); FDA 1-1981, f. & ef. 3-20-81; FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

586-030-0065

Oral Argument and Issuance of Final Order

(1) Within 10 days of receipt of the hearings officer's proposed findings of fact and evidentiary rulings, either party may file objections in writing to the Executive Secretary of the Board. No new testimony, documents or exhibits will be accepted by the Board at this stage of the proceedings, subject only to the panel's right to take judicial or official notice as permitted by the Administrative Procedures Act.

(2) Upon receipt of the proposed findings of fact and evidentiary rulings, along with objections, if any, the Executive Secretary shall schedule oral argument not later than 21 days after issuance of the proposed findings of fact and consistent with the time frame for the panel to issue a final order. Oral arguments shall be limited to one-half hour for each party. In scheduling oral argument, the Executive Secretary may schedule either orally, in person or by telephone dependent upon the time frames, availability of parties and panel members and other logistical considerations.

(3) Written arguments may be submitted by parties in advance of the oral argument. The arguments must be received at least 5 days before the date of the oral argument by the Executive Secretary showing service of a copy on opposing party.

(4) Written arguments are limited to 30 pages, double spaced on legal pleading paper unless written permission is obtained, in advance, from the Executive Secretary based on good cause shown to lengthen written argument.

(5) The parties shall advise the Board's Executive Secretary if they are waiving oral and or written argument within 3 days of the date they receive notice of the scheduled date.

(6) On the date set for oral argument the panel shall take the matter under advisement. It shall determine whether the facts relied upon to support the statutory grounds cited for dismissal or non-extension, and included in hearings officers finding of fact, are true and substantiated. The panel shall also rule on all motions and objections raised in the course of the proceedings. The panels review of the evidence shall be de novo.

(7) The panel shall prepare a final order within 30 days from the date set for oral argument. This written decision shall be rendered no later than 140 days after filing of the appeal unless additional time has been deemed necessary consistent with due process. The written decision will be served personally or by certified mail, return receipt requested, to representatives of the parties by the Executive Secretary.

(8) The panel shall be represented by an Assistant Attorney General at any stage of the proceeding they or the Executive Secretary on their behalf deem it necessary, including attendance at oral argument, panel deliberations and preparation of a final order.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 1997 (Eff. 8-15-97)

Hist.: FDA 15, f. 3-3-77, ef. 3-5-77; FDA 1-1981, f. & ef. 3-20-81; FDA 1-1985, f. 3-25-85, ef. 3-27-85; FDA 1-1986, f. 11-7-86, ef. 11-12-86; FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

586-030-0070

Final Orders, Notification

(1) Final orders shall be in writing and include the following:

- (a) Rulings preserved by objection to the panel, or as consistent with the standard of de novo review;
- (b) Findings of fact;
- (c) Conclusions of law; and
- (d) Order.

(2) Parties and their attorneys of record shall be served a copy of the final order. Parties shall be notified of their right to judicial review of the order.

(3) Any party may appeal the final order of the panel by filing a petition in the Court of Appeals within 60 days following the date the final order is served or within 60 days after denial of a petition for rehearing or petition for reconsideration.

(4) The record will be made available to the parties for inspection, upon reasonable advance request and at a reasonable time and place, if there is an appeal of the final order. The record shall include:

- (a) All pleadings, motions and intermediate rulings;
- (b) Evidence received or considered;
- (c) Stipulations;
- (d) A statement of matters officially noticed;
- (e) Questions and offers of proof;
- (f) Objections and rulings thereon;
- (g) A statement of any ex parte communications on a fact in issue made to a panel member; and
- (h) Findings of fact, conclusions of law and final order.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 1997 (Eff. 8-15-97)

Hist.: FDA 1-1987, f. & ef. 11-16-87; FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

586-030-0075

Reconsideration or Rehearing

(1) A party may file a petition for reconsideration or rehearing on a final order with the executive secretary for the board within 30 days after the order is served.

(2) The petition shall set forth the specific ground(s) for requesting the reconsideration or rehearing and may be supported by written argument.

(3) The panel may grant, in its discretion, the petition if sufficient reason therefore is made to appear. The written order on the request for reconsideration shall state whether an amended final order is to be filed as a result of the petition or if the matter will remain in its original form.

(4) The panel may grant a rehearing if sufficient reason therefore is made to appear. The written order will specify the area(s) subject to a rehearing and direct that the matter be returned to the hearings officer for this purpose.

(5) If the panel does not act on the petition by the 60th day following the date the petition was filed, the petition shall be deemed denied.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 1997 (Eff. 8-15-97)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

586-030-0080

Ex Parte Communications to the Hearings Officer or Panel

(1) The hearings officer and/or panel shall place on the record, either during the hearing or at oral argument, a statement of the substance of any written or oral ex parte communications on a fact in issue made to the hearings officer or any member of the panel.

(2) The hearings officer and/or panel shall give notice to all parties of ex parte communications. The notice shall include the substance of the communication, if oral, and if in writing, a copy, and whether the panel will consider the ex parte communication in deciding the case.

(3) If notice is given that the communication will be considered, a party may request the hearings officer, or in the case of the panel, that the panel direct the hearings officer to accept evidence, either by way of documentary rebuttal or schedule a limited hearing to receive evidence relating to the ex parte communication.

(4) All documents and other evidence concerning ex parte communications shall be made a part of the official board record.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 1997 (Eff. 8-15-97)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

586-030-0085

Members, Officers, Hearings Officers or Employees as Witnesses

(1) No Board Member, hearings officer, officer or employee of the Board or legal counsel to the Board shall be called or appear as a witness at a hearing before a hearings officer on behalf of any party to the hearing without the prior consent of the panel.

(2) The request for such testimony shall be in writing and filed with the Executive Secretary to the Board at least ten (10) days before the scheduled commencement of the hearing. It shall state the:

(a) Name and address of the witness whose testimony is sought;

(b) The specific area of testimony expected from the witness; and

(c) The reasons supporting the request as it affects the party's presentation of its case.

(3) The panel's ruling on the request may be given orally or in writing and shall be communicated to the parties through the Executive Secretary in the most expeditious manner possible. The ruling shall be set forth in the final order in the case.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 1997 (Eff. 8-15-97)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98

