1. Board’s Authority - school boards have broad authority to conduct the business of the district. ORS 332.072.

2. The board’s authority includes the authority to employ a district superintendent, teachers and administrators. ORS 332.505(a) and (b).

3. The school board’s role in the termination and nonrenewal of employee contracts is set forth in statute for each type of district employee.

4. Superintendent and Assistant Superintendents
   A. ORS 332.505(a) specifies that the board may “[e]mploy a superintendent of schools and necessary assistant superintendents for the district and fix the terms and conditions of employment and the compensation.
   B. The superintendent contract shall not extend longer than 3 years and shall automatically expire at the end of its term. ORS 332.505(a). The board may elect to issue a subsequent contract for an additional 3 years at any time. ORS 332.505(a).
   C. Termination - the process for termination of the superintendent is not set forth in Oregon statutes.
   D. Due Process - the board should provide reasonable notice and an opportunity to be heard. The Board should also set out in writing the basis for the termination.

5. Licensed Staff - defined as teachers and administrators who are licensed through TSPC.
   A. Probationary teachers - probationary period for teachers is 3 years.
      1. Termination - During that probationary time period the board may terminate for any reason deemed good faith sufficient. ORS 342.835(1).
         • The district needs to provide written notice and the opportunity for a hearing.
         • At the hearing the teacher shall have the opportunity to be heard in person or by a representative.
      2. Nonrenewal - The board can also choose to nonrenew a probationary teacher’s contract for any reason deemed good faith sufficient. ORS 342.835(2).
         • The board must provide written notice of nonrenewal by March 15th.
         • The teacher must then be given an opportunity for a hearing.
         • The teacher may also request a written copy of the reasons for the nonrenewal.
         • Those written reasons form the basis for the hearing.
   B. Contract teachers
      • Definition - teachers become contract teachers after being regularly retained for three years, and then retained. ORS 342.815(3).
      • Contract teachers have two-year employment contracts. ORS 342.895.
      • Contract teachers can only be dismissed for the following reasons: 1) Inefficiency; 2) Immorality; 3) Insubordination; 4) Neglect of Duty; 5) Physical or mental incapacity; 6) Conviction of a felony or crime under ORS 342.143; 7) Inadequate performance; 8) Failure to comply with reasonable requirements as the board may prescribe to show normal improvement and evidence of professional training and growth; and 9) Any cause which constitutes grounds for the revocation of the teacher’s teaching license. ORS 342.865.
      • Authority to dismiss or not extend a contract teacher is vested in the district school board. ORS 342.895(2)
      • Superintendent must recommend dismissal to the Board and give written notice (20 day letter) to the teacher, the board and the Fair Dismissal Appeals Board (FDAB) prior to making a recommendation. ORS 342.895(3).
      • 20 days after notice has been given, the superintendent provides a dismissal
recommendation to the board. The statute does not define the format of this recommendation. However, the superintendent should ideally provide a written, dated recommendation letter or memorandum to the board referencing the prior notice.

C. Administrators
   1. Definition - Is any teacher the majority of whose time is devoted to service as a supervisor, principal, vice principal or director of a department or the equivalent in a fair dismissal district. ORS 342.815. This does not include superintendents, deputy or assistant superintendents.
   2. The grounds for dismissal or reduction of pay are the same as those for teachers. ORS 342.845(5)(a). Administrators can also appeal to FDAB.

5. Classified/Nonlicensed Staff
   • if demoted or dismissed they are entitled to a hearing in front of the Board within 15 days of their demotion or dismissal. ORS 342.544.
   • They must provide written notice.
   • Superintendent has the initial authority to dismiss or demote.

6. Conducting Termination Hearings
   A. The process for conducting hearings is not defined in statute. Boards should check the CBA, if applicable, and district policy to determine whether or not there are specific requirements regarding process.
   B. Otherwise, the board should be focused on providing basic due process - notice and the opportunity to heard.
   C. Steps:
      1. Notice - provide the appropriate, **written** notice if specified in statute or reasonable notice, if none is specified.
      2. Determine and outline the process for hearing in the notice.
         • Set time limits for the employee to provide an oral statement
         • Advise the employee of the opportunity to provide written materials prior to the hearing
         • Advise the employee of the potential for witnesses and ask that they submit a witness list
         • Advise the employee to provide notice of representation prior the hearing
      3. Public hearing or executive session - employee can request public hearing.
      4. Process During Hearing:
         • Hear both sides
         • Be objective
         • Weigh the evidence
            - Burden of proof? On district to establish basis for termination
            - Strength of evidence?
            - credibility of witnesses?
            - would a neutral third party agree and find the decision was reasonable?
      5. Did the Administration Follow Proper Procedures
         • Complaint Procedure
         • Evaluation Procedure
         • Personnel File Procedure
         • Notice Procedure
      6. Deliberations - Board members should convene to discuss matter
      7. Board Action
      8. Provide written notice of decision - check statutes, policy and CBA regarding specific requirements. Recognize that FDAB, courts, etc., may be reviewing the written notice.

D. Due Process - always err on the side of providing additional due process. No one has been successfully sued for giving an employee too much due process.

E. Fair Dismissal Appeals Board - Questions Regarding Review of Board’s Decision
   1. Were the facts relied upon by the employer true, and if so,
   2. Were they adequate to justify the statutory grounds cited as reason for dismissal or nonrenewal.

If you have legal questions please contact John Stellwagen at 503.588.2800 or email at jmstellwagen@osba.org.