

EXAMINERS REVIEW AND APPEALS BOARD BYLAWS AND RULES OF PROCEDURE

SECTION 1. PURPOSE

The purpose of this Examiners Review and Appeals Board (ERAB) will be to provide the FAA Regulator Support Division (AFS-600) Manager with an objective, un-biased, and deliberate process for the review of complaints or actions taken against Designed Pilot Examiners (DPE's). This Examiners Review and Appeals Board, through its actions, will help build confidence and trust in Designed Pilot Examiners and the FAA resulting in a safer aviation community with enhanced communication. This Examiners Review and Appeals Board will advocate fairness and respect for all individuals seeking access, accountability of all public employees and DPEs, open communication with the aviation community, and equal access for all who seek action by this Board.

SECTION 2. DEFINITIONS

“Alternate Member” means a Board Member who serves as a Regular Member in the absence of a Regular Member. Voting privileges granted only in the absence of a Regular Member.

“Board” means the Examiners Review and Appeals Board (ERAB).

“Board Member” means any person appointed to serve on the Board including Alternate Members.

“Board Membership” means membership on the Board.

“Chair” means Presiding Officer of the Designee Action Review Board that shall provide executive leadership to the Board. No voting privileges granted.

“Co-Chair” means executive officer working jointly with the Chair to provide executive leadership to the Board. No voting privileges granted.

“Complaint” means the filing of a complaint or action taken by the FAA against a DPE.

“Complainant” means the person filing the Complaint or Requests for Review by this Board.

“Confidential Information” means any information that is privileged or otherwise exempt from disclosure under applicable law.

“Conflict of Interest” means an actual conflict or potential Conflict of Interest regarding applications submitted for review by this Board.

“DPE” means a FAA appointed Designated Pilot Examiner.

“Executive Session” means a Board meeting with only Board Members and Officers.

“FAA” means the Federal Aviation Administration.

“FSANA Board of Directors” means a duly elected member of FSANA’s Board of Directors.

“FSANA MEMBERS” means a member of FSANA.

“FSANA President and CEO” means the duly elected President and CEO of FSANA.

“Improper Conduct” means a violation of confidentiality, illegal actions, criminal arrest or convictions, witness tampering, evidence tampering, discriminatory or retaliatory actions, disrespect to fellow Board Members, irregular or abnormal behavior, dishonesty, failure to disclose a conflict of interest, and improper influence of your vote.

“Industry Leaders” means representatives of industry flight training groups, IE: FSANA, NAFL, SAFE, EAA, HAI, and AOPA.

“Regular Member” means a Board Member who has full participatory and voting privileges regarding business that comes before this Board.

“Request for Review” means a request in writing to have their cause reviewed by this Board.

“Review” means the process of reviewing a Complaint or action taken submitted to this Board filed by a Complainant.

“Temporary Member” means any Board Member selected due to a Conflict of Interest of a Board Member or Alternate Member that will serve for a specific Request for Review.

“Timely Manner” means within a time period of no more than 180 days.

“Unresolved Complaint” means any action or Complaint against a DPE that has not been resolved or closed actions in the previous 7 years from the Boards initial formation that wasn’t or possibly not handled in an unbiased or fair manner or believed to be incorrect by the Complainant or FAA.

SECTION 3. FSANA DESIGNEE SUPPORT STATEMENTS

- (a) All DPEs serve at the pleasure of the FAA. FSANA supports that the FAA should provide timely, written notification to the DPE who is the subject of an investigation relating to the approval, denial, suspension, modification, or revocation of their appointment as a DPE. This notification should include the nature of the investigation and given to the DPE in a Letter of Investigation.
- (b) A DPE may have their Review heard by the Examiners Review and Appeals Board.
- (c) FSANA supports that an oral or written response to a Letter of Investigation is not required by a DPE.

- (d) FSANA supports that no action or adverse inference should be taken against an individual for declining to respond to a Letter of Investigation.
- (e) Any response given may be considered as evidence by the Examiners Review and Appeals Board and will be held in confidence by the Board.
- (f) That the releasable portions of the investigative report will be available to the individual DPE and shared with the FAA as necessary to defend your position by the Examiners Review and Appeals Board. FSANA supports that the DPE can access and obtain complete air traffic control data to support their Review and that this data should be given to the DPE in a timely manner.
- (g) FSANA encourages that any actions taken against a DPE should require the Pilot Bill of Rights being given to the DPE in the event the investigation leads to the suspension or revocation of their pilot certificates.

SECTION 4. MEMBERSHIP

This Board will be comprised of seven (7) Regular Members and two Alternate Members. Board Members will be made up as follows: two retired FAA ASI Officials, two current DPEs, and three qualified representatives from the flight training industry, IE: representatives or chairmen of the flight training industry, trade group leaders, instructors, pilots, chief or assistant chief pilots of 141 schools, or school administrators. The two Alternate Members shall be selected from the type of individuals or groups listed above.

Alternate Members may fully participate in any meeting of the Board. Alternate Members shall not be permitted to vote on actions taken by the Board except in the absence of a Board Member or Members. The Alternate Member with the most seniority will serve first followed by the second alternate. If both were selected at the same time, the Alternate Member with the most time in the aviation industry will be selected. If no clear choice is available, the selection will be made by a vote of the Board Members.

Six Board Members will be appointed to a single three year (3) term selected by the FSANA Board of Directors. A Board Member may be reappointed to an additional three (3) year term after remaining off the Board for one (1) year. Board Members will rotate off as follows: three (3) after year one, three (3) after year two, and one (1) member and two (2) alternates on year three. The initial Board Members serving in year one and two may be re-appointed to an additional three year term. Board Members will receive no compensation for their services..

Qualified individuals desiring to serve on the Board must submit an application to the Board Chair or Co-Chair. Industry Leaders and other individuals within the aviation industry may be considered for Board Membership at the discretion of the FSANA Board of Directors.

Vacancies on the Board will be filled at the discretion of the FSANA Board of Directors. A person appointed to fill an unexpired term will end their services at the expiration of their

immediate predecessor's term. They may be re-appointed if they have served 18 months or less on the Board.

All Board Members will agree to keep their work confidential and any breach will result in immediate removal from the Board.

No Board Member may serve if a Conflict of Interest exists in a Request for Review. Board Members should avoid any appearance of impropriety. Full disclosure of any contacts concerning any Request for Review being investigated by the Board should be disclosed. In the event of a Conflict of Interest that affects Board Members or Alternate Members, it may be necessary to select Temporary Members to hear a Request for Review. Temporary Members will be selected at the discretion of the FSANA Board of Directors. All decisions made by the Board shall be based upon evidence submitted in an unbiased manner. A Board Member should withdraw themselves if they cannot be impartial or prejudge the Request for Review.

A Board Member may be removed by three quarters (5) votes of the Board for violations of confidentiality, lack of attendance, or improper conduct.

Members are required to attend 75% of the meeting of the Board.

SECTION 5. OFFICERS

A Chair will be selected by Consensus of the FSANA Board of Directors to serve a three year (3) term and may be appointed for a second term. After a one year absence from the Board at the end of their term(s), the Chair or Co-Chair may be reelected as Chair or Co-Chair. After the expiration of the Chair or Co-Chairs term(s), they may be immediately elected as a Board Member. The Chair will be the presiding officer at all meetings of the Board. They shall keep decorum and lead the meetings. The Chair shall provide leadership and direction to the Board. The Chair shall work as a liaison between FSANA, industry and the FAA. The Co-Chair shall be appointed by the FSANA Board of Directors. They shall share in all responsibilities of the Chair. In the event the Chair is not present, the Co-Chair shall preside over the meetings. In the absence of the Chair and Co-Chair a Temporary Presiding Officer may be selected by majority vote of the Board. The Chair or Co-Chair may call a meeting of the Board. Neither the Chair nor the Co-Chair shall have voting powers on the Board. They will be allowed to lead and participate in all discussions and investigations by the Board.

During the first meeting of a new calendar year, the Board shall select a Secretary and Assistant Secretary that shall be elected by the Board to serve a one year(1) term for the purpose of recording minutes of each Board meeting. They may be reelected at the discretion of the Board.

SECTION 6. BOARD DUTIES.

- (a) Review complaints against a DPE
- (b) Review dismissals of a DPE by the FAA
- (c) Take testimony and review information regarding a Request for Review
- (d) Take minutes of each meeting
- (e) Make a written report to be submitted to the AFS-600 Manager
- (f) Make non-binding recommendations to the AFS-600 Manager
- (g) Will concur or not concur with FAA or DPE actions.
- (h) Promote the Board to industry.

SECTION 7. MEETINGS

Meetings may be called by the Chair or Co-Chair when a Request for Review has been made to the Board or the FSANA President and CEO.

Meetings will be held at a place and time given at least 14 days in advance. Meetings may be held via electronic means when and if necessary. A quorum of 5 Members or Alternate Members must be present to conduct business. Minutes shall be taken of all meetings and actions taken by the Board including the names of those in attendance.

The Presiding Officer shall preserve decorum and decide all points of order subject to appeal to the entire Board. Board Members will show courtesy and respect to fellow Members and will not engage in argumentative and insulting remarks towards each other.

Board Members shall observe proper order and decorum during Board meetings, and shall not, by conversation or other action, delay or interrupt the proceedings or refuse to obey the orders of the Presiding Officer. Board Members shall, when addressing staff or members of the public, confine themselves to questions or issues then under discussion, shall not engage in personal attacks, shall not impugn the motives of any speaker, and shall at all times, when in session or otherwise, conduct themselves in an appropriate and dignified manner.

Any person who makes insulting, impertinent, slanderous or unauthorized remarks, or who becomes boisterous while addressing the Board or attending a Board meeting or hearing shall be removed from the room if the Presiding Officer so declares. In case the Presiding Officer should fail to act, any Board Member may obtain the floor and move to require enforcement of this rule; upon affirmative vote of the majority of the Board present, the person shall be removed as if the Presiding Officer so directed.

In the absence of the Chair or Co-Chair and a Temporary Presiding Officer has been selected, They shall relinquish all duties immediately upon the conclusion of the item of business then in consideration before the Board should the Chair or Co-Chair arrive at the meeting.

The Board shall follow generally accepted rules of parliamentary procedure when conducting business. All decisions will be determined by majority vote of the Board unless otherwise noted.

Only one witness shall be present before the Board and heard at a given time. Additional witnesses desiring to be heard in the same session shall be held in a holding or waiting area not in the Board's presence.

SECTION 8. REQUEST FOR REVIEW AND HEARINGS

A Request for Review shall be submitted to the Board with details and evidence of the matter being presented to the Board for Review within 60 days of actions. The Board, will within 60 days of an application being submitted, schedule a meeting to consider the Request for Review. The Board by a majority vote may extend this time period.

The initial Board may give former DPEs that have served in the previous seven (7) years a right to have their Review heard if submitted within 180 days of this Board's official formation.

The FAA shall be encouraged to provide documentation concerning its actions to the Board.

All investigations shall commence as soon as possible and every effort will be made to conclude the Review within one (1) year. The Board may conduct interviews with the parties involved. Written and oral witness testimony may be considered by the Board. The Board may interview other applicants that have had interaction with the DPE or FAA.

The Board can refuse to hear a Request for Review that has not been submitted within the proper time frame, the Board has no jurisdiction over the Request for Review, The Complaint is clearly without merit or the Request of Review is a duplicate Review previously submitted.

This process is not intended to be used for litigation of Federal or State employment or discrimination law.

The Board shall only accept Requests for Review regarding unresolved complaints.

Hearings shall be conducted in an informal, non-confrontational manner, free of harassment, coercion, intimidation or undue interruption.

All Board Members will be given adequate time for questioning of those coming before the Board. The technical rules of evidence applicable to judicial proceedings do not apply to hearing before this Board. The Board may receive any evidence or hear any testimony which the Board considers relevant to the Request for Review. The Board may exclude any testimony or evidence that is cumulative, repetitive, or not relevant to the Request for Review.

SECTION 9. FINDINGS AND REPORTS

- (a) All evidence, statements, and testimony accepted will be considered
- (b) The Board will either concur or not concur with the initial findings of the DPE or FAA
- (c) The Board will submit a detailed written report to the AFS-600 Manager
- (d) The report shall be completed and submitted within 30 days of the Board's final hearing
- (e) The report will be signed by all Board Members
- (f) No Confidential information will be in the report
- (g) Dissenting opinions may be included in the report
- (h) The report may contain non-binding recommendations to the AFS-600 Manager
- (i) The AFS-600 Manager will be encouraged to provide the Board a written response to the report within 30 days
- (j) The Board may consider such response and amend the report if it so desires. The initial or amended report will become the final report after 30 days of being resubmitted to the AFS-600 Manager
- (k) No appeal of the Final report is allowed
- (l) Any DPE that has made a Request for Review to this board may be given a copy of the final report which may include redactions for confidential reasons.

SECTION 10. CONFIDENTIALITY

All Board Members shall take an oath of confidentiality and shall sign a Confidentially Non-Disclosure Agreement (NDA) with the Board prior to service. A breach of the Confidentiality Non-Disclosure Agreement is outside the scope of a Board Member's authority and will result in immediate removal from the Board.

The very nature of this Board will require Confidential Information being shared with Board Members. Such information may come from the individual making the Request for Review, informants, witnesses, FAA, FBI, secret service, state, federal or local law enforcement, or other government entities. It is paramount that this information be protected.

Any Confidential Information which was provided to the Board for deliberations shall not be disclosed in any form by any Board Member to the public or Complainant. Disclosure of Confidential Information by a Board Member is a violation of confidentiality.

Confidential Information is shared on a need to know basis with the board to assist in its Request for Review. This information is not to be discussed outside of the Board, shared, posted, copied, photographed, saved, or transmitted via electronic or any other means. Confidential Information will not be removed from the Board by any member. Confidential Information will be held in the strictest confidence.

Upon completion of the Review by the Board, all Confidential Information will be returned to the appropriate owner or agency. If no request to return the confidential material has been made, it shall be destroyed.

The Board may schedule executive sessions for the sole purpose of considering a Requests for Review, making related findings, and reviewing and discussing confidential records or information. Executive sessions will not be open to anyone other than Board Members and Officers.

SECTION 11. COST OF BOARD SERVICES

It should be understood by those seeking A Request for Review by this Board that expenses to conduct such investigations are involved. The Complainant making a Request for Review shall pay for any cost incurred by this Board for services requested thereof. Such expenses may include phone calls, technology services, coping services, travel, legal advice, and postage. The Board will discuss with the Complainant the depth of such expenses and request payment prior to services being offered. Discounts may be offered to FSANA Members. A preselected amount may be requested upfront with additional funds for expenses being requested as necessary for continued services. An itemized statement will be given to the Complainant detailing these expenses. No charges will be incurred for the Board Member's time for serving on this Board and completing a Request for Review for the Complainant.