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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 synopses 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, Scheduling Hearings and Legal Representation for Panels**

(1) When an appeal is filed a notice shall be sent by the Executive Secretary by certified mail and, if practicable, electronically to the parties or their legal representative. The notice shall include:

(a) A statement of the authority under which the hearing is to be held;

(b) A reference to the particular sections of the statutes and rules cited in the appeal;

(c) A short and plain statement of the matters asserted or charged in the appeal;

(d) A statement that the parties may be represented by counsel at the hearing; and

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

(2) The Executive Secretary shall take steps to select a panel and schedule the hearing in compliance with statutory time frames. They shall include:

(a) Contacting legal counsel for the parties to obtain:

(A) The estimated length of the hearing; and

(B) The maximum number of dates they are available for a hearing within the statutory time frame.

(b) All parties and representatives; have an affirmative duty to cooperate to the fullest extent possible in scheduling hearing dates, including promptly responding when contacted for dates, plus making witnesses and counsel available a maximum number of possible dates within the statutory timeframe.

(c) If either party or their representative is unavailable for a hearing within the statutory timeframe, either or both parties may advise that they are willing to waive objection to hearing dates beyond the statutory timeframe. The waiver can be for a fixed period of time or indefinitely.

(d) While dates from the parties and counsel are obtained the Executive Secretary shall contact members of the Board to sit on the panel. Selection shall be consistent with the statutory requirements for the panel membership. Panel members shall be selected consistent with the categories of Board membership listed in the statute and, where practicable, panel membership will be based on average daily membership comparable to the district from which the appeal arose.

(e) In light of the statutory timeframes and if the parties do not waive objection to extending the timelines, the Executive Secretary shall establish hearing date(s). If necessary to accommodate panel members, parties, witnesses or legal counsel, weekend hearing dates may be considered and offered. Notice will be sent by certified mail to the parties or their legal representatives. The dates so established shall not be changed except for good cause.

(3) The Board, individual hearing Panels and the board Executive Secretary shall be represented by legal counsel from the Department of Justice as assigned by the Attorney General. Representation shall be provided, upon request, for Board matters, responsibilities of the Executive Secretary by statute or under these rules, and at any stage of the proceedings on individual appeals. This includes attendance at meetings, oral arguments on Motions, hearing and panel deliberations along with conducting pre-hearing matters and preparation of Board orders.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 2001 (ef. 7/13/01)

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; FDAB 1-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; FDAB 2-2001, f. & cert. ef. 12-31-01

586-030-0025**Preliminary Matters**

(1) Preliminary motions challenging the Board's jurisdiction or requesting dismissal of the appeal without a hearing shall be filed

with the Executive Secretary at the earliest possible time. A briefing schedule shall be established. The panel may schedule a limited evidentiary hearing and/or oral argument by phone or in person and shall provide the parties with a ruling on the motion at the earliest practicable time. If the motion is denied or deferred, then the hearing process shall continue.

(2) All other preliminary motions shall be filed with the Executive Secretary. The panel will determine whether to rule on the matter prior to commencement of the hearing on the merits. Parties may also request advance rulings.

(3) The Executive Secretary or panel legal counsel may direct the parties to respond to inquiries related to any motion or to submit affidavits with or in response to any motion in order to determine if factual issues raised by the motion are not in dispute. The parties may be requested to waive objection to hearing dates beyond the statutory timeframe depending on the factual and legal complexity of the issues being raised.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 2001 (ef. 7/13/01)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98; FDAB 1-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; FDAB 2-2001, f. & cert. ef. 12-31-01

586-030-0032**Request to Participate as Party or in Limited Party Status**

(1) 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.

(2) 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.

(3) 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 2 above.

(4) 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.

(5) 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.

(6) The panel shall promptly serve its written decision concerning this matter on all parties. If status is granted, the order shall designate those areas in which it is to apply.

(7) The role and order of appearance for a party granted limited status shall be determined by the Panel prior to commencement of the hearing.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 2001 (ef. 7/13/01)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98; FDAB 1-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; FDAB 2-2001, f. & cert. ef. 12-31-01

586-030-0037**Duty of Cooperation, Subpoenas, Discovery and Pre-Hearing Conference**

(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. If necessary a lead counsel shall be designated. The most expeditious means of communication possible will be used including telephone, fax, or email to exchange information and discuss 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) Subpoena requests shall be in writing, to the Executive Secretary, with a copy to the opposing party, whether for hearing witnesses or for the production of physical evidence at or prior to the hearing. Statutory fees and the cost of service shall be the responsibility of the requesting party. The Executive Secretary, through legal counsel, may require an explanation of the testimony or the nature of the physical evidence expected under the subpoena and whether the opposing party has been requested to voluntarily produce the person or items sought before deciding whether to issue a subpoena. The panel may issue its own subpoenas.

(3) Appellant may request, in writing, 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 that the district has acquired with the intention of offering during its case-in-chief. The district shall promptly respond by making available for inspection the information requested. Appellant's representative may request copies of any items reviewed, subject to payment of the costs associated with providing them.

(4) The district may request, in writing, access to any physical evidence that the appellant intends to claim at hearing is either in explanation of the conduct at issue or will be presented as a defense. District's representative may request copies of any items reviewed, subject to payment of the costs associated with providing them.

(5) The parties shall promptly confer on objections or questions on the scope of the request. They shall cooperate concerning the manner of inspection or providing copies. If the parties cannot agree then they shall in good faith and cooperatively schedule an oral telephone conference before the Executive Secretary or Panel counsel to resolve the issue. The parties may refer to the discovery provisions in the Oregon Rules of Civil Procedure for general guiding principals in their discussions or during a conference call.

(6) Failure to cooperate or to produce discovery may result in sanctions, including a continuance or exclusion of evidence, depending on the circumstances.

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

(8) Discovery depositions, interrogatories and request for admissions are not permitted.

(9) A pre-hearing conference by phone with the parties or their legal counsel may be scheduled by the Executive Secretary or panel legal counsel for the purpose of assuring an orderly and efficient hearing process. Discussion topics may include anything that could impact the hearing. This includes preliminary hearing motions, advance agreement on exhibits to be offered, plus witness availability and scheduling. A written summary of the discussion and any agreements reached may be provided to the panel, and parties or their legal counsel by the Executive Secretary or panel legal counsel.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 2001 (ef. 7-13-01)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98; FDAB 1-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; FDAB 2-2001, f. & cert. ef. 12-31-01

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) Absent consent, a written request can be made to the Executive Secretary for permission to take testimony by telephonic or other electronic means of voice transmission. The request shall be filed and served on the opposing parties at least 15 days before the scheduled commencement of the hearing and shall provide the following information:

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

(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 15 day requirement set forth above, the request shall be filed and served as soon as possible after the party learns of the specific need.

(4) The opposing party has 5 days (or a reasonable time if less notice if given) to respond in writing.

(5) The Executive Secretary, if necessary, or panel legal counsel, shall rule on the request. A conference call may be scheduled to hear from the parties. Factors include whether:

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

(b) A subpoena could be used to compel attendance; and

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

(6) The request shall normally be granted unless the party opposing the request would be deprived of a fair hearing under all the circumstances. The ruling shall be communicated to all parties by the most expeditious means possible.

(7) In deciding on the request, alternatives including perpetuation of testimony, use of prior testimony or continuance of the hearing may be considered. Factors to evaluate include:

(a) The statutory timeframe to conclude the hearing;

(b) Whether personal appearance is necessary to fairly decide the case;

(c) The availability for an appearance;

(d) Whether prior sworn testimony exists and is reliable; and

(e) The Due Process rights of the parties.

(8) If perpetuation of testimony is allowed the party utilizing this procedure has the responsibility of presenting either a transcript, as an exhibit for the hearing, or a video tape of the testimony, as specified in the Order. The panel would rule on all objections either at the time of the hearing or in the final order.

(9) After the hearing commences, any question about the form or timing of testimony shall be decided by the panel. The panel has the discretion to require the personal appearance of any witness if the circumstances dictate this is necessary for the panel to meet its obligation under the statute.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 2001 (ef. 7-13-01)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98; FDAB 1-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; FDAB 2-2001, f. & cert. ef. 12-31-01

586-030-0044

Rights of Parties in Fair Dismissal Appeal Hearings

(1) The information required prior to commencement of a contested case hearing by ORS 183.413(2) 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 the hearing and 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) 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;

(f) 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; and

(g) 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 start of the hearing.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 2001 (ef. 7-13-01)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98; FDAB 1-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; FDAB 2-2001, f. & cert. ef. 12-31-01

586-030-0050

Exhibits

(1) At the start of the hearing each party shall provide the panel the original and four copies of exhibits for their respective case-in-chief (a total of 5 sets) with an exhibit list. Witnesses shall use the original exhibits.

(2) Appellant shall designate and mark exhibits "A-1" et seq and the school district "D-1" et seq. The exhibit list shall provide identification by exhibit number, a brief description, and columns showing "pages" (filled out) "offered" and "received".

(3) Exhibits shall be arranged in a chronological or other logical order. Three ring binders to hold the exhibits shall be provided where the number make it difficult to retain.

(4) The parties shall exchange exhibits for their respective case-in-chief and the exhibit list prior to commencement of the hearing.

(5) The panel may take time at the beginning of the hearing to discuss preliminary admissibility of exhibits.

(6) Exhibits not pre-marked and distributed prior to the hearing will be excluded in that party's case-in-chief unless good cause is shown why they were not presented consistent with these rules.

(7) Exhibits that are used solely for impeachment or rebuttal may be submitted during the hearing without pre-marking and exchanging under this rule. The same total number shall be provided as specified above.

(8) All exhibits offered and not withdrawn shall remain in the record even if not received by panel.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 2001 (ef. 7-13-01)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98; FDAB 1-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; FDAB 2-2001, f. & cert. ef. 12-31-01

586-030-0055

Evidentiary Standard, Objections, Standard of Proof, Burdens and Privileges

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

(2) Evidence must be objected to at the time it is offered or the objection is waived.

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

(4) Objections to evidence may be ruled on at the hearing or the evidence may be conditionally received subject to a ruling on its admissibility or exclusion as part of the Final Order.

(5) The degree of proof of all factual determinations by the panel shall be based on the preponderance of the evidence standard.

(6) The burden of presenting evidence to support a fact or proposition rests on the proponent of the fact or proposition at all stages of the proceeding, including motions, at hearing and for any post-hearing matter.

(7) The burden of proof rests with the party legally responsible to establish the particular fact or proposition.

(8) The panel shall acknowledge privileges recognized by law when receiving evidence and ruling on objections.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 2001 (Eff. 7-13-01)

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; FDAB 1-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; FDAB 2-2001, f. & cert. ef. 12-31-01; FDAB 2-2001, f. & cert. ef. 12-31-01

586-030-0060

Hearing Procedures

(1) The panel assigned to hear the matter shall appoint one member as chair to conduct the hearing, swear in the witnesses and rule on objections and offers. All witnesses shall be heard only upon oath or affirmation to tell the truth.

(2) The hearing will proceed as follows:

(a) The district may make an opening statement; appellant may then make one or reserve opening statement until the beginning of appellants' case.

(b) The district may present evidence in support of the content of the District's written notice of dismissal or contract non-extension;

(c) The appellant may present evidence relevant to or rebutting the matters contained in the written notice along with any other defenses;

(d) The district may then present evidence in rebuttal to evidence given by appellant;

(e) The appellant may then present evidence in sur-rebuttal to any rebuttal evidence; and

(f) The District may make oral closing argument, followed by the appellant. District, as the moving party, may reserve some time for final closing. The Panel shall advise the parties of any time limitation on closing argument in advance.

(3) Any party may examine their own witnesses and may cross-examine any other party's witnesses. The panel, with the assistance of legal counsel, may question any witness.

(4) The hearing will be recorded, by a designated hearing reporter/recorder or taped by an individual designated by the panel. A copy of the transcript of the proceeding or a duplicate of any tape recording may be obtained at cost.

(5) Parties, witnesses and counsel shall conduct themselves in a respectful manner at all times and are subject to sanction — up to summary dismissal of their claims — for violation of this rule.

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

(7) The chair may recess or adjourn the hearing at appropriate times for reasons found to be sufficient. The chair has the discretion to establish when the hearing will reconvene consistent with the statutory time frame to complete the case. The parties have the option of waiving objection to completion of the case within the statutory timeframe when the decision on reconvening is being made.

(8) After the hearing is closed, the panel shall deliberate and then, with assistance of counsel, prepare a written report in the form of a final order.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: OL 2001 (Eff. 7-13-01)

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; FDAB 1-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; FDAB 2-2001, f. & cert. ef. 12-31-01

586-030-0070

Final Orders, Notification and Timing

(1) The panel shall make all determinations required by the statute in the Final Order, including:

(a) Whether the facts relied upon to support the statutory grounds cited for dismissal or non-extension are true and substantiated;

(b) Whether the facts that are true and substantiated are both:

(A) Relevant to; and

(B) Adequate to justify the statutory grounds.

(c) In making these determinations that panel shall consider any written rules, policies or standards of performance adopted by the district, including, where applicable, whether the rules, policies or standards have been so inconsistently applied as to amount to arbitrariness.

(2) The panel shall not reverse the district's decision where the facts are true and substantiated unless it finds from the evidence, and states with specificity in the order, that the action was:

(a) Unreasonable;

(b) Arbitrary; or

(c) Clearly an excessive remedy.

(3) If the panel finds the facts are not true and substantiated, or even if true and substantiated, are not relevant or adequate to justify

fy the statutory grounds cited by the district, the appellant shall be reinstated with any back pay that is awarded in the order.

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

(a) As necessary any rulings on motions or objections raised in the course of the proceeding;

(b) Findings of fact;

(c) Conclusion of law; and

(d) Order.

(5) The Final Order shall be rendered no later than 140 days after filing of the appeal unless additional time has been deemed necessary consistent with due process. A copy of the written decision will be served personally or by certified mail, return receipt requested, to the parties or their legal representatives and the original submitted to the Executive Secretary.

Stat. Auth.: ORS 183 & ORS 342

Stats. Implemented: ORS 864, OL 2001 (Eff. 7-13-01)

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; FDAB 1-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; FDAB 2-2001, f. & cert. ef. 12-31-01

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 21 days after the order is served.

(2) The petition shall set forth specific ground(s) for the request and may be supported by written argument. The party opposing the petition may submit written objections within 14 days of receiving the petition.

(3) No new grounds or arguments, nor objections not preserved at the hearing, are to be cited and they shall not be considered.

(4) The panel may, in its discretion, grant the petition for sufficient reason. The written order addressing the petition shall state whether an amended final order is to be filed as a result of the petition or if the original order will remain.

(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 864 & ORS 342

Stats. Implemented: ORS 864, OL 2001 (Eff. 7-13-01)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98; FDAB 1-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; FDAB 2-2001, f. & cert. ef. 12-31-01

586-030-0076

Appeals

(1) Any party may appeal the final order of the panel by filing a petition in the Court of Appeals in accordance with the statutory timelines following the date the final order is served or within the statutory timeline after denial of a petition for rehearing or petition for reconsideration.

(2) 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 the following items:

(a) All pleadings, motions and intermediate rulings;

(b) Evidence received or considered;

(c) Stipulations;

(d) Correspondence from and to parties or their legal counsel;

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

(f) Any portion of the hearing record transcribed for the Panel

(g) The reporting/recording firm telephone number and address; and

(f) The Final Order.

(3) All communications between legal counsel and the Panel members or Board representatives shall not be made available.

Stat. Auth.: ORS 342.805 - ORS 342.930

Stat. Implemented: ORS 342.805 - ORS 342.930

Hist. FDAB 2-2001, f. & cert. ef. 12-31-01

586-030-0080

Ex Parte Communications to the Panel

(1) The 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.

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

(3) 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 2001 (Eff. 7-13-01)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98; FDAB 1-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; FDAB 2-2001, f. & cert. ef. 12-31-01

586-030-0085

Board Members, Representatives or Legal Counsel as Witnesses

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

(2) A 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 capacity with the board of the witness whose testimony is sought;

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

(c) An explanation of why the testimony is necessary for the party's presentation.

(3) The panel's ruling on the request may be given orally or in writing and shall be communicated to the parties 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 2001 (Eff. 7-13-01)

Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98; FDAB 1-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; FDAB 2-2001, f. & cert. ef. 12-31-01