

Leading Oregon School Districts in an era of Greater Scrutiny, Accountability, and Regulation

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Accountability – and Scrutiny

- Bargaining with more state dollars but higher employee and parent expectations, and more second-guessing on expenditure choices.
- A new evaluation system – and expectations that student learning will escalate as a result.
- Parent/ community feelings of “exceptionalism” and entitlement.

Scrutiny – and Accountability

- Expectations of greater transparency in decision-making and concern for greater confidentiality.
- Focus on public employee conduct – on and off the job.
- Everyone is a victim – and a complainant.

New “Regulation”



- “Dear Colleague” letters: disabled students in sports; end “zero tolerance” policies
- New state legislation: SAPO and leave laws
- Federal data collection on discipline and bullying
- Federal waiver requirements to drive evaluation ratings; assignment of teachers next?

At the Bargaining Table: Economics



- *Bargaining's new turf – how to spend resources? *How many new teachers to buy? How much in reserves is enough?*
- *Hedging our bets: contingent clauses in CBA compensation
- * “Catch-up” pay proposals
- * Incentive pay – no takers

At the Bargaining Table: CBA Language



- *Workload control: controlling “unassigned time”
- *The “non-issue”: evaluation
- *The other “non-issue”: RIF criteria (but new legislation?)

Expedited Bargaining

Expedited bargaining under ORS 243.698: 90-day timeline

- If changing the status quo in a mandatory subject that the CBA doesn't address (*ex. student contact time*)
- Once again an attractive option: contracting out, with “feasibility studies,” bargaining the decision and the impact
- Under legislative attack, again
H.B. 2448
- Labor-friendly Court of Appeals, ERB



S.B. 290: “Great Expectations”

- *News media: “We get to publish teacher scores” (as in California and Florida)*
- *Parents: “Ineffective teachers will be gone from my kid’s school.”*
- *Civil rights groups: “High poverty schools will have highly effective teachers – or at least as many as other schools.”*
- *Teachers unions: “VAM is a sham!”*
- *U.S. Dept. of Education: “Give student growth a definite weight.”*

Darker Realities?

- Administrative staffing inadequate to “get it all done”?
- “Grade inflation” in teacher ratings over time?
- Inconsistent scores over time raise skepticism about the reliability of student growth data?
- Tying scores to transfers (voluntary and involuntary)
- Dismissal, nonrenewal law, CBA is still a challenge

“Just cause” language covering teacher dismissals

Plans of Assistance still labor-intensive, lengthy processes

Problematic CBA language

1. “Evaluations shall not be based solely on student test scores or other measurements of student performance.”
2. “All evaluations shall comply with ORS 342.850 and S.B. 290, the ODE “Framework, and the District’s adopted Evaluation Handbook.””
3. “Any evaluation based on student academic growth shall be based on multiple measures of student performance that are customized for the individual teacher.”
4. “The District will collaboratively develop standards and processes in compliance with S.B. 290.”

All such language in the CBA creates a possibility for grievances. All proposals are wholly or partially permissive.



Using Evaluation Results -- Wisely

With new evaluation systems and more information about teacher performance:

- No weighting of student growth and learning is required for 2014-15
- Annual goal-setting process (SMART goals) that includes at least two goals related to student learning is required 2013-14.
- Mid-year and end-of-year meetings over progress on student growth goals is required this year.
- Summative evaluation is required every year (probationary) and at least every two years (contract teachers).

Impact on nonrenewal/non-extension decisions

- Use student growth data as “tips” for follow-up
- Use information from observations, mid-year progress on “directed” goals to inform decisions on nonrenewal of probationaries.
- Same for decisions on contract teacher and administrator “non-extensions”

Make sure the evaluator has complied with any evaluation procedures that are in the CBA or enforced by the CBA

Potential Trouble Spots?

- Probationary teacher is recommended for nonrenewal due to low ratings in “professional behavior” that are based on reports from other staff instead of evaluator observation.

Has the CBA complaint procedure been followed?

- In 3 of 4 “mini-observations,” probationary teacher is sitting at her desk working on her computer instead of working with students. Teacher’s contract is not renewed due to identified deficiency in instructional planning and delivery.

Any CBA evaluation provisions violated?

Potential Trouble Spots?

- Contract high school health teacher is arrested for second DUII after side-swiping a car with students inside.

Is there a sufficient impact on teacher's ability to teach the curriculum and serve as a role model for students?

- Parent complains that probationary teacher has texted her daughter dozens of times each day, including late at night and early in the morning. Teacher says “we’re just friends.”

The board can nonrenew the teacher's contract.

The board can dismiss the teacher immediately.

But teacher may grieve IF the CBA makes these actions subject to a “just cause” standard or other CBA provisions.

Potential Trouble Spots?

- Contract teacher is recommended for non-extension based on incomplete and late completion of IEP paperwork.

Plan of assistance will be required after board action.

- In several “mini-observations,” contract teacher uses derogatory and profane language. In a second instance, teacher is given a letter of directive to avoid any physical contact with students in such situations.

Can the board not extend the teacher’s contract?

Can the board dismiss the teacher immediately if there is a repeat of shoving or grabbing a student?

Long-term S.B. 290 Implications?

- Will teacher ratings (individual or aggregate by school) be subject to a public records request?
- Will teacher ratings be used to substantiate discrimination claims by minority students?
- Will teacher ratings be used to force transfer of low-ranking teachers out of high-poverty schools?
- Will administrator rankings be used the same?

Community Relations Challenges

Requests for Information

- Consider FERPA, CBA, Public Records Law, Board policy

Demands for Participation

- Consider Public Meetings Law, policy

Community Relations Challenges

Demands for Action

- Changes in policy, curriculum, instructional materials, eligibility

Complaints and Appeals

- State-mandated processes (i.e. expulsion appeals) v. board-created processes

Public Records Law

“Public Record” = All government records of any kind unless exemption is proven.

COMMON EXEMPTIONS

- Protected from disclosure by another law (i.e. FERPA)
- “Personal information”? (home address, personal phone # or email address – upon employee request in safety situation)
- Personnel records of licensed employees – not superintendents
- Completed disciplinary actions of employees (conditional)
- Internal advisory communications (may be exempt)

Action on Public Records Requests



Record Requests under Other Laws

- Unions have right to information “of probable or potential relevance” to a grievance or other contractual matter (PECBA).
- FERPA: Either parent/guardian has right to student’s “educational records.” School district may release “directory information” if no parent objection.
- Personnel records of licensed employees (but not superintendent) exempt under ORS 342.850 & policy

Typical Questions ? ? ?

What do you do if:

- A local photographer requests the names and home addresses of all juniors at your high school?
- The press asks for a preliminary draft of a report on safety hazards in the bus and maintenance shop?
- The union asks for all discipline issued to bus drivers during the past 10 years, during a grievance meeting?
- The local newspaper asks for the salaries paid to every one of the District's employees, as per W-2s?



Public Participation in District Decisions

Although the public has a desire to participate in school district decision-making, the right to do so is limited under state law:

1. Voters elect the school board and can recall board members.
2. The public has a legal right to speak at only one meeting a year: the mandatory budget hearing.
3. Public participation in board meetings is a decision of the board. The board has the discretion to allow or not:
 - Public input on topics being studied by the board at work sessions.
 - Boards may limit or eliminate public comment sections of agendas.
 - Even where an employee or student chooses an open hearing, there is no right of the attending public to speak.
 - Some topics, such as complaints against staff, can be referred to the superintendent under policy.

Typical Questions ? ? ?

What do you do if:

- Your rules for participants limit each to 3 minutes but Mr. A and B say they will “give” their minutes to Mr. C?
- Members of the audience have been told, “No booing, no applauding,” but do it anyway?
- Teachers bring picket signs into the board room, wave and hold them up from their seats in the front row?
- A local citizen calls the day before the board meeting and demands an interpreter be present because he is deaf?

Executive Sessions can be held to . . .

- Consider the employment of an employee or agent (but only if criteria are adopted and position has been advertised).
- Hear a complaint about a board member or employee.
- To consider the dismissal or disciplining of a public officer, employee, staff member or hear a complaint (unless the one complaining wants an open session hearing).
- To consider exempt public records.
- To consult with persons doing labor negotiations
- To listen to an appeal of an expulsion decision.

Holding Legal Executive Sessions

Include on agenda

Include the purposes and ORS authorizing the executive session on the agenda

Announce

Before adjourning to executive session, announce the subsection of ORS 192.660

Confidentiality warning

At the start of the executive session, warn all present that the content is not to be disclosed

Legal or Not ? ? ?

1. At an executive session to discuss bargaining, a board member argues for the board to put up a local option levy and others speak against it.
2. During an executive session under ORS 192.660(2)(a), the board decides on their first choice for superintendent, then puts him on speaker phone to ask if he would be willing to take the job for \$10,000 less than advertised.
3. In exec session, the board discusses a candidate for maintenance chief. In open session, the chair announces the filling of this position, which was posted a week earlier.
4. In exec session, the board hears a complaint by member A against member B. The session was posted under subsection (h) to get advice of counsel on pending litigation.

Complaint/Appeals

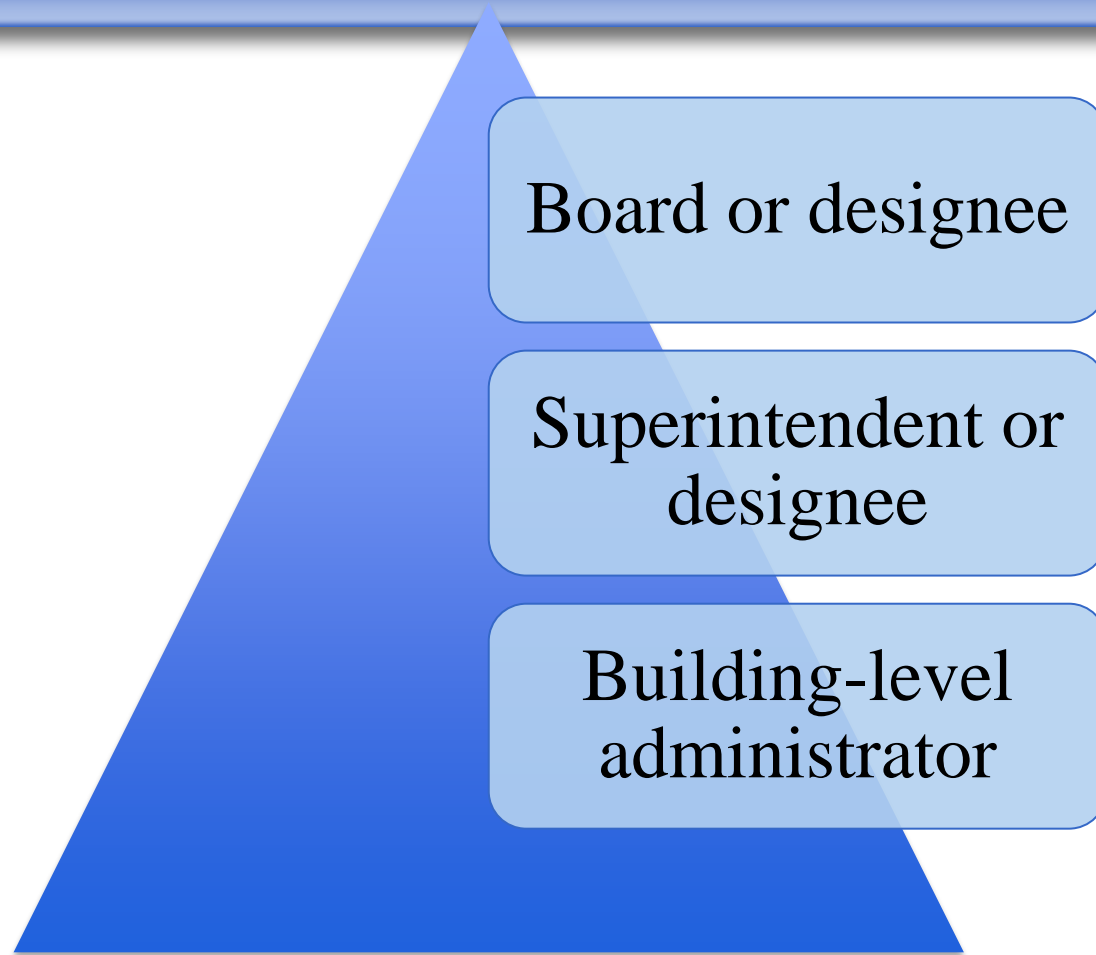
Procedures established by statute:

- Harassment/bullying complaint procedures must include right to district-level review of actions taken by a school after receiving a report.

Procedures established by policy:

- General complaint procedure in policy may provide for full board review or review by designee authorized by board.

Steps in Typical Appeal Process



Board Policy on Complaints

Whole board involvement in every complaint

- Public perception of access
- Time demands may be excessive
- Board cannot escape misuse by perennial complainer

Alternatives

- Board considers Supt. decision and patron appeal in exec session; decides whether to hold hearing.
- Board delegates appeal to independent hearing officer, with report back to board
- Board designates 1-2 members to hear appeal, and to report back to whole board for action.

What's Your Concern?

- For more opportunities for training and assistance
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