

# FAIR DISMISSAL APPEALS BOARD ANNUAL MEETING

Monday, October 24, 2011

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

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

## Minutes

<b>Non-Affiliated Members</b>	<b>ADM</b>	<b>School Board Members</b>	<b>ADM</b>
Jock Mills	Over 4500	Wally Hazen	1500-4500
Peggy Penland	Over 4500	David Krumbein	1500-4500
Paul Terdal	Over 4500	Kathy Miller	Under 1500
Doug Crow	1500-4500	Fred Marble	Over 4500
Dennis Ross	Under 1500		
<b>Teachers</b>	<b>ADM</b>	<b>Administrators</b>	<b>ADM</b>
Carolyn Ramey	Under 1500	Verenice Gutierrez	Over 4500
Jeff Coleman	Over 4500	Mary McKay	Over 4500
Lisa Nicholson	1500-4500	Christy Perry	1500-4500
Amy Schuff	Over 4500	John Lahley	Under 1500

### Presiding Officer: Fred Marble

Chair Marble called the meeting to order at 9:01 a.m.

Chair Marble asked for roll call. Present: Dave Krumbein, Dennis Ross, Doug Crow, Christy Perry, Jeff Coleman, Mary McKay. Participation by conference call: Paul Terdal, Jock Mills, Amy Schuff, Carolyn Ramey, Lisa Nicholson, Wally Hazen.

Staff present: Cindy Hunt, FDAB Executive Secretary and Debby Ryan, board staff.

Introduction of new board members: Mary McKay and Christy Perry from the Administrator category.

### Approval of October, 2010 Minutes

David Krumbein moved to approve the minutes. Motion seconded by Dennis Ross. No objections – approved.

### Packets – Cindy Hunt

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

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## UNFINISHED BUSINESS

### Succession Planning - Jock Mills

Mills asked whether or not we are getting teacher representatives on FDAB. Districts and teachers need to understand who is going to carry the costs associated with teachers' participation in hearings during the course of the year. Mills asked ODE what they forecast in future vacancies and whether or not there is a plan to fill those vacancies, particularly for the teacher ranks.

Discussion:

- Cindy Hunt pointed that in everyone's packet there is a roster of FDAB membership. The roster shows when the members' terms end. There are currently two vacancies: one teacher vacancy and one administrator vacancy.
- Mills stated that it would be good to have communication from FDAB to the Governor's Office to alert them that there are vacancies and to ask for action as soon as possible. Debby Ryan had recently done that.
- Mills asked if a teacher had been nominated for the November confirmations. Answer: No.
- Mills asked who to speak to regarding this issue. Mills willing to volunteer, but wants decision by the board, first, on how to move forward.
- Ramey stated that what usually happens is that a member from the Governor's Office talks to OEA to see if they have any recommendations. If those recommendations are acceptable to the Governor, they move forward with those.
- Mills asked if any of those conversations had taken place. Mills stated that he is asking for somebody to do an inquiry to make sure the process is rolling forward and it's not too late to get somebody for November.
- Ramey brought up issue – there are teachers willing to serve, but their districts are not willing to bear the cost of the substitute.
- Mills questioned if it would make a difference for OEA to compensate the district, rather than the teacher; so, there would be a layer of insulation between OEA and the teachers.
- Ramey asked why OEA needed to fund this. Mills stated that the districts are unwilling or unable to pick up the cost and the cost is hitting the teacher, who has to take the time off.
- Ramey stated that she did not believe a state board should be funded by a teacher organization – it should be funded by the state.
- Mills stated that when we brought this issue to the 2009 legislative session, there had been no legislative willingness to take it on. Mills asked Hunt if districts are statutorily

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prohibited from taking money from OEA. He agreed that if OEA giving a check to a teacher was too direct of a relationship.

- Lisa Nicholson stated that OEA was going to refund the district for her substitute costs when she serves at a hearing.
- Mills asked Hunt if she had observations on whether there were legal issues with OEA paying school districts. Mills stated that if it is an issue between OEA and its members then it is not FDAB's problem. The members would need to take that up with OEA.
- Hunt responded: agreed with Mills – this issue of paying for a substitute was taken to legislature in 2009, 2007 and 2005 and it failed each time. The trend with boards is for the state not to pay. FDAB gets a per diem, but new boards do not even get that. That's how tight the purse strings are in moving forward with these boards.
- Krumbein asked if SB 290 made it to the floor at the legislature. Hunt stated that it did and would talk about it in the agenda item coming up. Krumbein stated that the state, the districts, the unions are not rolling in money. Most FDAB members look at this as a service, although, he understood the issues with substitutes' costs. Teachers are correct – OEA should not have to take teachers' dues money to pay for a substitute cost. The state has us in this position – we need to keep going back to the legislature. If OEA, OSBA and COSA would get behind the bill it might work.
- Mills stated that we tried that in 2009 and OEA, OSBA and COSA did not show up. FDAB and ODE drafted legislation for their consideration in the 2011 session and they only got response from one of the three associations, who were fine with the bill; but, none of these entities engaged actively in support of the bill. At the last FDAB Annual Meeting, we chose not to pursue the legislation because we were tired of going into the legislature and looking stupid trying to get money for a state board that the legislators were not willing to fund. There were no interest groups backing us with this effort. We chose not to choose legislation in 2011. If OEA, OSBA, and COSA think this is a problem, they can get together and draft whatever they think will solve this problem and move it forward.
- Doug Crow stated that the Governor of this state and the legislature has no interest in small agencies. They are not interested in funding or supporting them. As a union member, he believes the union should protect its teachers. Crow stated that he was ashamed of the OEA for not supporting its teachers. Amount of money involved is trivial. OEA should do whatever they can to support their teachers and they are not doing it.
- Wally Hazen agreed with Crow to a certain extent. Hazen stated that if one group of FDAB is going to be compensated by the state, then all four groups should be. Hazen agreed with Krumbein's comment that we donate our time to this board. The state is not generally going to be interested in funding it. The union could step up if they wanted

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representation from active teachers. The other choice would be to change our bi-laws and move the teacher membership to include retired teachers or substitute teachers.

- Hunt stated that would take a change in the statute. It would be something that FDAB could move forward with, not in the 2012 legislative session, but in the 2013 session.
- Hazen stated that this would be a more realistic approach. Does not think that the state will have any money to fund any portion of this. We tried last session to pass the funding on to the school district from where the appeal originated. That gained no support. Looking for another pool of candidates that could fill the teacher positions would eliminate this issue.
- Mills asked if a subcommittee could be designated with representation from each FDAB group to convene this conversation, again, with OEA, OSBA and COSA, all in one room, prior to the end of the fiscal year, June 30, 2012. The discussion should cover whether or not to introduce legislation in 2013 and what it should say. Hunt stated that drafting legislation would have to take place before the next annual FDAB meeting. ODE would turn in the bill draft request. If done under Superintendent Castillo's authority, as in the past, those requests are due by June 1 of even numbered years. Mills stated that we have to get people together before the end of April in order to give enough time to get this thing done.
- Chair Marble stated that he had heard interest from Mills, Ramey and Hazen to serve on the subcommittee. He asked for someone from the administrator group to join the subcommittee. Mary McKay volunteered to join committee. Mills will serve as chair of the committee.
- Amy Schuff stated that this is not about teachers being compensated. This is about substitutes being paid, so the teacher is not required to take sick days or personal days to serve at a hearing.
- Nicholson agreed with Schuff. Her district will not let her take personal days to go to a hearing.
- Mills stated that this is why he would like to have a conversation with the Governor's Office. If they are going to bring people on to the board whose employers will not let them exercise their duty on the board, then there has been a failure to communicate, ahead of time, on what's involved in serving on the board.
- Chair Marble stated that we have a committee. Mills will work with the committee. We will move forward, now, with other agenda items. Chair Marble thanked Mills.

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## NEW BUSINESS

### Nominating Committee for \*Vice Chairperson <sup>1</sup>

Dave Krumbein, Mary McKay and Fred Marble served on the nominating committee. The committee recommended Jock Mills to serve as the vice-chair for 2011-2012. Mills accepted the nomination. Doug Crow motioned to elect Jock Mills as vice-chair. Dave Krumbein seconded the motion. Motion was approved without objection.

### FDAB action since the 2010 Annual Meeting – Cindy Hunt

Hunt stated that within the packet, there is a document that shows a list of FDAB activity. Department of Justice has not yet produced the supplement for the members' three ring binders. FDAB saw a large increase in activity this past year. In the year 2011, there were eleven cases. Hunt reviewed some of the cases on the list. Hunt discussed three cases from the Salem-Keizer School District. Those three cases were similar. The three final orders are in the packets. These appeals were for non-extension of teacher contracts and whether or not the schools district had followed the correct procedures for notification of non-extension and whether or not, by March 15, the school district had actually provided notice to these three teachers for non-extension. FDAB found on all three cases they had not. Formal notice had not been given to the teachers until March 18, even though the school board had met on March 8. Those three cases were not appealed to the Court of Appeals.

Discussion:

- Wally Hazen served at that hearing. He stated that the district was found negligent in the timeline. Statute states what needs to be done and the district failed to do that.
- Dennis Ross stated that he looked at the statute. When it states that the school Superintendent . . . *may give written notice to the teacher no later than March 15.* . . . What might be confusing is the implied discretion that the superintendent has with the word *may*. Ross talked to an attorney. This is a poorly written part of the ORS. It should be clear that the March 15 date is a requirement.
- Hazen stated that they had looked at that – if you read further, you see that the wording does not apply to the dismissal section of the statute. Ross stated that FDAB should look

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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*

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at it. Hunt stated that FDAB could suggest to the legislature that the language needs to be clarified.

Hunt discussed the Nicole Schmidt and Roseburg School District case. Issue was whether or not Nicole Schmidt was actually a contract teacher entitled to FDAB procedures. There was a question because she had been a probationary teacher for three years. The issue was whether or not her probationary status was extended by a year or whether or not, when the district renewed her contract, she went into contract status. The district argued that she was a probationary teacher and she was arguing that she was a contract teacher. FDAB ruled that she had become a contract teacher. Jock Mills, Kathy Miller and Carolyn Ramey served on that panel. Discussion:

- Ramey stated that she learned a lot at this hearing. There were previous opinions that were applicable to this case. It was clear that when a teacher is in their last year of probationary status, they are considered a contract teacher. This district had made up a new procedure to allow a probationary teacher; even though they were not sure they wanted to keep the teacher as a future contract teacher, to have one more year in the probationary teacher role to prove their worth. The union local bought into the same thinking. The law very clearly omits any opportunity to lengthen the period of time a teacher is a probationary teacher. FDAB felt compelled by the wording of the law to go the direction they did.
- Hunt stated that order had just been issued. Did not know if it was going to be appealed.

A couple of older cases:

- The Peter Porath case was appealed to Court of Appeals. Court affirmed without opinion. Case is summarized in binders. This was originally decided in 2009. Court of Appeals issued decision in April, 2011.
- Chris Gilman and Medford SD: Court of Appeals affirmed without opinion in September. That case involved whether or not Mr. Gilman resigned or whether or not the district dismissed him. District said they dismissed him; Mr. Gilman said that he resigned. Case is summarized in binders. Mr. Gilman originally appealed to FDAB; FDAB said that he resigned and was out of FDAB's jurisdiction. The District, as the losing party in this case, could appeal that to the Oregon Supreme Court.

Discussion:

- Fred Marble stated that the district refused to accept his resignation. Gilman delivered it prior to their board meeting. District wanted records at TSPC.

Hunt thanked all the members who had served at the hearings.

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## **Legislative Update/Senate Bill 290/Draft rule – Cindy Hunt**

There was quite a bit of activity this last session regarding education policy and the legislature. The Oregon Education Investment Board (OEIB) was created. Right now the FDAB does not appear to be a part of the boards that are being looked at to be eliminated and to have their duties transferred to the OEIB. Senate Bill 290 was enacted last session. This is new statutory language that was added to the FDAB statutes. The State Board of Education was charged with setting forth guidelines for teachers and administrators and SB 290 lays out what those guidelines are. SB 290 specifies that by July 2013, local school districts are to use these guidelines in evaluating teachers and administrators. These guidelines could be a part of a dismissal in the coming years. The draft administrative rule from the State Board of Education (OAR 581-022-1720) sets forth what these teacher/administrator evaluation standards are going to be. The standards are based on national standards, but these rules are now open for comment. If FDAB members see an issue with these, they can comment on them until November 1, 2011.

Chair Marble asked if anything else needed to be brought forward to this board.

Meeting adjourned at 10:02 a.m.

Next FDAB Annual Meeting scheduled for October 22, 2012.