The Board Hearing

Kate A. Wilkinson, Director of Litigation Services

Who's In the Room??

Administrative professionals....

KEEP CALM AND STAGE MANAGE
Agenda
1. How did we get here?
2. What happens after the appeal is submitted?
3. Conducting the hearing
4. Communicating the final decision

BE PREPARED
Public Complaint Procedure KL-AR(1)

• Step Four: If the complainant is dissatisfied with the superintendent or designee’s findings and conclusion, the complainant may appeal the decision to the Board within five working days of receiving the superintendent or designee’s decision. The Board may hold a hearing to review the findings and conclusion of the superintendent, to hear the complaint and to hear and evaluate any other evidence as it deems appropriate. Generally all parties involved, including the school administration, will be asked to attend such meeting for the purposes of presenting additional facts, making further explanations and clarifying the issues. The Board may elect to hold the hearing in executive session if the subject matter qualifies under Oregon Revised Statutes.
Staff Complaint Procedure - GBNA-AR

Step 4: If the complainant is not satisfied with the decision at Step 3, a written appeal may be filed with the Board. Such appeal must be filed within 10 working days after receipt of the Step 3 decision. The Board shall, within 20 working days, conduct a hearing at which time the complainant shall be given an opportunity to present the complaint. The Board shall provide a written decision to the complainant within 10 working days following completion of the hearing.

Complainant may appeal the decision to the Board within five working days of receiving the superintendent or designee’s decision.
• Appeal
• Complaint
• Email that says “I want a board hearing on this..”

TEST - what if someone refuses to fill out a district complaint form?

Pre Hearing Communication
Dear [Complainant],

I am sending you this letter in preparation for the [School Board] hearing that will take place beginning at 5:30 p.m. on the [date] in the [location]. I represent the [School Board] and will be present to assist them during this board hearing.

As you know, [Complainant] presented a written complaint to the Board Chair on [date]. This complaint was investigated, and Board determined that while the majority of facts surrounding the complaint were substantiated, they did not give rise to a policy violation under Board policy [policy number].

You timely appealed these findings and recommendations to the full Board, and has requested a hearing on this appeal.

Pursuant to your request, the hearing will be conducted in executive session pursuant to ORS 192.660(2)(b).

The hearing will begin with Board Chair presenting the history of complaint, including findings and recommendations stemming from the written complaint. You will then have 10 minutes to present any testimony you have prepared to present to the board. Both parties will have 10 minutes to offer rebuttal testimony. You may choose to waive your opportunity for rebuttal and present a full 15 minutes of testimony if you would prefer. Under policy [policy number], this appeal is related to the findings and recommendations stemming from the written complaint.

You may also submit a written statement or any witness statements in support of your appeal if you plan to submit any written materials, please provide those materials to [school board] by 3 pm.

Oral witness testimony other than from yourself and [Complainant] will not be permitted. You will not be permitted to call a representative present at the settlement discussion hearing, but the representation cannot speak on your behalf.

After the board has heard testimony from yourself and [Complainant], you both will be excluded so the board can deliberate privately. If the board is able to render a decision, it will return to open session to take a vote. It is possible that the board will not be able to render a decision on your appeal on the night of the hearing.

Please let me know if you have any questions or concerns about the procedure for the hearing. Thank you.

Sincerely,

[Your Name]

[School Board]
### Can we hold it in secret?

<table>
<thead>
<tr>
<th>executive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment of a public employee;</td>
</tr>
<tr>
<td>To consider the dismissal or disciplining or hearing complaints against an employee or staff member unless they request an open meeting</td>
</tr>
<tr>
<td>Open meeting</td>
</tr>
<tr>
<td>Everything else</td>
</tr>
</tbody>
</table>

### Scenario

Parents have had repeated conflict with a teacher. They have followed district complaint process and have a hearing with the board on their complaints about the teacher.

**OPEN session?**
Quiz

A former District employee now active member of the public. Has filed a complaint against the superintendent – claiming that the superintendent has allowed black mold to grow in the local elementary school.

OPEN or EXECUTIVE?

Big Bonus Scenario:

Appeal before the board of a probationary employee’s nonrenewal (administration had recommended nonrenewal and employee appealed to the board). During that hearing, the employee begins to complain bitterly about another staff member claiming that that staff member had “sabotaged” his job performance and that the other staff person was “evil.” He continues to rant about the other staff member, using profanity and vulgar language.

FOR $10,000 = what should the board do??
Sorry, you don’t really win $10,000

Student expulsion
• Executive session unless parent or student requests public.
• Can vote in executive session
• See ORS 332.061
• News media not allowed

The Hearing
NOTHING LIKE TV!!
Practical: where will you hold it? Timing, agenda etc.

Orally review procedures

- Board chair should read RULES, explain process. Best practice – have a script to read from.
- All board members should have relevant documents – copies of complaint, anything else that is relevant or that the complainant wants to give to the board.
- Any relevant policies/rules/procedures etc.
In order to ensure fairness and that the board is able to hear relevant evidence, I have set some ground rules for the hearing:

1. Participants must address their presentation to the question currently before the board. New complaints regarding events that occurred after the conclusion of the investigation of the complaint, are outside the scope of this hearing.
2. Participants will address the board as a whole; they may not direct questions to board members.
3. Participants will observe fair questions and answer time limits and respect the timekeeper’s notice that time has concluded. I will serve as timekeeper.
4. All participants will speak in respectful tone and volume.
5. No personal attacks will be allowed.

I will now state the question before the Board that they are tasked with considering at this meeting:

Did the ___ err in conclusion that ___ conduct toward ___ did not violate the District’s policies?

Presentations will be as follows:

- 5 minutes
- 20 minutes
- 20 minutes
- Rebuttal if requested (10 minutes)
- Rebuttal if requested (10 minutes)

Questions from the Board.

There are two possible outcomes of this appeal:

Possible Outcomes:

A. The Board finds the investigation was INSUFFICIENT and directs the board to reopen the investigation to address the following question(s) that remain unanswered:

B. The Board finds the investigation was SUFFICIENT.

The parties will then be dismissed and the Board will deliberate in private. The Board may move into public session and vote on a motion put forward by a Board Member.

Can complainants bring someone/an advocate/friend etc.?
I want to present the Board my evaluations for the past two years and a letter from my best friend that I am a great teacher.
Stuff

- Board should have all documents used/referred to by the district;
- Copy of complaint;
- Any relevant policies and procedures.
- Complainant – whatever they want;
- Copies for the board
- Limit by letter in advance;
- No last minute bring to meeting with no warning.

Hearing/ Appeal

- Set your ground rules for before.
- One side, then the other.
- Address the board

Deliberations
Teacher appeals. Principal tells you she determined that this person wasn’t doing a good job, didn’t think that would change and did not want her back. Teacher says not true – she did a good job.

Do you trust your administration? What message are you sending if you reverse the decision?? Carefully think about that. Administration spends every day in the school, working with the teacher – who is better placed to make this decision??

Nonrenewal of a probationary teacher

- Teacher appeals. Principal tells you she determined that this person wasn’t doing a good job, didn’t think that would change and did not want her back. Teacher says not true – she did a good job.
- Do you trust your administration? What message are you sending if you reverse the decision?? Carefully think about that. Administration spends every day in the school, working with the teacher – who is better placed to make this decision??
2015 ORS 342.835¹  Probation teacher

(1) The district board of any fair dismissal district may discharge or remove any probation teacher in the employ of the district at any time during a probationary period for any cause considered in good faith sufficient by the board. The probation teacher shall be given a written copy of the reasons for the dismissal, and upon request shall be provided a hearing thereon by the board, at which time the probation teacher shall have the opportunity to be heard either in person or by a representative of the teacher’s choice.

(2) For any cause it may deem in good faith sufficient, the district board may refuse to renew the contract of any probation teacher. However, the teacher shall be entitled to notice of the intended action by March 15, and upon request shall be provided a hearing before the district board. Upon request of the probation teacher the board shall provide the probation teacher a written copy of the reasons for the nonrenewal, which shall provide the basis for the hearing.
Motions

MOTION – I move that the Board accept/support the recommendation of the _____ for _____.

OR - I move that the Board accept the recommendation of the ________.

OR – I move that the Board not accept the _____ recommendation. REMEMBER EARLIER DISCUSSION.

EXCEPTION – vote in executive session on ________.

After the hearing
Staff Complaint Procedure-GBNA-AR
The Board shall provide a written decision to the complainant within 10 working days following completion of the hearing.
Simple letter and/or email to complainant

- Hearing was held on this date;
- Board voted to _____;
- Next steps/options if any;
- Thank you.

Dear: NAME

On DATE, the board voted to affirm the recommendation that ---- .

At the end of the day
Was it fair?

Communicate Plan Ahead

we all just want to be heard
Questions

Kate A. Wilkinson
kwilkinson@osba.org
Date

Name
Address

RE: Complaint Appeal

Dear __________:  

I am sending you this letter in preparation for the ________ School Board hearing that will take place beginning at 5:30 p.m. at the ________. I represent the ________ School Board and will be present to assist them during this board hearing.

As you know, __________ presented a written complaint to the Board Chair on ________. This complaint was investigated, and Board __________ determined that while the majority of facts surrounding the complaint were substantiated, they did not give rise to a policy violation under Board policy ________, timely appealed these findings and recommendations to the full Board, and has requested a hearing for this appeal.

Pursuant to your request, the hearing will be conducted in executive session pursuant to ORS 192.660(2)(b).

The hearing will begin with Board Chair ________ presenting the history of complaint, __________ including __________ findings and recommendations. ________ will then be given 10 minutes to present _____ appeal. You will then be given 10 minutes to present any testimony you would like to present to the board. Both parties will be given 5 minutes to offer rebuttal testimony. You may choose to waive your opportunity for rebuttal and present a full 15 minutes of testimony if you would prefer. Under policy ________, this appeal is related the findings and recommendations stemming from __________ written complaint, so both parties should take care to limit your presentation to the facts surrounding that complaint.

You may also submit a written statement or any witness statements in support of your appeal. If you plan to submit any written materials, please provide those materials to __________ by 3 pm ________.

Oral witness testimony other than from yourself and __________ will not be permitted. 
You will be permitted to have a representative present for observation at the hearing, but this representative cannot speak on your behalf __________ will similarly be allowed to have a union representative present, but this representative will not be allowed to speak on __________ behalf.

After the board has heard testimony from yourself and __________, you both will be excluded so the board can deliberate privately. If the board is able to render a decision, it will return to open session to take a vote. It is possible that the board will not be able to render a decision on your appeal on the night of the hearing.
Please let me know if you have any questions or concerns about the procedure for the hearing. Thank you.

Sincerely

Name
Title

cc:
Ground Rules:

In order to ensure fairness and that the board is able to hear relevant evidence, I have set some ground rules for the hearing:

1. Participants must address their presentation to the question currently before the board. New complaints regarding events that occurred after the conclusion of the investigation of the complaint, are outside the scope of this hearing.
2. Participants will address the board as a whole; they may not direct questions to board members.
3. There will also be no cross-examination.
4. Participants will observe the time limits and respect the timekeeper’s notice that time has concluded. I will serve as timekeeper.
5. All participants will speak in respectful tone and volume.
6. No personal attacks will not be allowed.
7. Board members are asked to save their questions for the presenters for the Q/A period.

I will now state the question before the Board that they are tasked with considering at this meeting: Did the Board Chair err in conclusion that conduct toward did not violate the District’s policies?

Presentations will be as follows:

- (5 minutes)
- (20 minutes)
- (20 minutes)
- rebuttal if requested (10 minutes)
- rebuttal if requested (10 minutes)
- Questions from the Board.

There are two possible outcomes of this appeal: Possible Outcomes:

A- The Board finds the investigation was INSUFFICIENT and directs the board chair to reopen the investigation to address the following question(s) that remains unanswered.

B- The Board finds the investigation was SUFFICIENT.

The parties will then be dismissed and the Board will deliberate in private. The Board may move into public session and vote on a motion put forward by a Board Member.