

**BEFORE THE FAIR DISMISSAL APPEALS BOARD
OF THE
STATE OF OREGON**

In the Matter of the Appeal of:

JILL BONG,

Appellant,

v.

DOUGLAS COUNTY SCHOOL DISTRICT
#15, DAYS CREEK CHARTER SCHOOL,

District.

CASE No. 21-03

DISMISSAL ORDER

Jill Bong, Days Creek, Oregon, appeared *pro se*.

Paul A. Dakopolos, Garrett Hemann Robertson, P.C., Salem, Oregon, represented the District.

On October 20, 2021, the Appellant, appearing *pro se*, filed an appeal by submitting it to the Fair Dismissal Appeals Board (FDAB). On December 7, 2021, the District filed a motion to dismiss. The Appellant filed objections to the District’s motion on December 9, 2021. On December 17, 2021, the FDAB Panel assigned to this appeal issued an Order to Show Cause to the Appellant on why the appeal should not be dismissed. The Appellant filed four additional documents with the FDAB on December 20, 2021, a motion to compel on December 27, 2021, and a motion to compel/motion to strike on December 28, 2021.

DISCUSSION

The District’s December 7 motion to dismiss challenges FDAB jurisdiction. The District asserts that the Appellant was employed by the District as a “probationary teacher” and for this reason, the FDAB has no jurisdiction.

The District’s motion provided supporting documents indicating the Appellant was hired by the District with a start date of January 19, 2021, approval of the Appellant’s background check on March 19, 2021, and a Temporary Licensed Employee’s Contract with the District signed by the Appellant on April 6, 2021.

The Appellant admits she was in her first probationary year at the time of her dismissal in her December 9 objection to the District’s motion. The Appellant’s December 9 objection then argues the District failed to comply with ORS 342.835. None of the Appellant’s other pleadings,

filings, and submissions to the FDAB contradict or retract the Appellant's admission in her December 9 objection to her probationary teacher status when employed by the District.

A "probationary teacher" is defined in ORS 342.815(6) as "any teacher employed by a fair dismissal district who is not a contract teacher." The definition of "contract teacher" is found separately in ORS 342.815(3) and describes a teacher regularly employed by a school district "for a probationary period of three consecutive years" and retained for the following year. The Appellant's admission of being a probationary teacher in her first year squarely puts Appellant under the definition in ORS 342.815(6).

The District's motion relies on ORS 342.835 and subsections (1) and (2) state as follows:

(1) ***The district board*** of any fair dismissal district may discharge or remove any probationary 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 probationary 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 probationary 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 probationary 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 probationary teacher the board shall provide the probationary teacher a written copy of the reasons for the nonrenewal, which shall provide the basis for the hearing.

(emphasis provided)

These two subsections identify the district board –not the FDAB –as the proper forum for hearings involving probationary teachers. More specifically, subsection (1) provides the district board as the forum for the probationary teacher to challenge a district when discharged or removed by the district, whereas subsection (2) provides the district board as the forum for the probationary teacher to challenge a district when the district refuses to renew the probationary teachers' contract. Based on a plain reading of this statute, the district board is the proper forum for the two types of hearings arising in these two types of circumstances.

ORS 342.835 is also clear on the next proper forum available for a probationary teacher that seeks to appeal either type of district board hearings identified in subsections (1) and (2). Cited in full, subsection (3) states:

(3) If an appeal is taken from any hearing, ***the appeal shall be to the circuit court*** for the county in which the headquarters of the school district is located and shall be limited to the following: (a) The procedures at the hearing; (b) Whether the written copy of reasons for dismissal required by this section was supplied; and (c) In the case of nonrenewal, whether notice of nonrenewal was timely given.

(emphasis provided)

The Court of Appeals has corrected the FDAB for failing to recognize its jurisdictional limits regarding probationary teachers under ORS 342.835. This occurred in *Beeson v. Warrenton-Hammond School District*, 189 Or.App. 576 (2003) which followed the reasoning in *Smith v. Salem-Keizer School District*, 188 Or.App. 237, 244-245 (2003). In *Beeson*, the Court vacated and remanded the FDAB for its failure to deny an appeal; appellant was dismissed *before* completing three consecutive school years. In contrast, the *Smith* court reversed and remanded the FDAB for dismissing an appeal; appellant was a contract teacher *after* completing three consecutive school years. *Smith*, at 244-245. Factually, this case resembles *Beeson*, in which both parties agree the Appellant did not complete her three years as a probationary teacher before her separation from service.

The case law interpreting the procedural limitations of ORS 342.835 mostly follow the precedent set by *Maddox v. Clackamas County School Dist. No. 25*, 293 Or. 27 (1982). The *Maddox* case itself did not involve an improperly filed FDAB appeal. Rather, the court discussed the purpose of ORS 342.835 was to “leave the substantive determination to terminate with the school districts, to allow flexibility in probationary teacher decisions, and to avoid embroilment in extended termination procedures.” *Maddox*, 293 Or. at 33.

In other words, probationary teachers that are discharged, removed from employment, or fail to have their contract renewed by the district, must first seek a hearing with their respective district board—not the FDAB. After that, the teacher must appeal any further disposition by the district board directly to the Circuit Court for the county in which the school district is headquartered—not the FDAB. Based on the above, the FDAB does not have jurisdiction over this appeal and does not have the legal authority to speak to the other issues raised in the pleadings, filings, and submissions submitted.

ORDER

The Appeal is dismissed.

DATED this January 6, 2022 _____*signed/ confirmed electronically*_____
Camron Pope , Panel Chair

DATED this January 6, 2022 _____*signed/ confirmed electronically*_____
Duane N. Johnson, Panel Member

DATED this January 6, 2022 _____*signed/ confirmed electronically*_____
Elaine Placido, Panel Member

Notice: Under ORS 342.905(9), this order may be appealed in the manner provided for in ORS 183.480, and any appeal must be filed within 60 days from the date of service of this Order.

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2022, I served a true and correct copy of the ORDER ON TO DISMISS the method indicated below:

Jill Bong, Appellant PO Box 321 Days Creek, OR 97429 Email: marszinmotion@yahoo.com	<input type="checkbox"/> [] <input type="checkbox"/> [] <input type="checkbox"/> [] <input type="checkbox"/> [] <input checked="" type="checkbox"/> [X]	HAND DELIVERY U.S. MAIL OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY
Paul A. Dakopolos, for the District Garrett Hemann Robertson, P.C. 1011 Commercial St NE Salem, OR 97301 Email: pdakopolos@ghrlawyers.com	<input type="checkbox"/> [] <input type="checkbox"/> [] <input type="checkbox"/> [] <input type="checkbox"/> [] <input checked="" type="checkbox"/> [X]	HAND DELIVERY U.S. MAIL OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY

Respectfully submitted,

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