

# FAIR DISMISSAL APPEALS BOARD ANNUAL MEETING

Monday, October 22, 2012

9:00 a.m.-11:00 a.m.

Minutes

Oregon Department of Education  
255 Capitol Street NE  
Salem, Oregon  
Rooms 251-A & B

## FDAB Members Present

Doug Crow  
Walter Hazen  
David Krumbein  
Fred Marble  
Mary McKay  
Kathy Miller  
Jock Mills  
Lisa Nicholson (phone)  
Christy Perry  
Dennis Ross

## FDAB Members Absent

Jeff Coleman  
Peggy Penland  
Carolyn Ramey  
Amy Schuff

## Others Present

Cindy Hunt, FDAB Executive Secretary  
Stephanie Parks, ODE Staff  
Autumn Wilburn, ODE Legislative Director

Lisa Umscheid, Senior Assistant Attorney General, DOJ  
Tom Lenox, Assistant Attorney General, DOJ  
Laurie Wimmer, Oregon Education Association

## Call to Order

Chair Jock Mills called the meeting to order at 9:02 a.m.

Introductions were made of all those present at the meeting, both in the meeting room and on the phone.

## Approval of October 2012 Minutes

*Fred Marble moved to approve the draft minutes of the October 22, 2012 FDAB Board Meeting. The motion was seconded by Wally Hazen. There were no objections; the draft minutes were approved.*

## Materials in Packets

Cindy Hunt, FDAB Executive Secretary, described the contents of the packets. She stated that it was important to look at the membership list to make sure that all personal information was accurate. She also explained the expense claim form, and said that FDAB members who live more than 70 miles away from Salem may claim reimbursement for lodging. Other items in the packets included FDAB Procedures and FDAB OARs.

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## FDAB Website

Cindy Hunt led the discussion regarding the new website for the Fair Dismissal Appeals Board. The website includes the following pages:

- [Board Members](#)
- [History](#)
- [Organization](#)
- [Scope of Jurisdiction](#)
- [Annual Meetings](#)
- [List of Cases](#)
- [Procedures](#)
- [Grounds for Dismissal](#)
- [Statutory Process for Dismissal](#)
- [Statutes and Rules](#)
- [Final Orders](#)

Cindy explained the updating process and future plans for the website.

## Actions taken since October 24, 2011 Meeting

Cindy discussed the list of cases, which include FDAB cases from 2008 through 2012. She said there were a total of five cases from 2008-2010, and ten cases in 2011. Most of the 2012 cases came in the May/June timeframe. There were a number of cases all at once, and there are currently two appeals pending, both of which involve administrators.

FDAB case activity since the last FDAB annual meeting involved two cases: James Eide v Portland Public Schools and Jamey Hardey v Baker School District 5J. In the Eide case, the parties elected to go to arbitration instead of have a hearing through FDAB, and a decision was made against the district so they decided to appeal the arbitrator's order in the court of appeals. The case went to the court of appeals, where it was ruled that FDAB was not involved.

Many appeals are withdrawn so there is no case decision or order. Another pattern we see is that we receive calls from separate press organizations looking for information on cases before FDAB (one in Forest Grove and another in Reynolds School District). They have press attention and a higher profile because of local issues.

The information becomes public information as soon as we receive it. Sometimes items are exempt from disclosure (such as social security numbers, student names, attorney-client communications, etc.). Once briefs are submitted they are public.

Hearings are only open to the public if the appellant agrees to this. This is a matter that is discussed at preconference with the attorneys.

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## **Scheduling of FDAB Hearings**

Discussion took place regarding the best process to schedule FDAB hearing dates.

- Once FDAB receives the notice of appeal the clock starts ticking. By statute, FDAB has 100 days to schedule a hearing. The first month it is not realistic in which to schedule a hearing, so we are looking at the back two months.
- We try to identify blocks of time three months out.
- We have told parties that we are limiting hearings to three days (not five) under the theory that people are more likely to be available if the hearings are three days or less.
- DOJ has been working on preconference hearings with parties to lay out an aggressive hearing schedule with dates. This gets the parties to talk and in many cases resolve the dispute before having to go to an FDAB hearing. Cases are being resolved faster than in the past.
- FDAB staff notifies parties giving them available dates to have a hearing; they have an option of waiving the 100 days. We do occasionally have cases where one party waives and another doesn't.
- Documents will be sent to FDAB hearing panel member at least one week prior to a scheduled hearing. Witness lists, exhibits, etc. are all available prior to the hearing date.
- We can try using the Doodle calendaring system.

## **Legislative Update Discussion**

Laurie Wimmer, Oregon Education Council Staff Liaison for the Legislative Advisory Council, and Autumn Wilburn, Oregon Department of Education's Legislative Director, discussed proposed legislation that would amend ORS 342.930 to allow FDAB members who are teachers or administrators to be retired as long as the member was previously employed as a contract teacher or an administrator at a school district. LC 634 would create a larger pool of applicants to serve on the Fair Dismissal Appeals Board. They would have more time to serve and would bring a certain level of experience to the panel. Fiscal impact would be increased because there would be costs of an additional four members to attend the annual meeting.

The legislation will be presented at the 2013 legislative session. Each FDAB member recruited will serve a four-year term, and terms of new members will be staggered. New member will be appointed on or after July 1<sup>st</sup> (instead of January). New FDAB members will be appointed by September 2013.

There was some discussion regarding recruitments of new members to fill existing slots. OEA, OSBA and COSA are actively recruiting.

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Laurie also discussed requesting funding from the legislature to reimburse districts for the cost of covering substitute teachers while an FDAB teacher member is presiding at a hearing or attending an FDAB annual meeting. She talked to the co chair of ways and means, and there is a line item in the budget without legislation; it was put in the bill as a placeholder. COSA and OSBA are signed on with this as well. She said that having three organizations coming forward on this matter will make a better impression to the legislature than having FDAB come forward alone.

Laurie said OEA has an emergency plan B if necessary, but there is a potential conflict of interest if OEA is seen as providing compensation for an FDAB member to participate in the process. Lisa Nicholson said that she had spoken to Gail Rasmussen at OEA about this, and was told that they are not providing compensation to her, but to the district for her substitute. They are paying for the substitute, which she said doesn't give us any legal concerns.

***David Krumbein moved that FDAB send LC634 forward for inclusion in 2013 Legislation. Dennis Ross seconded the motion. All were in favor; non opposed. The motion passed.***

David Krumbein said that he would testify in favor of the bill when it came before the Legislature. The bill will be one of the first ones to go before the Senate Education Committee in January. Autumn Wilburn will be talking to staff and committee chairs about it.

Laurie Wimmer explained that it is not necessary to have a bill to increase appropriations to cover substitute expenses if we use a line item. It will not go before a substantive education committee, but before the ways and means committee. They are two separate items. The first bill doesn't have any fiscal involved, and is a separate issue.

Laurie thanked the FDAB for taking the time and effort to take care of this. She will pass the information on to her counterparts in OSBA and COSA.

### **Department of Justice Training**

Lisa Umscheid, Senior Assistant Attorney General, and Tom Lenox, Assistant Attorney General, discussed the processes in place for FDAB hearings, explaining changes to prehearing procedures that focus the parties in dispute on facts earlier in the process so there are opportunities to reach a negotiated resolution.

When an appeal comes in, either Tom or Lisa contacts the lawyers for the parties and schedules a telephone case handling conference. They discuss calendaring the hearing, find out what motions the parties want to bring, and find out immediately if one of the parties thinks there's a jurisdictional issue. They discuss witness availability, and create more discipline between parties as the cases move forward. As the hearings draw closer, a second pre-hearing conference is held, where anticipated issues are discussed. The goal is to make the actual hearing process more streamlined.

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In the event of a hearing lawyers must submit their draft findings of fact. This shifts some of the work and cost to the parties. It is also the kind of prehearing work that focuses lawyers on what the facts of their case are before a hearing where it is more likely they will find opportunities to reach negotiated resolution so an actual hearing isn't necessary.

Doug Crow asked if parties ever objected to an FDAB member. Lisa responded that if there is an objection, it has to do with a conflict of interest. She said it is each person's individual responsibility to watch for that.

Old FDAB cases were discussed.

### Nominating Committee for Vice-Chairperson<sup>1</sup>

*Dave Krumbein moved that Mary McKay be nominated as Vice Chair for 2012-2013. The motion was seconded by Fred Marble. All present voted "Aye." The motion was carried without objection.*

### Adjournment

The meeting adjourned at 10:02 a.m.

### Next Meeting

The next FDAB Annual Meeting is scheduled for October 28, 2013.

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<sup>1</sup>**OAR 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 the 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 342.805-342.934*