

STATE BOARD OF EDUCATION – ADMINISTRATIVE RULE SUMMARY

Title/OAR #: Adoption—Authorization for Employee to Appear on Behalf of Agency in Certain Hearings – OAR 581-001-0002 **Date:** March 3, 2016

Staff/Office: Cindy Hunt, Deputy Supt. Office

New Rule Amend Existing Rule Repeal Rule
Hearing Date: _____ Hearings Officer Report Attached
Prompted by: State law changes Federal law changes Other

Action Requested:

First Reading/Second Reading Adoption Adoption/Consent Agenda

PROPOSED/AMENDED RULE SUMMARY: Updates rule relating to authorization for Department of Education employees to appear on behalf of agency in certain administrative hearings.

BACKGROUND:

ORS 183.452 allows state agencies to be represented by the Attorney General in contested case hearings. The statute also allows, subject to the approval of the Attorney General, agency employees to represent the agency in hearings.

There are two types of hearings for which traditionally agency employees serve as case presenters:

- Appeals under ORS 326.603 and OAR 581-021-0500 relating to an applicant's employment or eligibility to contract with a school district based on the results of a criminal background check.
- Appeals under ORS 820.110 and OAR 581-053-0060 relating to school buses and actions taken by the Department against a certificate or permit holder. These may include suspensions, revocations or refusals of certificates or permits.

Recently, the Attorney General's Office requested that the Department update the administrative rule which grants the agency this authority. The update utilized the Attorney General's model rule and was done in consultation with the Attorney General's Office.

ISSUES/CONCERNS THAT SURFACED DURING RULE WORK:

Which types of hearings should be subject to this authorization?

What are the circumstances in these hearings in which the agency would request Attorney General authorization?

CHANGED SINCE LAST BOARD MEETING? (so members can focus on what's different)

- N/A; first read—hasn't been before board
 No; same as last month
 Yes – As follows:

FISCAL IMPACT:

None for the rule as amended. Although if agency personnel no longer represented the agency there would be a fiscal impact as fees paid to the Attorney General would increase.

STAFF RECOMMENDATION:

- Adopt administrative rule as prepared this month
- Adopt administrative rule next month
- No recommendation at this time (rarely used)

Updated by CH on 12/23/15

581-001-0002

Authorization for Employee to Appear on Behalf of Agency in Certain Hearings

~~In contested case hearings authorized by ORS 326.603 and OAR 581-053-0006, an officer or employee of the Department may represent the Department if the Attorney General so consents to such representation.~~

(1) Subject to the approval of the Attorney General, an officer or employee of the Department of Education is authorized to appear on behalf of the agency in the following types of hearings conducted by this agency or the Office of Administrative Hearings:

(a) Appeals under ORS 326.603 and OAR 581-021-0500 relating to an applicant's employment or eligibility to contract with a school district based on the results of a criminal background check; and.

(b) Appeals under ORS 820.110 and OAR 581-053-0060 relating to school buses and actions taken by the Department against a certificate or permit holder. These may include suspensions, revocations or refusals of certificates or permits.

(2) The Department representative may not make legal argument on behalf of the agency.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

Stat. Auth.: ORS 183.452

Stats. Implemented: ORS 183.452