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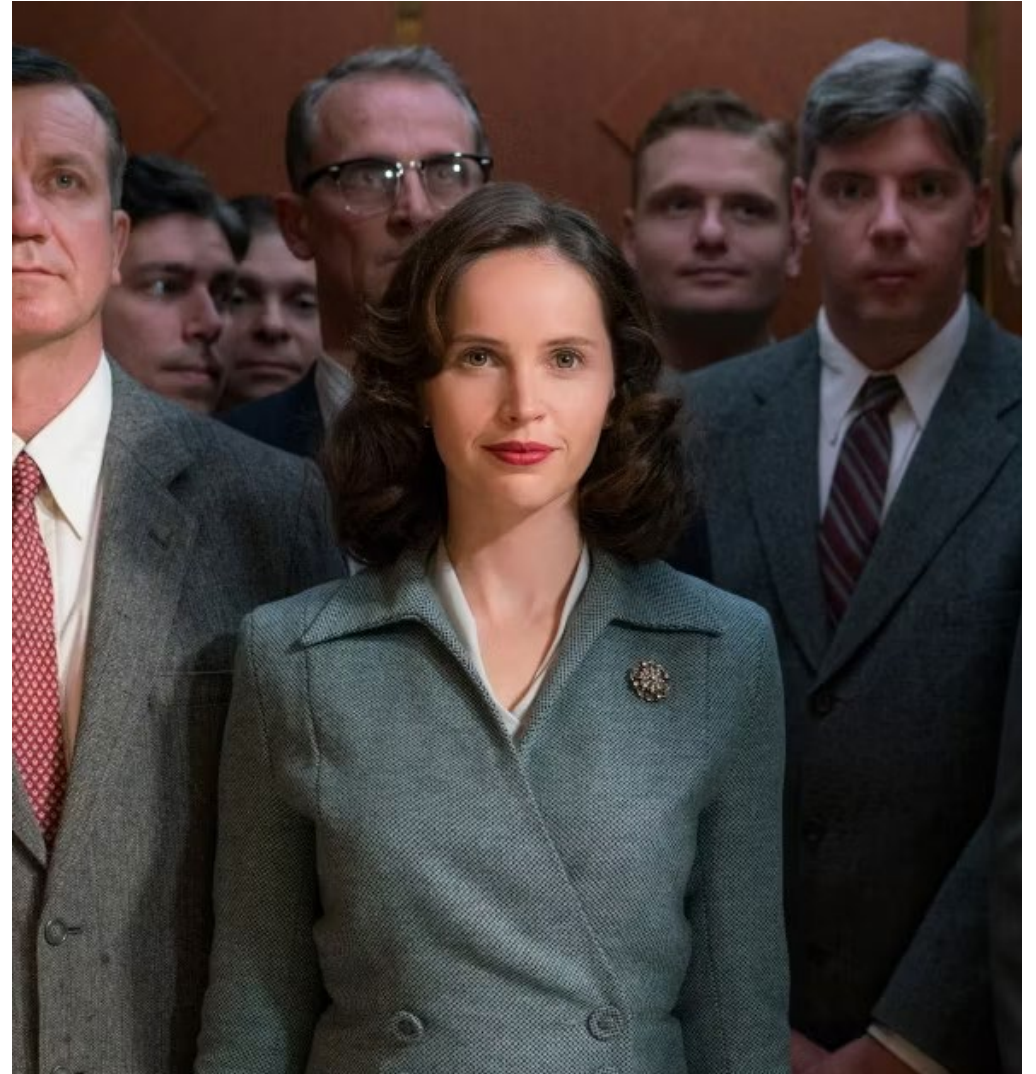
Quasi-judicial Hearings: A Primer for School Boards



Quasi-Judicial Proceedings: What are they?

Defined by 1 VSA sec. 310(6):

1. Legal rights of one or more persons who are granted party status are adjudicated.
2. Conducted in such a way that all parties have an opportunity to present evidence.
3. Parties have a right to counsel.
4. Parties have a right to cross examine witnesses.
5. Results must be in writing.
6. Decision is appealable to a higher authority.



When do School Boards have quasi-judicial meetings?

- It is a meeting under the OML.
- Must warn, have an agenda and allow for public comment before commencing
- Can be in executive session if permitted by statute.
- If not permitted by statute, must be in open session.
- Public has no right to speak during course of the quasi-judicial function.
- Decisions are made in deliberative session.



What are subjects that can require quasi-judicial functions?

1. Employee termination
2. Residency hearings
3. Grievances by Association
4. Expulsion hearings



Employee Termination Hearings: Executive Session?

Principals: Right to a hearing, before or after termination by the Board. **Open session only if both parties agree in writing** to public session.

Superintendents: If for cause, entitled to hearing. **Must be in open session.**

Teachers: Hearing shall be in executive session unless the teacher requests in writing otherwise.



Expulsion Hearings: Due Process Required

§ 1162. Suspension or expulsion of students

- (a) A superintendent or principal may, pursuant to policies adopted by the school board that are consistent with State Board rules, suspend a student for up to 10 school days or, with the approval of the board of the school district, expel a student for up to the remainder of the school year or up to 90 school days, whichever is longer, for misconduct:
- (1) **on school property**, on a school bus, or at a school-sponsored activity when the misconduct makes the **continued presence of the student harmful to the welfare of the school**;
 - (2) **not on school property**, on a school bus, or at a school-sponsored activity **where direct harm to the welfare of the school can be demonstrated**; or
 - (3) not on school property, on a school bus, or at a school-sponsored activity where the misconduct can be shown to **pose a clear and substantial interference with another student's equal access to educational programs**.
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Residency Hearings

- To determine whether a parent is a resident of the district
- Evidence as to domicile
- Domicile means the place the parent plans to stay indefinitely and treats as their home
- It is the place where we keep our old yearbooks and our winter clothes in the summer
- Must be in open session



Hints from the Vermont Supreme Court

- As a quasi-judicial body, however, the Board is bound to grant the parties a **fair and open hearing**.
- At the core of due process is **the right to an opportunity to be heard**.
- A fair trial before **an impartial decisionmaker** is a basic requirement of due process.
- Decisions by the Board must be based on **admitted competent and material evidence**.
- Competent evidence is **trustworthy, reliable evidence**
- **Material evidence** is that which relates to the questions the board has to answer.



What about impartiality by Board Members?

- We recognize that “[a] fair trial before an **impartial decisionmaker** is a basic requirement of due process, applicable to administrative agencies as well as to the courts.
 - The presence of bias—or prejudgment, a form of bias—may preclude a fair and impartial hearing.
 - Bias may manifest itself in the form of **either “actual bias” or the “probability of actual bias.”**
 - it is not improper for the same board that unsuccessfully negotiated with the union to conduct the disciplinary hearings leading to the teachers' dismissal.
 - **Mere familiarity with the facts of the case gained by an agency in the performance of its statutory role,” the Court explained, “does not disqualify a decisionmaker.”**
 - **Prior involvement in the subject matter of the hearing, of itself, will not work a judicial disqualification.** And a claim of prejudgment founded on prior participation will not oust the only tribunal that has the authority to act in the premises.
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So, where does it become actual bias?

- While serving as a selectboard member, the DRB chair personally **had attacked the nonprofit environmental organization that opposed the permit**. We held that the chair should have recused himself from participating in the DRB proceeding and that his failure to do so was a due-process violation.
- What about the Board member who runs on the concept that the Principal is not performing and needs to be fired?
- What about the Board member who has conversations with constituents who may be witnesses in the quasi-judicial hearing?
- What is the best way to preserve the right to decide the dispute in a quasi-judicial hearing?



Process for the Board Hearing

1. Typically: Hire a lawyer to represent the Board. Will need to support the Board on issues of evidence, process, discovery and drafting a decision.
2. Have a lawyer for the Administration. It acts as prosecutor. It will almost surely need a lawyer for cross examination.
3. Be prepared to record the hearing in some reliable manner. Court reporter, audio recording or video recording for remote meetings.
4. Issue some document that identifies the nature of the charges/issues for the parties.
5. Consider what needs to be produced to the parties and when to comply with due process requirements.



How do we control the hearing?

- Evidentiary rules: Make sure that we do not allow everything into evidence while still being fair.
- Prefiled testimony: Shorten direct examination and allow cross on the prefiled testimony.
- Time limits for presentation of the case that are the same for both sides.
- Filing of stipulations before the hearing to narrow the issues.
- Schedule the hearing ASAP! Justice delayed is justice denied. (Herrera problem)
- Reach agreement that you will use an informal process that is described with some detail.



How do we opt out of formal proceedings?

Dear Parent:

We are having an expulsion hearing soon. I want to avoid a super complicated process that will definitely require lawyers. Let's do it this way.....

Okay?

I need you to confirm it is acceptable by sending me an email saying so.

Best wishes.

Administration/Board Chair



When doesn't it matter if we get the procedures wrong?

- Residency hearings
- Grievance determinations
- Both have a de novo review by next step in the process
- Agency of Education assigns a hearing officer
- Association can move to binding arbitration
- Both proceedings will follow due process
- So, how do we structure the hearing for residency and a grievance?



Evidentiary Issues at Hearing

- How do we handle written statements from non-witnesses?
- Do we allow hearsay statements to prove the central issues in the case?
- What is relevance?
- How do we rule on objections to the evidence?
- What is the danger of getting it wrong on evidence?
- What is the burden of proof?



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How do we reach a decision?

The law allows a public body to **make a decision in deliberative session so long as the decision is issued in writing and the writing is a public record.** 1 V.S.A. § 312(f). This means that after the public body has heard all of the evidence in a hearing, it may privately discuss and determine the merits of the case, and then circulate drafts of an opinion for comment and approval prior to issuing its formal written decision. A deliberative session is not an open meeting and need not be warned



Questions for Panelists

- What is your experience with these proceedings?
 - What advice do you have for Board Chairs and members?
 - What can be done to communicate expectations to members?
 - What is the best way to provide training/information for members?
 - How do we deal with participants who have trouble following the rules?
 - Do we want the proceedings to be public or private?
 - What is the hardest part of participating in the process?
 - What can lawyers do to better support boards?
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