

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

In The Matter of the Appeal of:

JULINE WALKER,

Appellant,

v.

MAPLETON SCHOOL DISTRICT,

Respondent.

FDA CASE No. 22-01

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

INTRODUCTION

Appellant Juline Walker (“Walker”), a teacher, was dismissed by the Mapleton School District (“the District”) on April 21, 2022. Walker timely appealed her dismissal to the Fair Dismissal Appeals Board (“FDAB” or the “Panel”) on April 29, 2022. FDAB conducted a two-day hearing on the merits: the first day of the hearing was held at the Lane County Education Service District on July 13, 2022, while the second day of the hearing was held by videoconference on August 19, 2022. Appellant appeared *pro se* and the District was represented by Nancy J. Hungerford of the Hungerford Law Firm. The hearing was conducted before the appointed Panel, which consisted of Camron Pope, Duane Johnson, and John Hartstock. The Panel, having considered the evidence and the arguments of counsel, makes the following rulings, findings, conclusion, and order.

ISSUE BEFORE THE PANEL

In its original dismissal letter, the District provided multiple grounds for Appellant’s dismissal under ORS 342.865(1). At the hearing, the District stipulated to withdraw all these

grounds, except for “insubordination” under (1)(c) and “neglect of duty” under (1)(d).¹ For these reasons, the Panel limited its review to a dismissal under (1)(c) and (1)(d).

PANEL RULINGS

Hearing rulings by the Panel include preliminary determinations based on the FDAB contested case hearings process and evidentiary rulings as follows:

Process Rulings: The FDAB followed ORS 342.805 through ORS 342.930 and OAR 586-030-0015 through OAR 586-030-0085 for this contested case.

In-person hearing request. The FDAB statutes and rules do not explicitly require an in-person hearing. FDAB rules explicitly permit preliminary hearings “by phone or in person.” OAR 586-030-0025(1); OAR 586-030-0037(9). The FDAB considers due process protections preserved to the same extent whether the parties appear in-person or by videoconference.

When scheduling this case for hearing, the State of Oregon and the FDAB were emerging from restrictions imposed by COVID-19. The FDAB was concerned about resurgence of the COVID-19 virus and the difficulty of securing a venue that met the safety concerns of all the parties and witnesses. For this reason, on May 26, 2022, the Panel set this matter for a video hearing. During and after the June 21, 2022 pre-hearing conference, Appellant requested an in-person hearing. The Panel was able to accommodate this request at the Lane County Education Service District on July 13, 2022, the first day of hearing, but conducted the second day of hearing, on August 19, 2022, through videoconference. The format of the hearing complied with Appellant’s due process rights.

Public hearing request. ORS 342.905(5)(b) requires FDAB hearings to “be private unless the teacher requests a public hearing.” On June 21, 2022, Appellant requested a public hearing. For the same COVID-19 and venue reasons described above, the Panel met this obligation by providing a live weblink, via Youtube, of the hearing on both hearing dates.

¹ Hearing Transcript 511.

Granting District's request to disregard documents. In an August 18, 2022 email, sent before the hearing on August 19, 2022, the District raised a concern regarding the distribution of documents to FDAB members by a representative in another case. The District requested that Panel members for this case not review those documents. The Panel agreed, while also noting the documents of concern are not in the record, were not admitted as exhibits, and were therefore never considered evidence for the Panel to consider.

Denial of Appellant's "Motion to Dismiss with Directed Judgment." The Panel denied Appellant's prehearing "Motion to Dismiss with Directed Judgment." That motion appeared to ask the Panel to make a summary determination or disposition against the District without a hearing on the merits. In making its decision, the Panel noted that Appellant's motion did not challenge FDAB jurisdiction under OAR 586-030-0025(1) and that the FDAB never adopted OAR 137-003-0580, which permits summary dispositions.

Opportunity to Present Evidence and Examine Witnesses. Appellant asserts that the conduct of the hearing violated three procedural rules: First, that FDAB did not send notice to the parties, required by OAR 586-030-0015(1)(e), that included a "statement that each party will be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing as required under ORS 183.413(2) prior to the hearing." Second, that the procedures for approving the testimony of witnesses by telephone or electronic means under OAR 586-030-0040 were not followed. And third, that requiring Appellant to proceed with her direct examination of some witnesses before the district finished its case-in-chief violated OAR 586-030-0060(2).

These cited FDAB rules ensure that the parties have the opportunity to present evidence and witnesses to support their positions, and to challenge evidence through objections and cross-examination. The FDAB therefore reviewed the record to determine whether this opportunity was preserved for the parties.

The parties in this case shared the same witnesses. Consistent with the cooperation on witnesses laid out in OAR 586-030-0037(1), the District made its witnesses, which were board members for the District and/or District employees, also available for Appellant at the hearing. Before the hearing, on July 11, 2022, the Panel informed Appellant that she could exhaust her line of questioning of her own witnesses in the cross-examination of the District's witnesses, but she could choose whether or not, to do so.

Here, the Panel finds that Appellant had an opportunity to **both** directly examine and cross-examine each witness.² Consistent with OAR 586-030-0044(1)(f), the Panel finds that an extra day was provided for Appellant to continue examining the two remaining witnesses requested by Appellant.³

The Panel finds that Appellant had the opportunity -- and availed herself of the opportunity -- to present evidence, object to evidence, and examine witnesses on direct and cross examination. For this reason, the Panel concludes that Appellant was not unfairly prejudiced by taking some of the evidence and witnesses out of the order set out in OAR 586-030-0060 for the purpose of complying with OAR 586-030-0037(1).

Similarly, OAR 586-030-0040 governs the testimony of witnesses who are *not present* at a hearing. In a hearing conducted by videoconference, all witnesses are present in the same format as the parties and the panelists, and thus we question whether the rule applies to a hearing by videoconference. But even assuming that the rule applies, Appellant was not unfairly prejudiced by the failure to follow procedures for approving witness testimony by videoconference. OAR 586-030-0040(6) states that requests to have witnesses testify by telephone or by electronic means "shall normally be granted * * * ." In addition, postponing the hearing so that witnesses could have been available for in-person testimony would likely have led to a significant delay in finding mutually agreeable hearing dates. The potential risk for

² Hearing Transcript 86-96, 118-24, 150-52, 126-46, 153-79, 183-241, 248-84, 310.

³ *Id.* at 285-87.

further delay was exacerbated by the COVID-19 venue restrictions described above. Within this context, the parties agreed to the nature of the witness appearances and the hearing dates.

Finally, the claim of a lack of the notice required by OAR 586-030-0015(1)(e) did not unfairly prejudice Appellant. First, the Panel's June 24, 2022, order notified the parties that the FDAB hearing rules are set out in OAR 586-030-0015 through -0085, and that the order of presentation is outlined in OAR 586-030-0060. And second, Panel counsel began the hearing by informing Appellant in detail of the hearing procedures and rights.⁴

Limiting time for closing oral argument – OAR 586-030-0060(2)(f) requires the Panel to provide advance notice if it intends to impose a time limit on closing arguments. The Panel finds that Appellant rested her case-in-chief at the end of a two-day hearing that occurred on July 13, 2022, and August 19, 2022. For this reason, the Panel decided to limit closing arguments to 15 minutes at that point in time. However, Appellant raised the prior notice requirement in response.⁵ Through counsel, the Panel noted the time of day might require rescheduling to undertake longer oral arguments, but also offered the parties the opportunity for a short oral closing argument in addition to providing a written closing brief.⁶ The Panel finds that the parties agreed to this latter option.⁷ The Panel further finds that neither party was unfairly prejudiced or denied an opportunity to be heard by this approach.

Evidentiary Rulings: Generally, for contested case hearings, ORS 183.450(1) provides:

“Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Agencies and hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.”

⁴ *Id.* at 23-26.

⁵ *Id.* at 552.

⁶ *Id.* at 553-55.

⁷ *Id.* at 555.

The admission of evidence in FDAB hearings is governed by OAR 586-030-0055(1), which also articulates a standard to admit evidence “commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.” In overruling the objections, the Panel also reasoned that the evidence did not substantially prejudice the rights of either party.

Denial of Appellant’s motions to limit evidence. On June 22, 2022, Appellant filed an “Alternative Motion #1 to Limit Evidence and Testimony” and an “Alternative Motion #2 to Limit Evidence and Testimony.” Appellant sought to limit the District to the facts presented in the school board chair’s written notice of dismissal, or to the facts presented in the school board chair’s termination notice and the superintendent’s 20-day termination notice. Appellant relied on OAR 586-030-0060(2)(b), which notes that “[t]he district may present evidence in support of the content of the District’s written notice of dismissal or contract non-extension.” However, this rule does not operate to limit evidence and testimony; it instead guides the scope of evidence presented by the district. This is consistent with the generally permissive evidence rule articulated in OAR 586-030-0055.

Overruling objections seeking to limit evidence. Appellant also raised two prehearing objections in an email dated July 5, 2022. The first objection challenged the District’s proposed exhibits D-1 through D-8, D-14, and D-16-24, alleging that the District failed to comply with ORS 342.850(4) and (8), ORS 342.865(2), ORS 342.895(3)(a), and various provisions of the Collective Bargaining Agreement (“CBA”) covering Appellant’s position. The FDAB overruled Appellant’s objections because the FDAB lacks jurisdiction over the CBA and because the cited statutes are not evidentiary rules that exclude evidence.

FINDINGS OF FACT

1. Appellant's teaching experience began in 2017 and started at the District.⁸ As a teacher, Appellant's evaluations, labeled Mapleton Goals Sheet, from the years 2017 through 2019, show positive feedback and scoring.⁹ On December 4, 2018, Appellant was nominated by Terri Johnston to receive the Mapleton School District Crystal Apple Award.¹⁰

2. Appellant signed an agreement on June 15, 2021, entitled "Contract Teacher," listing contract conditions for Appellant to perform the duties of a teacher for Mapleton School District. Mapleton School District Superintendent Jodi O'Mara also signed the document on June 14, 2021.¹¹ O'Mara had been Superintendent since the beginning of Appellant's employment with the District.¹²

3. In response to the Delta variant of the COVID-19 virus, on August 19, 2021, Oregon Governor Kate Brown announced that all teachers would be required to be fully vaccinated by October 18, 2021, or six weeks after FDA approval of the vaccine, or to request a medical or religious exemption.¹³

4. On the same day as Governor Brown's August 19, 2021 announcement, O'Mara sent an email to the District's teachers, including Appellant, stating that Governor Brown had directed OHA to develop a rule to require all workers associated with K-12 schools to be vaccinated.¹⁴

⁸ *Id.* at 45.

⁹ Exhs A-29, A-30, A-124.

¹⁰ Exh A-27.

¹¹ Exh A-2.

¹² Hearing Transcript 45.

¹³ Exhs A-129, D-1.

¹⁴ Exhs A-81, D-4; Hearing Transcript , 49-50.

5. O'Mara met with Appellant on August 23 and August 31, 2021, to discuss the vaccination requirements.¹⁵
6. The Oregon Department of Education issued a bulletin, dated August 26, 2021, to Oregon superintendents and principals, citing OAR 333-019-1030 and setting out requirements that teachers provide proof of vaccination or religious and medical exceptions to the vaccination.¹⁶
7. On August 31, 2021, O'Mara held a "Welcome Back District Meeting" with staff, which Appellant attended.¹⁷ During the meeting, O'Mara told the staff about the vaccination requirements, and shared a PowerPoint presentation with information on those requirements.¹⁸ The PowerPoint explained that October 18, 2021 would be the effective date of the vaccination requirement, and that teachers would not be able to teach or work at a school unless they were fully vaccinated or had provided documentation of a medical or religious exception.¹⁹ The PowerPoint also notified staff that they had to declare to O'Mara by the end of day on August 31 their vaccination status or plan.²⁰
8. Following the Welcome Back District Meeting, O'Mara sent the District's teachers an email informing the teachers, including Appellant, that the teachers were required to declare by the end of that same day, August 31, 2021, whether they were fully vaccinated, planned to get vaccinated, planned to file a religious or medical exception, or whether the teacher planned to not get vaccinated or file an exception.²¹ The email attached the OHA vaccine mandate rule, the

¹⁵ Hearing Transcript 54, 462-63. In total, O'Mara met with Appellant four separate times (on August 23, August 31, September 6, and September 10) to discuss the options regarding the vaccine mandate and the exceptions available to her. During those meetings, Appellant stated she had no intention to get vaccinated and would not seek a medical or religious exception. Exh D-22.

¹⁶ Exhs A-130, D-2.

¹⁷ Hearing Transcript 52, 462; Exh D-5.

¹⁸ Hearing Transcript 52, 462.

¹⁹ Exh D-5.

²⁰ *Id.*

²¹ Exhs A-82, D-5.

forms to request a religious or medical exemption, an OHA Frequently Asked Questions document, and an Oregon Department of Education PowerPoint called “Vaccine Mandate.” O’Mara testified that the August 31 deadline was based on her coordination with PACE, the District’s insurance carrier.²²

9. O’Mara emailed Appellant on September 3, 2021, about At-Home Testing conducted through Willamette Valley Toxicology.²³

10. O’Mara emailed Appellant on September 6, 2021, describing additional expectations for unvaccinated staff that included requiring double-masking and keeping three feet of distance from students/staff.²⁴ O’Mara also held individual meetings with the teachers, including Appellant, to discuss these protocols.²⁵

11. On September 10, 2021, O’Mara met with Appellant to discuss her vaccination status.²⁶ Appellant indicated that she would not be seeking a medical or religious exception, and that she was unsure of her ability to follow the additional safety protocols in place for unvaccinated staff.²⁷

12. O’Mara followed up the September 10 meeting by emailing Appellant on September 13, 2021, to confirm that Appellant was “choosing not to be vaccinated,” and not to seek a medical or religious exception. O’Mara also described to Appellant four options for Appellant to choose. These options included taking a leave of absence for the remainder of the school year, resigning, agreeing to follow the safety protocols, or becoming fully vaccinated by October 18, 2021. In

²² Hearing Transcript 53.

²³ *Id.* at 54; Exhs A-83, D-6.

²⁴ Exhs A-84, D-7.

²⁵ Hearing Transcript 56-57.

²⁶ *Id.* at 487; Exh D-8.

²⁷ *Id.*

that same email, O'Mara asked Appellant to inform O'Mara of her choice by September 17, 2021.²⁸

13. On September 17, 2021, O'Mara spoke with Appellant, who stated that she did not intend to comply with the vaccination requirements under OAR 333-019-1030.²⁹ O'Mara made Appellant aware of the four options described above. Appellant also stated that she did not intend to request a leave of absence or submit her resignation.³⁰

14. On September 21, 2021, O'Mara sent a letter to Appellant citing OAR 333-019-1030, and repeating the four options described above. O'Mara also noted in the letter that Appellant stated that she did not intend to comply with OAR 333-019-1030. For this reason, O'Mara notified Appellant that she would be placed on paid administrative leave pending dismissal and that the District would post Appellant's position to minimize disruption to student instruction.³¹

15. O'Mara sent Jeron Ricks an email on October 15, 2021, enclosing a letter directed to Appellant and directed Jeron Ricks to put the letter in Appellant's personnel file, and discontinue benefits and paid leave to Appellant starting October 19, 2021.³²

16. On behalf of the District, O'Mara sent a letter dated October 18, 2021, to Appellant placing her on unpaid administrative leave, and citing to OAR 333-019-1030, which required all teachers to become fully vaccinated or provide documentation of a medical or religious exception. In the same letter, O'Mara informed Appellant of O'Mara's intent to recommend dismissal of Appellant at the March 2022 School Board Meeting.³³

²⁸ Hearing Transcript 60, 371; Exhs A-85, D-8.

²⁹ Exh D-9.

³⁰ *Id.*

³¹ Hearing Transcript 374-75; Exhs A-11, D-9.

³² Hearing Transcript 354; Exh A-108.

³³ Hearing Transcript 528; Exhs A-7, A-108, D-10.

17. O'Mara placed Appellant on unpaid administrative leave, as opposed to dismissing Appellant, to provide time for either Appellant to change her mind or for the regulations requiring the vaccine to change.³⁴

18. The District did not provide remote teaching as an option to Appellant because the District was prohibited from employing teachers that were not vaccinated or did not have a religious or medical exception. While the District allowed two teachers to teach remotely before the vaccine mandate because they were deemed medically fragile, after the mandate took effect, the District did not allow any teachers to work remotely.³⁵

19. The District posted Appellant's job on its job listings web site on March 1, 2022.³⁶ Also on March 1, Appellant sent a letter to O'Mara stating that Appellant was in compliance with her teacher contract, dated June 15, 2021. Appellant asserted that being placed on paid, and then unpaid, administrative leave, violated the Collective Bargaining Agreement ("CBA") and ORS 342.845 and ORS 342.875. Appellant also requested reinstatement with restoration of pay and benefits.³⁷

20. On March 4, 2022, O'Mara sent Appellant an email titled pre-termination notification, again citing OAR 333-019-1030 and stating that Appellant did not indicate an intent to comply with the rule. This March 4 email included a "pre-termination" letter. The letter stated that the "statutory basis for my potential recommendation is set forth below," and listed insubordination under ORS 342.865(1)(c), neglect of duty under (1)(d), any cause for revocation of a teacher's

³⁴ Hearing Transcript 61.

³⁵ *Id.* at 62-64.

³⁶ Exh A-12.

³⁷ Exhs A-9, D-11.

license under (1)(i), gross neglect of duty under OAR 584-020-0040(4), and gross unfitness under OAR 584-020-0040(5).³⁸

21. In a letter to O'Mara dated March 7, 2022, Appellant demanded to be returned to her position as contract teacher. In this letter, Appellant asserted that the District violated the CBA and cited to ORS 342.845 and ORS 342.875 as a reason the District should reinstate Appellant with restoration of pay and benefits.³⁹

22. In O'Mara's March 4 letter described above, O'Mara also offered to meet with Appellant on March 9, 2022, at 10:00 am. However, Appellant did not show up to this March 9 meeting.⁴⁰

23. On behalf of the District, O'Mara sent Appellant a letter dated March 9, 2022, titled 20-day termination notification. This letter notified Appellant that O'Mara would recommend Appellant's termination to the school board. Similar to the March 4 letter, this letter stated the reasons for termination as insubordination under ORS 342.865(1)(c), neglect of duty under (1)(d), any cause for revocation of a teacher's license under (1)(i), gross neglect of duty under OAR 584-020-0040(4), and gross unfitness under OAR 584-020-0040(5).⁴¹

24. O'Mara responded to Appellant's March 7 letter, described above, in a letter dated March 10, 2022 and disputed Appellant's allegations that the District violated the CBA, ORS 342.845, and other statutory provisions. O'Mara repeated the Appellant's obligation to comply with OAR 333-019-1030 and asserted that O'Mara was only required to provide Appellant a 20-day written notice of termination.⁴²

³⁸ Exhs A-13, A-89, D-12, D-13. The March 4, 2022 letter provides, "Each separate category constitutes an independent basis for my recommendation and each category alone constitutes sufficient grounds for termination."

³⁹ Exhs A-10, D-14.

⁴⁰ Hearing Transcript 70.

⁴¹ Exhs A-77, D-15.

⁴² Hearing Transcript 73-74; Exhs A-19, A-90, D-16.

25. Appellant sent an email to the Mapleton School Board of Directors (“Mapleton Board”) on March 15, 2022, entitled “Contract Teacher Employment Grievances,” that referenced an attached document of grievances. This email asked the Mapleton Board to include the attached document of grievances as part of the Board’s agenda for its meeting on March 16, 2022.⁴³

26. Appellant sent a letter dated March 15, 2022, to the Mapleton Board. In this letter, Appellant alleged that the District breached its contract with Appellant, that Appellant was suspended without due process in violation of ORS 342.805 through ORS 342.937, that Appellant’s suspension without pay violated ORS 342.845 and ORS 342.875, and that the suspension without pay violated the CBA. In the same letter, Appellant requested reinstatement, restoration of benefits, and back pay.⁴⁴

27. The Chair of the Mapleton Board, Mary Ellen Mansfield, sent Appellant an email on March 15, 2022. Mansfield notified Appellant that she could elect to have a hearing before the Mapleton Board before it made its final decision on the termination of Appellant’s employment.⁴⁵

28. On April 7, 2022, Appellant responded to O’Mara and the Mapleton Board and requested a hearing.⁴⁶

29. On the same day that Appellant requested a hearing, April 7, Board Chair Mansfield sent Appellant a letter acknowledging Appellant’s request for a hearing and setting the date for April 20, 2022. This letter also notified Appellant that she could present written evidence by April 18, 2022, including witness statements.⁴⁷

⁴³ Exhs A-32, A-91.

⁴⁴ Hearing Transcript 75; Exhs A-1, A-91, D-17, D-18.

⁴⁵ Hearing Transcript 75; Exhs A-33, D-18.

⁴⁶ Hearing Transcript 76; Exhs A-36, A-37, D-19.

⁴⁷ Exhs A-39, D-20.

30. On April 9 and 11, 2022, Appellant and Chair Mansfield exchanged emails regarding the scheduling and process of the hearing before the Mapleton Board.⁴⁸

31. Appellant emailed the Mapleton Board on April 12, 2022, and attached a letter to the Mapleton Board entitled “Defense Against Termination Recommendation.”⁴⁹ In the document, Appellant presented arguments against terminating her employment. The letter also contained attached exhibits in support of Appellant’s arguments.

32. On April 20, 2022, the Mapleton Board met with Appellant. Superintendent O’Mara presented her recommendation that the Mapleton Board dismiss Appellant.⁵⁰

33. Appellant had an opportunity to address the Mapleton Board. The Board asked Appellant if she would comply with the vaccine mandate or request an exception. Appellant stated that she would not and that requesting an exemption was a violation of Appellant’s rights.⁵¹ The Board then voted to accept the decision of Superintendent O’Mara to terminate Appellant’s contract with the District.⁵²

34. On behalf of the Mapleton Board, Board Chair Mansfield sent Appellant a letter on April 21, 2022. The letter informed Appellant that the board had voted to accept Superintendent O’Mara’s recommendation to terminate Appellant’s employment, effective immediately.⁵³

35. Mansfield testified that Appellant’s refusal to comply with the direction from Superintendent O’Mara—based on state law—to become either vaccinated by October 18, 2021 or obtain an exception, comprised insubordination.⁵⁴ Similarly, Chair Mansfield testified that

⁴⁸ Exhs A-40, A-41.

⁴⁹ Hearing Transcript 130-32; Exhs A-42, A-43.

⁵⁰ Hearing Transcript 420; Exh D-22.

⁵¹ Hearing Transcript 81-82, 115-16, 118, 120, 245-46; Ex A-112.

⁵² Hearing Transcript 84-85, 122; Exhs A-111, A-112.

⁵³ Hearing Transcript 85, 114-15; Exh D-23.

⁵⁴ Hearing Transcript 135-36, 141.

Appellant's refusal to comply with the vaccine mandate or request an exception also comprised a neglect of duty.⁵⁵

36. Mapleton Board member Michelle Holman testified that Appellant's refusal to follow Superintendent O'Mara's direction comprised insubordination.⁵⁶

37. Mapleton Board member Mizu Burruss testified that Appellant's refusal to become vaccinated or seek an exemption was insubordination.⁵⁷

38. Superintendent O'Mara testified that she concluded that Appellant disobeyed lawful authority to become vaccinated or obtain an exception to vaccination, and that this refusal comprised insubordination.⁵⁸

39. On April 29, 2022, Appellant sent a Notice of Appeal to the Superintendent of Public Instruction at 255 Capitol Street NE, Salem, Oregon. This letter alleged the District failed to follow ORS 342.865, ORS 342.850, ORS 342.875, ORS 342.895(3)(a), and the CBA.⁵⁹

CONCLUSIONS OF LAW

1. The District is a "fair dismissal district" under the Accountability for Schools for the 21st Century Law.⁶⁰ Appellant is a "contract teacher" and entitled to a hearing before this Panel.⁶¹

2. The facts are true and substantiated that Appellant was directed by Superintendent O'Mara to become vaccinated by October 18, 2021 or request a medical or religious exception to the vaccine requirement.

⁵⁵ *Id.* at 142-43.

⁵⁶ *Id.* at 159-60, 163.

⁵⁷ *Id.* at 253-54.

⁵⁸ *Id.* at 442-43.

⁵⁹ *Id.* at 85; Exhs A-56, D-24.

⁶⁰ ORS 342.805-342.937.

⁶¹ ORS 342.905.

3. The facts are true and substantiated that Appellant engaged in insubordination by not becoming vaccinated by October 18, 2021 or seeking a medical or religious exception to the vaccine requirement.

4. The facts are true and substantiated that Appellant neglected a duty by not becoming vaccinated by October 18, 2021 or seeking a medical or religious exception to the vaccine requirement.

5. The District's dismissal of Appellant was not arbitrary, unreasonable, or an excessive remedy within the meaning of ORS 342.905(6).

6. The true and substantiated facts are adequate to support the grounds for dismissal relied upon by the District.

Discussion

I. Applicable Legal Standard.

At the conclusion of a hearing appealing a District's dismissal decision, the panel reviews the evidence pursuant to the legal standard set forth in ORS 342.905(6), which provides:

The Fair Dismissal Appeals Board panel shall determine whether the facts relied upon to support the statutory grounds cited for dismissal or nonextension are true and substantiated. If the panel finds these facts true and substantiated, it shall then consider whether such facts, in light of all the circumstances and additional facts developed at the hearing that are relevant to the statutory standards in ORS 342.865(1), are adequate to justify the statutory grounds cited. In making such determination, the panel shall consider all reasonable written rules, policies and standards of performance adopted by the school district board unless it finds that such rules, policies and standards have been so inconsistently applied as to amount to arbitrariness. The panel shall not reverse the dismissal or nonextension if it finds the facts relied upon are true and substantiated unless it determines, in light of all the evidence and for reasons stated with specificity in its findings and order, that the dismissal or nonextension was unreasonable, arbitrary or clearly an excessive remedy.

ORS 342.905(6) (emphases added). The "degree of proof of all factual determinations by the panel shall be based on the preponderance of the evidence standard." OAR 586-030-0055(5). At

the hearing, evidence of “a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs” is admissible. OAR 586-030-0055(1).

ORS 342.905(6) creates a three-step review process this panel must follow:

First, the [FDAB] panel determines whether the facts upon which the school board relied are true and substantiated. Second, the panel determines whether the facts found to be true and substantiated constitute a statutory basis for dismissal. Third, even if the facts constitute a statutory basis for dismissal, the panel may reverse the school board’s dismissal decision if the decision nonetheless was ‘unreasonable, arbitrary[,] or clearly an excessive remedy.’

Bergerson v. Salem-Keizer School District, 341 Or 401, 412 (2006) (footnote omitted). If the panel determines “the facts are not true and substantiated, or even if true and substantiated, are not relevant or adequate to justify the statutory grounds cited by the district, the appellant shall be reinstated with any back pay that is awarded in the order.” OAR 586-030-0070(3).

II. The True and Substantiated Facts are Adequate to Justify Dismissal for Insubordination

Insubordination within the meaning of ORS 342.865(1)(c) means “disobedience of a direct order or unwillingness to submit to authority,” and must be accompanied by a defiant intent or attitude on the part of the teacher. *Bellairs v. Beaverton Sch. Dist.*, 206 Or App 186, 199 (2006). To establish insubordination due to disobedience of a direct order, there must be credible evidence that the District imposed a lawful order or directive, that it clearly communicated that order or directive, and that the teacher willfully refused to obey the order. *Sherman v. Multnomah Education Service Dist.*, FDA-95-4, at 23 (1996).

Here, the District contends that Appellant’s refusal to comply with the COVID-19 vaccine requirement imposed by OAR 333-019-1030, which was communicated by the District to teachers and school staff, amounted to insubordination within the meaning of ORS 342.865(1)(c). Appellant asserts that she was not insubordinate because the order did not come from the District and, moreover, that the order was not lawful. She also contends that she was not insubordinate because she complied at all times with the duties in place at the time of her June

15, 2021 contract. For the reasons explained below, we agree with the District. The true and substantiated facts show that Appellant disobeyed a direct order to either be vaccinated against COVID-19 by October 18, 2021, or to request an exception on medical or religious grounds.

i. The District imposed a lawful order or directive.

To begin, there is no serious dispute that the District required Appellant to obtain the COVID-19 vaccine or request a religious or medical exception. The Superintendent held a staff meeting on August 31, 2021 to communicate the details of the COVID-19 vaccine requirement. After the meeting, the Superintendent emailed a summary of the meeting to all teachers, including Appellant, and included the Oregon Health Authority administrative rule that imposed the requirement, the medical and religious exception forms, OHA’s Vaccine Frequently Asked Questions, and a Vaccination Update PowerPoint from the Oregon Department of Education. In the email, Superintendent O’Mara confirmed that by the end of that day, August 31, 2021, teachers were required to “have declared” one of the following:

1. You are fully vaccinated and will show me proof of vaccination.
2. You plan to be fully vaccinated as defined in the Vaccine Status packet by October 18, 2021.
3. You plan to file a Medical Exception.
4. You plan to file a Religious Exception.
5. You do not plan to get vaccinated or file and [sic] exception.⁶²

The District’s order was first based on a temporary rule adopted by OHA, OAR 333-019-1030 (Aug 25, 2021), which—as relevant here—generally required teachers to either provide their school with proof of COVID-19 vaccination or with documentation of a medical or religious exception. That rule took effect on August 25, 2021, and remained in effect until replaced by OHA’s permanent rule on January 28, 2022.

Specifically, the temporary rule provided that after October 18, 2021, teachers “may not teach, [or] work * * * at a school unless they are fully vaccinated or have provided

⁶² Exh D-5.

documentation of a medical or religious exception.” OAR 333-019-1030(3)(a).⁶³ The rule also directed that a school could not “employ [or] contract with * * * teachers * * * who are teaching [or] working * * * at a school unless the teachers * * * are fully vaccinated against COVID-19 or have a documented medical or religious exception.” OAR 333-019-1030(3)(b). Schools that violated any provision of the rule were subject to civil penalties of \$500 per day per violation. OAR 333-019-1030(15).

OHA explained in its rule filing that the rule was “necessary to help control COVID-19, and to protect children, teachers, school staff, volunteers, and school-based program staff and volunteers.” OHA adopted the rule at the direction of Governor Brown, who required the vaccination mandate for education employees “to address Oregon’s hospital crisis, caused by the Delta variant surge, and to help keep Oregon students safe in the upcoming school year and minimize disruptions to in-person instruction[.]”⁶⁴ The Governor emphasized the importance of staff vaccinations to protect students “because children under 12 are still not yet eligible for vaccination,” ensuring that “all the adults around students are fully vaccinated against COVID-19 adds another layer of protection for students[.]”⁶⁵

The temporary version of OAR 333-019-1030 was repealed by OHA as of January 28, 2022. But OHA replaced the temporary version with a permanent version, which—as relevant here—imposed similar requirements on teachers. That permanent rule retained the requirements that are relevant to this case. It provides that “teachers * * * may not teach [or] work * * * at a school unless they are fully vaccinated or have provided documentation of a medical or religious exception and the exception has been approved or accepted.” OAR 333-019-1030(3)(a). And “[a] school may not employ [or] contract with * * * teachers * * * who are teaching [or] working at a school unless the teachers * * * are fully vaccinated against COVID-19 or have an approved or accepted medical or religious exception.” OAR 333-019-1030(3)(b).

⁶³ The temporary version of this rule is available at <http://records.sos.state.or.us/ORSOSWebDrawer/Recordhtml/8581079>.

⁶⁴ Exh D-1.

⁶⁵ *Id.* at 2.

There is no real dispute that the District imposed this vaccination requirement and the option for a medical or religious exception on Appellant, as explained above.

Further, there is no real question that the vaccination requirement imposed by the District was a lawful order. Appellant has not advanced any argument that OHA—independent of any asserted conflict with other state and federal laws—lacked the statutory authority to adopt these rules. We note that ORS 431.110(7) gives OHA the “full power in the control of all communicable diseases.” ORS 431.110(1) gives OHA “direct supervision of all matters relating to the preservation of life and health of the people of this state.” And finally, ORS 433.004(1)(d) gives OHA the authority to “[p]rescribe measures and methods for * * * controlling reportable diseases.” Therefore, as a threshold issue, we conclude that OHA had the statutory authority to adopt the temporary and permanent versions of OAR 333-019-1030. Under the rule promulgated by OHA, the District was therefore obligated to implement OHA’s rule or risk penalty.⁶⁶

For the reasons described above, we conclude that the District imposed a lawful directive when the Superintendent informed Appellant that she was required either to be vaccinated for COVID-19 by October 18, 2021 or to request a medical or religious exception.

In arguing for a different result, Appellant contends that the District’s vaccination requirement was unlawful. She argues that OHA’s rule conflicted with other federal or state laws. Appellant points to various state and federal laws, including the following: ORS 659A.136, ORS 677.096, ORS 127.507, ORS 659A.303, 42 USC sections 12102, 12103, 12111, and 12113,

⁶⁶ We note that attempts to enjoin or invalidate Oregon’s vaccination requirements imposed during the COVID-19 pandemic have been unsuccessful. *See Johnson v. Brown*, 567 F Supp 3d 1230, 1253, 1266 (D Or 2021) (the “decision to require vaccination among * * * critical populations such as * * * education workers and volunteers, is a rational way to further the State’s interest in protecting health and safety during the COVID-19 pandemic,” and concluding that plaintiffs “are not likely to succeed in showing that their individual interests in remaining unvaccinated outweigh the State’s interest in public health and welfare”); *Williams v. Brown*, 567 F Supp 3d 1213, 1229-1230 (D Or 2021) (OAR 333-019-1030 is “directly aligned” with Oregon’s “legitimate and compelling interest in slowing the spread of COVID-19 and in protecting the lives and health of the people of Oregon” and the “benefits inherent in requiring all healthcare personnel, *school staff*, and state executive employees to be vaccinated are clear and obvious, both in terms of protecting the newly vaccinated workers themselves and, of at least equal importance, in protecting the people around them.”) (emphasis added); *see also Jacobson v. Massachusetts*, 197 US 11 (1905) (upholding smallpox vaccine mandate).

the First, Fourth, and Fourteenth Amendments to the U.S. Constitution, and the Oregon Constitution, article I, sections 3, 4, 9, 20, and 22.

But Appellant has not sufficiently developed these arguments. Appellant generally does not tie specific wording from any statutes or constitutional provision to the District's actions here. And Appellant has not cited any caselaw that supports her arguments. Moreover, her argument fails to recognize that OAR 333-019-1030 expressly provides that the rule does not prevent employers from “[c]omplying with the Americans with Disabilities Act and Title VII of the Civil Rights Act, and state law equivalents, for individuals unable to be vaccinated due to a medical condition or a sincerely held religious belief.” OAR 333-019-1030(13)(a). Her argument also ignores the fact that the rule requires vaccination documentation and documentation of medical and religious exceptions to be “[m]aintained in accordance with applicable federal and state laws[.]” OAR 333-019-1030(14)(a).

Appellant advances only conclusory arguments that various state and federal laws prohibit an employer from mandating a vaccination or requiring proof of a medical exception to the vaccination requirement. Although these arguments are not developed, we note that guidance from the U.S. Equal Employment Opportunity Commission contradicts Appellant's arguments with respect to the Americans with Disabilities Act (ADA). The Commission has explained that the federal laws it enforces—including the ADA—“do not prevent an employer from requiring all employees to be vaccinated against COVID-19,” subject to various exceptions.⁶⁷ The Commission similarly advises that if an employer requires vaccination, then these same laws “do not prevent employers from requiring documentation or other confirmation that employees are up to date on their vaccinations.”⁶⁸

Appellant also argues that the order to be vaccinated came not from the District, but from OHA. Appellant argues that Appellant therefore was not insubordinate to anyone at the District,

⁶⁷ EEOC, *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, at K-1, <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (accessed Nov 21, 2022).

⁶⁸ *Id.*

implying that Appellant was insubordinate only to OHA. But we find that the District has shown by a preponderance of the evidence that *the District* directed Appellant to be vaccinated by October 18, 2021 or apply for a medical or religious exception. That directive is clear on the face of the Superintendent’s email to Walker and the rest of the staff on August 31, 2021.⁶⁹ The District was required to comply with OHA’s vaccination rule, and subsequently directed its teachers to comply with that rule. The fact that the District’s order was based on the District’s need to comply with the OHA rule does not undermine our conclusion; rather, it bolsters it. The District was not directing Appellant to comply merely with a District-generated rule. It was requiring Appellant to comply with a legal requirement imposed by OHA that applied statewide and that was promulgated in response to a declared public health emergency.

Finally, Appellant argues that she was not insubordinate because she complied at all times with the duties and conditions in her contract with the District. But that is merely an argument that the District was somehow precluded by her contract from complying with OAR 333-019-1030, which required the District to ensure that Walker was either vaccinated by the October 18, 2021 deadline or had requested a medical or religious exception. Appellant does not convincingly argue that her contract precluded enforcement of OAR 333-019-1030, and we see no reason to conclude that it did.

We therefore conclude that the true and substantiated facts show that the District imposed a lawful order when it required Appellant to be vaccinated by October 18, 2021 or request a medical or religious exception.

ii. The District clearly communicated the vaccination order to Appellant.

The record also amply demonstrates that the District’s communications to Appellant were clear. To begin, on August 19, 2021, when Governor Kate Brown announced that all teachers would be required to be fully vaccinated by October 18—or alternatively, six weeks after FDA approval of a vaccine—Superintendent O’Mara e-mailed the District’s teachers (including

⁶⁹ Exh D-5.

Appellant) to inform them of the impending rule from OHA requiring all K-12 workers to be vaccinated or seek exception.⁷⁰ On four different occasions, beginning on August 23, 2021, the Superintendent met with Appellant to discuss the options regarding the vaccine mandate and the exceptions available to her.

On August 31, following a “welcome back” staff meeting, O’Mara e-mailed the District’s teachers—again including Appellant—to require them to declare their vaccination status and whether they planned to file a religious or medical exception.⁷¹ In that email, the Superintendent attached five detailed documents about the vaccine requirements, as explained above, including the OHA document entitled, “Schools and School-Based Programs Vaccine Rule FAQs (Updated 8-26-2021).”⁷² The OHA FAQs clearly communicated that teachers such as Appellant were required to either get vaccinated by October 18, 2021 or request a medical or religious exception, or they would lose their employment. For example, the FAQs state:

Q: If an employee refuses to get a vaccination or submit a medical or religious exemption, what steps does the district take?

* * * * *

For employees who refuse to present proof of vaccination, medical exemption, or religious exemption, the school district should follow regular procedures for corrective action, including disciplinary action.⁷³

The FAQs also state:

Q: Is there a point where an employee no longer has a job if they refuse to comply with this rule?

A: Yes. After October 18, 2021, teachers, school staff and volunteers may not teach, work, learn, study, assist, observe, or volunteer at a school unless they are fully vaccinated or have provided documentation of a medical or religious exemption. *A school may not employ, contract with, or accept the volunteer services of teachers, school staff or volunteers who are teaching, working, learning, studying, assisting, observing, or volunteering at a school unless the*

⁷⁰ Hearing Transcript 47, 49; Exhs A-81, D-4.

⁷¹ Exhs A-82, D-5.

⁷² Exh D-5.

⁷³ *Id.*

*teachers or school staff are fully vaccinated against COVID-19 or have a documented medical or religious exception.*⁷⁴

The PowerPoint slides attached to the Superintendent's August 31 email amplified the consequences of a teacher's failure to comply with the rule. One slide clearly states that, effective October 18, 2021, "teachers, school staff and volunteers may not teach, work, learn, study, assist, observe, or volunteer at a school unless they are fully vaccinated or have provided documentation of a medical or religious exception."⁷⁵ It was clear from these statements that Appellant, if she chose not to comply, would not be able to work and could face corrective action, including disciplinary action.

On September 10, after OHA had adopted OAR 333-019-1030, Appellant told O'Mara that she did not intend to get vaccinated, and did not intend to seek a medical or religious exception. O'Mara explained that absent compliance with OHA's rule, Appellant could either take a leave of absence for the remainder of the school year or resign. On September 21, O'Mara wrote to Appellant to advise her that if she did not comply with the OHA rule, the District would place Appellant on paid administrative leave pending dismissal.⁷⁶ That letter cited to OAR 333-019-1030, and repeated the options that O'Mara had previously explained to Appellant.

O'Mara subsequently notified Appellant several times of her failure to comply with the OHA rule: in a March 4, 2022, pre-termination notification;⁷⁷ a March 9, 2022, 20-day termination notification;⁷⁸ and in a March 10, 2022, letter responding to Appellant's counterarguments.⁷⁹

These true and substantiated facts show that the District's vaccination requirement was clearly communicated to Appellant. The information was communicated in writing (including through the Superintendent's August 31 email and its attachments and in the Superintendent's three March letters) and orally during the Superintendent's multiple meetings with Appellant.

⁷⁴ *Id.* (Emphasis added.)

⁷⁵ *Id.*

⁷⁶ Hearing Transcript 374-75; Exhs A-11, D-9.

⁷⁷ Exhs A-13, A-89, D-12, D-13.

⁷⁸ Exhs A-77, D-15.

⁷⁹ Hearing Transcript 74; Exhs A-19, A-90, D-16.

Appellant does not seriously dispute that the order was communicated to her. In fact, Appellant informed the Superintendent on September 10 that she *did not intend* to get vaccinated or request an exception, conveying, through that statement, that she was aware of the District's requirement.

iii. Appellant willfully refused to obey the District's order.

The evidence discussed above shows that Appellant was on notice that the District required her and other teachers to comply with OHA's rule, which required Appellant to be vaccinated by October 18, 2021, or to request a medical or religious exception. The evidence also shows that Appellant did not comply with the rule: Appellant did not submit proof of vaccination, or submit a request for a medical or religious exception. Appellant simply chose, as a matter of personal principle, not to comply. As Appellant explained in her March 15, 2022 letter to the school board, "I chose to exercise my right to medical privacy by not submitting documentation to The District of having been 'fully vaccinated' against Covid-19 and by not applying for a religious or medical exception beyond those which are already provided by law."⁸⁰

The true and substantiated facts therefore show that Appellant willfully refused to obey the District's order or was unwilling to "submit to authority." *See Bellairs*, 206 Or App at 199.

Based on the above analysis, we conclude that the true and substantiated facts, in light of all the circumstances and additional facts developed at the hearing, are adequate to justify the District's finding of insubordination. Those facts show that Appellant willfully refused to obey a lawful order or was unwilling to submit to authority, that the order was imposed by the District, and that the order was clearly communicated to her.

⁸⁰ Exh D-18 at 4.

III. The True and Substantiated Facts Are Adequate to Justify Dismissal for Neglect of Duty.

Neglect of duty means the “failure to engage in conduct designed to result in proper performance of duty.” *Wilson v. Grants Pass School District*, FDA-04-07, at 9 (2005). “FDAB has interpreted ‘neglect of duty’ to mean the failure of a teacher to engage in conduct designed to bring about a performance of his or her responsibilities.” *Bellairs v. Beaverton Sch. Dist.*, 206 Or App 186, 196 (2006) (internal citations omitted). Neglect of duty can be demonstrated through evidence of “repeated failures to perform duties of a relatively ‘minor importance or a single instance of a failure to perform a critical duty.’” *Wilson*, FDA-04-07, at 10.

Here, our analysis of the allegation of neglect of duty closely tracks the above analysis of insubordination. *See Bellairs*, 206 Or App at 198 n 4. (“We also note that the distinction between ‘neglect of duty’ and ‘insubordination’ is difficult to grasp in situations where, as happened here, a teacher’s supervisors impose a duty and the teacher willfully fails to perform it.”). The District imposed a duty on Appellant to obtain the COVID-19 vaccination by October 18, 2021, or to request a medical or religious exception. The purposes of that requirement were “to protect students”⁸¹ and to “maximiz[e] the possibility of students learning in person by lowering the chances of COVID-19 related isolations and quarantine.”⁸²

Absent Appellant’s compliance with this duty, Appellant could not lawfully teach or work at the school. The evidence shows that Appellant simply chose to not to comply with this duty, despite having been told about it—and the possibility of dismissal if she did not comply—multiple times. The record is devoid of any evidence that Appellant ever stated that she declined to comply for a conscience-based, but not religious, reason. Rather, Appellant here makes many of the same arguments we have addressed above. Appellant argues that she had no duty to comply with the vaccination order because it is “novel,” and violates several state and federal

⁸¹ Exh D-1.

⁸² Exh D-5 at 11.

laws. However, as discussed above, we conclude that the District’s order—based on OHA’s rule—was lawful, and the District was required to comply with OHA’s rule.⁸³

Finally, Appellant argues that she could not have neglected a duty because OAR 333-019-1030 “contains no affirmative mandates for teachers to do anything.”⁸⁴ Rather, as Appellant construes the rule, it states only that unvaccinated teachers could not do certain things at school and, according to Appellant, she did none of those things “at school.” But Appellant only stopped performing her duties at school because the District placed her on unpaid leave for failing to comply with the District’s order to follow OHA’s rule. That is, by the time the District placed her on unpaid leave, Appellant had already refused to follow the District’s order. That order affirmatively mandated that its teachers become vaccinated against COVID-19 by October 18, 2021 or request a medical or religious exception.⁸⁵

We conclude that the true and substantiated facts, in light of all the circumstances and additional facts developed at the hearing, are adequate to justify the District’s finding of neglect of duty.

IV. Appellant’s additional arguments fail.

Appellant has advanced several other arguments against a finding of insubordination or neglect of duty.

Appellant argues that the District violated ORS 342.875 by placing her on unpaid administrative leave, but not moving to dismiss her. ORS 342.875 limits the ability of a district superintendent to suspend a teacher: it provides that when the superintendent “has reason to believe that cause exists for the dismissal of a contract teacher on any ground specified in ORS

⁸³ Appellant argues also that there was no valid safety-related duty that she was required to perform because both vaccinated and unvaccinated teachers were permitted by OAR 333-019-1030 to work. According to Appellant, it would therefore have been safe for her to teach at school. But in advancing this argument, Appellant assumes that the District contends that the neglect of duty involved endangering students. Because we do not base our decision on such an argument, we need not consider Appellant’s counterargument on this point.

⁸⁴ Appellant’s Closing Brief 33.

⁸⁵ Relatedly, Appellant also argues that the only duties that apply to her were those “openly and clearly known” at the time she entered her contract. See Appellant’s Closing Brief 34. In particular, she asserts that being subject to OHA’s rule, which was promulgated after she entered into her contract, would violate the constitution and clearly established contract and employment law. But Appellant has not pointed to the authorities that support her contention.

342.865 (1)(b) to (f), and when the district superintendent is of the opinion that immediate suspension of the teacher is necessary for the best interest of education in the district, the district superintendent may suspend a contract teacher from the position without prior notice to the teacher.” That statute provides further that in the event the superintendent decides to suspend a teacher without prior notice, the “teacher’s salary shall continue during the first five days of the suspension period. However, within five days after such suspension becomes effective, either procedure shall be commenced for the dismissal of the teacher pursuant to the provisions of ORS 342.805 to 342.937 or the teacher must be reinstated.”

We understand Appellant to be arguing that the District in effect dismissed or suspended Appellant by placing her on unpaid administrative leave. And that if the District intended to suspend Appellant without prior notice, the District was required to commence the dismissal procedure within five days. Basically, Appellant alleges that she was de facto dismissed on October 19.

We agree with Appellant that the District should not have placed her on unpaid leave for several months. However, under ORS 342.905(1), our jurisdiction applies only when the district school board “dismisses the teacher” or does not extend the teacher’s contract. When the teacher contests a dismissal, the teacher must appeal that decision within 10 days after receipt of notice of the district school board’s decision. ORS 342.905(1)(a).

Here, the Appellant did not submit an appeal until April 29, 2022. If Appellant is correct that she was de facto terminated on October 19, 2021, then Appellant failed to appeal that decision within 10 days of that de facto decision. Appellant questions what procedure she could have followed in these circumstances. But if Appellant considered the District’s actions to result in her termination as of October 19, then she could have filed an appeal with the Board at that time. By failing to file an appeal within ten days of her alleged de facto dismissal, Appellant has

failed to preserve that argument. We consider the dismissal under review to be the dismissal announced by the District on April 21, 2022.⁸⁶

Appellant argues that her dismissal was fundamentally unfair because the District's order was based on OHA's rule. Appellant alleges that she had no recourse against OHA and no right to a contested case hearing. However, the contested case hearing at issue here provided Appellant with the opportunity to argue that the District's vaccination order was unlawful. As discussed above, Appellant has not developed those arguments and we are unable to conclude that the District's order or OHA's rule was unlawful due to violating other state or federal laws.

V. Appellant has not shown that the District's decision to dismiss her was unreasonable, arbitrary, or clearly an excessive remedy.

Under ORS 342.905(6), once we find that the true and substantiated facts are adequate to justify the statutory grounds for dismissal, we cannot "reverse the dismissal * * * unless * * * the dismissal or nonextension was unreasonable, arbitrary or clearly an excessive remedy."

Here, we do not conclude that the dismissal was unreasonable, arbitrary, or clearly an excessive remedy. As discussed above, the District ordered Appellant to be vaccinated or request a medical or religious exception. This order was based on a lawful OHA rule requiring teachers to either obtain the COVID-19 vaccination or request a religious or medical exception. Appellant has not expressly advanced any arguments specific to this portion of the analysis. And we have been unable to locate any relevant arguments. For example, Appellant has not submitted any evidence that Appellant was treated differently from others.

⁸⁶ Exh D-23.

ORDER

The appeal is dismissed.

DATED January 26, 2023

/s/ Camron Pope

Camron Pope, Panel Chair

DATED January 26, 2023

/s/ John Hartsock

John Hartsock, Panel Member

DATED January 26, 2023

/s/ Duane Johnson

Duane Johnson, 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 27, 2023, I served a true and correct copy of FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER by the method indicated below:

Juline Walker PO Box 306 Mapleton, OR 97453 julinewalker@gmail.com	<input type="checkbox"/> [] <input checked="" type="checkbox"/> [x]	HAND DELIVERY U.S. MAIL – CERTIFIED, RETURN RECEIPT REQUESTED OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY
Nancy Hungerford The Hungerford Law Firm LLP Po Box 3010 Oregon City, OR 97045 nancy@hungerfordlaw.com	<input type="checkbox"/> [] <input type="checkbox"/> [] <input type="checkbox"/> [] <input type="checkbox"/> [] <input checked="" type="checkbox"/> [x]	HAND DELIVERY U.S. MAIL – CERTIFIED, RETURN RECEIPT REQUESTED OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY

/s/ Emily Nazarov _____
 Emily Nazarov
 Executive Secretary
 Fair Dismissal Appeals Board