BEFORE THE FAIR DISMISSAL APPEALS BOARD OF THE STATE OF OREGON

In The Matter of the Appeal of CHERI CLARK, Appellant, v. SCAPPOOSE SCHOOL DISTRICT, Respondent.	**Case No.:** FDA-14-04 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

INTRODUCTION

Appellant, a contract teacher, was dismissed from her employment with Scappoose School District ("Scappoose" or the "District") on May 30, 2014. She timely appealed to the Fair Dismissal Appeals Board ("FDAB") on June 2, 2014. A hearing on the merits was conducted in Hillsboro, Oregon on October 28, 29, 30, and 31, 2014. Appellant was represented by Margaret S. Olney, Attorney at Law, and the District was represented by Nancy J. Hungerford and Brian J. Hungerford, Attorneys at Law. The hearing was conducted before a panel appointed from the FDAB, consisting of Duane Johnson, Douglas Nelson, and Karen Stratton. The panel, having considered the evidence and the arguments of counsel, makes the following rulings, findings, conclusions and order.

PANEL RULINGS

At hearing, counsel for both parties requested the opportunity for a post-hearing review of Exhibits D-1 through D-97 and Exhibits A-1 through A-192 and agreed to submit objections to admission of any Exhibits in writing after the hearing. The panel agreed and provisionally admitted all Exhibits at hearing pending objections. Parties' counsel did not submit objections after the hearing, and all Exhibits were admitted.

FINDINGS OF FACT

Background

1. The District hired Appellant as a special education teacher in 2009. At the time of her dismissal, Appellant was a "contract teacher" with the District within the meaning of ORS 342.815(3).[1]

2. From August 2009 to January 2014, Appellant worked as a resource room teacher at the District's Warren Elementary School ("Warren") and as a special education liaison to a local private school and a charter school. From January 2014 until her dismissal in April 2014, Appellant worked as a behavioral room teacher at the District's Grant Watts Elementary School ("Grant Watts").[2]

3. Appellant obtained her teaching license in 2000. Prior to her hire by the District, Appellant worked as a special education teacher for the St. Helens School District, serving students with a broad range of disabilities, and as an Autism Spectrum Disorder Specialist for the Northwest Regional Education Service District.[3]

4. Warren is a small rural K-3 school. Until the summer of 2013, Appellant reported to Warren Principal Mike Judah, who also served as the District's Special Education Director.[4]

5. Appellant's performance evaluations from Mr. Judah from 2010 through 2013 were excellent.[5]

6. Mr. Judah retired in 2013. District Superintendent Stephen Jupe took over the role of principal at Warren. Mr. Jupe hired a Special Education Director, Joan Steiner, to serve the District's schools, including Warren.[6]

7. When Mr. Jupe took over as principal in 2013, Warren had one full-time special education teacher (Appellant), four full-time classroom teachers for grades 1-3, a part-time counselor, a part-time physical education teacher, and Jeff Wilebski, who taught kindergarten

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[1] D-8; A-101. The panel uses the following citation methods in this order. The District exhibits and Appellant exhibits are referred to as D-# and A-#, respectively, with the relevant page number following when appropriate. The hearing transcript is referred to by citation to the volume number, *e.g.*, either "TR1" (for Day 1 of the hearing) or "TR2" (for Day 2 of the hearing) and then the relevant page number(s) (*e.g.*, "TR1 25").
[2] A-101.
[3] TR1 23-34.
[4] TR1 63-64.
[5] A-186; D-6; D-7.
[6] TR1 63; TR3 58.

half-time and served half-time as the Teacher on Special Assignment ("TOSA"), which carried with it lead teacher responsibilities.[7]

Appellant's Performance at Warren, 2012-2013

8. In 2012-2013, Appellant's caseload consisted of eleven to seventeen students, including a group of students with learning disabilities, four students with autism, two medically fragile and intellectually delayed students with high physical needs, and several students from a nearby charter school. Her caseload also included a set of twins, "Jo" and "Je," who had severe behavioral issues. Both boys spent a significant amount of time in Appellant's classroom.[8]

9. Appellant had four educational assistants ("EAs") assigned to her classroom at Warren. In 2013, Appellant reported to Ms. Steiner that all four EAs claimed physical limitations or medical issues and a high rate of absenteeism that impacted their ability to provide assistance in the classroom. Ms. Steiner instructed Appellant to request medical documentation from the EAs. Ms. Steiner provided ADA paperwork to the EAs to obtain up-to-date information on medical restrictions.[9]

10. Prior to the summer of 2013, Appellant was allowed to use a second space in a Title I classroom at Warren, in which she set up a comfortable chair and vestibular swing for students needing a quiet area for calming activities. In the summer of 2013, Warren's TOSA, Mr. Wilebski, notified Appellant that she could no longer have access to the second space because he believed this use interfered with Appellant's legal responsibility to directly supervise EAs, in the same room. Appellant was very concerned about the loss of the second space, because it caused her regular classroom to become crowded with equipment; she gave up her teaching desk to make room.[10]

11. Appellant spoke with Ms. Steiner about the need for a second space in September 2013. Ms. Steiner instructed Mr. Wilebski to allow Appellant to use the second space. He provided her with access again in mid-October 2013.

12. In late September 2013, Ms. Steiner arranged for a Northwest Regional Education School District consultant, Laura LaMarsh, to observe and provide feedback about Appellant's

[7] TR1 65, 166-168.
[8] TR2 132-135, 145-146; TR3 44-46, 60-61, 104.
[9] TR2 148, 193, 196-197; TR3 101; TR4 188-191; A-178.
[10] TR1 172; TR3 52-54, 57, 59; D-12.

classroom. Ms. LaMarsh conducted her observation on October 2, 2013, prior to Appellant having access again to the second space in the Title I classroom.[11]

13. Ms. LaMarsh's report described Appellant's classroom as very crowded, confusing, and cluttered, and recommended a reorganization of the space. Her report also included recommendations on addressing student behavior, using materials and rewards, and how to train EAs. The report stated that EAs did not have a clear idea of their roles and required more specific schedules. The report ended with the statement, "The teacher needs substantial training in current best practices, the room needs to be reworked into a more environmentally cohesive area, visuals need to be reworked and made individually understandable to both staff and students, a master schedule need [sic] to be visible to everyone entering the room and the swing and other non-essential sensory items need to be removed. Additionally the quiet space needs to be reworked to a more functional break area."[12]

14. On October 16, 2013, Ms. Steiner and Appellant met to go over Ms. LaMarsh's report. They walked through Appellant's classroom together identifying objects to remove. Appellant complied with Ms. Steiner's directives for the room and removed identified items.[13]

15. On October 18, 2013, Ms. Steiner e-mailed Appellant asking her to remove several more items from the classroom; she stated, "you have already removed several boxes of items out of the resource room and it is looking better already."[14]

16. On October 22, 2013, Ms. Steiner e-mailed Appellant with concerns about an Individualized Education Plan ("IEP") meeting with a parent that Ms. Steiner had attended in Appellant's stead. Ms. Steiner described the meeting as "not productive." Ms. Steiner criticized Appellant for having offered daycare to the parent to allow her to attend the meeting. Ms. Steiner instructed Appellant to check before making this kind of offer in the future to parents. Ms. Steiner also noted that she was "concerned" that the student's IEP was not being implemented, and instructed Appellant to review and prepare further data prior to the next IEP meeting.[15]

[11] D-12; A-111.
[12] *Id.*
[13] TR3 109; TR2 143.
[14] A-119, p. 2.
[15] D-27.

17. On October 23, 2013, Ms. Steiner arranged for a special education teacher from Grant Watts, Ivy Dumont, to visit Appellant's classroom to observe the twins with behavioral issues, Jo and Je.[16]

18. That fall, Ms. Steiner also arranged for an Oregon Intervention System consultant, Cindy Hodges, to offer training to Appellant on restraints and to assist with behavior intervention plans for the twins.[17]

19. On October 24, 2013, one of Appellant's EAs, Sue Paxton, e-mailed Appellant and Mr. Wilebski expressing distress over Appellant's tone of voice with her on a several occasions. Appellant responded to Ms. Paxton by e-mail, expressing remorse and assuring her that she had not intended to be grumpy with her. Appellant copied Ms. Steiner on the exchange.[18]

20. On November 4, 2013, Ms. Steiner e-mailed Appellant and stated that she would help Appellant draft a daily classroom schedule for EAs. Appellant thanked Ms. Steiner and noted difficulties with her own attempts to draft a schedule because of difficulties with EA staffing levels and providing instruction to the twins, Jo and Je. Appellant provided Ms. Steiner with a draft EA schedule she had prepared.[19]

Issues with the twins, Jo and Je, at Warren

21. During the 2012-2013 school year, District staff considered placement options for one of the twins, Jo, including the possibility of removing him from Warren. Both twins were reported to be engaging in unsafe behavior and physical assaults. In October 2013, Jo's behavior had escalated to the point that he was excluded from Warren for a period of time.[20]

22. Ms. Steiner suspected that Jo's problems were exacerbated by Appellant's reward and reinforcement system.[21]

23. The District decided to change Jo's program at Warren and assigned him to a separate room for one-on-one instruction by an EA. The plan was not successful. Jo continued to be extremely destructive at school.[22]

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[16] D-26.
[17] TR2 144-145.
[18] D-28.
[19] A-120; A-125, pp. 2-3.
[20] TR2 147, 200; TR3 125-126; D-15.
[21] TR2 146-147.

24. Jo's program of one-on-one instruction with an EA removed him from Appellant's resource room; it also removed one EA from Appellant's team.[23]

25. On March 22, 2014, shortly before Appellant's dismissal, the twins Jo and Je were removed from District schools. They are currently attending a private school.[24]

Conflict with Staff at Warren

26. Mr. Wilebski, Warren's TOSA, and Appellant had experienced conflict working together prior to 2013.[25]

27. On or around September 16, 2013, Mr. Wilebski reported to Mr. Jupe that Appellant and a new school secretary had exchanged heated words about a leave reporting procedure (on or around September 16, 2013). Mr. Jupe met with Appellant and provided her with a non-disciplinary letter of expectations regarding unprofessional communications.[26]

28. On September 30, 2013, Mr. Wilebski e-mailed Superintendent Jupe with concerns about Appellant's conduct during a Positive Behavioral Intervention System ("PBIS") meeting that day. The meeting was attended by Mr. Wilebski, the school counselor, Appellant, and three other school employees. Mr. Wilebski facilitated the meeting instead of the school counselor, who would normally have taken the facilitator role.[27]

29. According to Mr. Wilebski, Appellant was seven minutes late. Appellant interrupted Mr. Wilebski to state that it was not his role, but the school counselor's role, to facilitate the meeting. Appellant then addressed the school counselor in a tone that Mr. Wilebski described as condescending and demeaning and causing the school counselor to well up in tears. Mr. Wilebski reported that Appellant continued to talk over meeting participants for the remainder of the meeting.[28]

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[22] TR2 147, 200, 210; TR3 125-126; D-15.
[23] TR2 145-146; TR3 127-128, 167.
[24] TR3 72-76.
[25] TR1 179-181; TR3 121-124.
[26] TR1 65-67, 107.
[27] D-14; TR1 174-175.
[28] *Id.*

30. On October 16, 2013, Mr. Jupe issued a Letter of Reprimand to Appellant for not communicating in a professional, collaborative, and sensitive manner (the "October 16 Letter of Reprimand").[29]

31. On October 16, 2013, Mr. Wilebski e-mailed Mr. Jupe about a discussion between Mr.Wilebski and Appellant regarding specialized instruction, during which Appellant accused Mr. Wilebski of not listening to her and targeting her. Mr. Wilebski felt offended by Appellant's accusations and perceived them as "hostile." In his email, Mr. Wilebski referred to "previous incidents," "confront[ations]," and "three mediations last year" involving him and Appellant.[30]

32. Five days later, on October 21, 2013, Mr. Wilebski called the District office about an incident at a PBIS meeting that day. Mr. Jupe also received an e-mail from a teacher, Mr. Bailey, describing the incident. According to the email, Mr. Wilebski had asked Mr. Bailey to relate the incident to Mr. Jupe.[31]

33. According to Mr. Bailey's e-mail, Appellant called the school counselor by the wrong name at the meeting and Mr. Wilebski corrected her. After using the wrong name again, Appellant became "emotional." Toward the end of the meeting, Appellant rushed out of the room.[32]

34. According to Mr. Bailey's e-mail, he encountered Appellant in his classroom after the meeting and asked her if she needed anything. Appellant started crying and left the classroom. According to Mr. Bailey's email, Appellant then began "very audibly sobbing" outside of his classroom, and he heard her "stomping rapidly in place" and making "crying and groaning noises." Mr. Bailey's email also states that students were scheduled to arrive in a few minutes and that he was "very concerned with her ability to emotionally pull herself together for the sake of the students."[33]

35. After Mr. Wilebski reported the incident to the District, Ms. Steiner came to Warren and went to Appellant's classroom. Appellant was not crying.[34]

36. Ms. Steiner directed Appellant to go home. Appellant was placed on two days paid leave.[35]

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[29] D-14.
[30] D-20; TR1 113.
[31] D-23; TR1 186-188; TR3 130-134.
[32] D-23.
[33] D-23.
[34] D-25, TR3 133.

37. Mr. Jupe placed a letter in Appellant's personnel file regarding the incident, characterizing her as having "appeared unfit for duty" and stating that Appellant "exhibited inappropriate emotional behavior in the presence of students."[36]

38. Appellant denies, and no eye witness testimony was presented at hearing, that any students observed Appellant's "emotional" or "inappropriate emotional behavior."[37]

Appellant Placed on Program of Assistance for Improvement in December 2013

39. On October 31, 2013, Mr. Jupe notified Appellant that she would be placed on a "Program of Assistance for Improvement" ("PAI").[38]

40. On November 21, 2013, Mr. Jupe sent a draft PAI to Appellant for review.[39]

41. The PAI went through several drafts and was finalized on December 17, 2013, with an effective date of December 19, 2013.[40]

42. Appellant's PAI went into effect on December 19, 2013 and had an ending date of March 21, 2014. This date was later extended by the District to April 3, 2014 to account for Appellant's missing several school days because of an injury.[41]

43. The PAI identified three areas of performance deficiencies: (1) Supervision of EAs; (2) Maintaining positive relationships with others; and (3) Adherence to program plans and procedures.[42]

44. Under the first area of deficiency (Supervision of EAs), the PAI directed Appellant to: create schedules that comply with labor provisions and wage and hour law; ensure that EAs comply with their schedules; ensure that EAs can take breaks; have student schedules that "adequately cover the needs of her program" assuming staffing levels are "adequate"; and create a positive, professional, cohesive environment for and relationship with EAs using "built-in observation and feedback time will provide data for improved practice."[43]

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[35] *Id.*
[36] D-25.
[37] *Id.*
[38] TR3 132.
[39] D-31.
[40] TR1 86; TR4 17-18; D-40; D-41.
[41] TR3 194-195; D-68.
[42] TR3 194-195; D-68.
[43] D-68, p. 2.

45. Under the second area of deficiency (Maintaining positive relationships with others), the PAI directed Appellant to: "maintain self-control at all meetings, avoiding emotional outbursts that contribute to awkward situations that cause negative interactions with those around her"; avoid raising her voice and using an abrasive tone; allow colleagues to express their opinions; be sensitive to social signals to prevent misunderstandings and conflict; avoid behaviors that include talking over, interrupting, failing to listen, and body language and facial expressions "that act as obstacles to respectful interactions"; and improve her relationships with District staff through listening and asking clarifying questions.[44]

46. Under the third area of deficiency (Program planning, organization, adherence, and follow-through), the PAI directed Appellant to: fully participate in planning coordination and dialogue by listening carefully and offering opinions and ideas; make a good-faith effort to adhere to plans created by her team and act with fidelity to the plan; collect data faithfully; and fully participate in reviews of the data and follow through with adjustments that have been agreed upon.[45]

47. The PAI also contained the following set of requirements for the District:

> 1. The Principal and/or The Director of Student Services will conduct formal and/or informal observations in Ms. Clark's classroom and other venues at least weekly for a minimum of thirty minutes, and will subsequently provide oral and written feedback.
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> 2. The Principal and/or The Director of Student Services will schedule regular meetings with Ms. Clark, at which time she will be provided with feedback, input and suggestions.
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> 3. The Director of Student Services and Principal shall be available to answer questions about required procedures.
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> 4. A supervisor will attend eligibility, IEP meetings and staffings to observe Ms. Clark's preparation for the meeting and effectiveness in running an efficient and productive meeting. This will also help to provide an overview of Ms. Clark's follow through from team plan development to plan execution. The supervisor will provide written feedback regarding these observations.

[44] D-68, pp. 2-3.
[45] D-68, p. 3.

5. The Principal and/or The Director of Student Services will review daily schedules for Educational Assistants, daily schedules for student instruction, and plans for Educational Assistants' meetings, and provide assistance where appropriate. Sufficiency of staffing levels will be judged by a team process.

6. At Ms. Clark's request, the Principal will consider release time to allow her to observe in other classrooms.

7.a. The District will consider Ms. Clark's requests to attend staff development opportunities related to appropriate behavior interventions, creating Educational Assistants' schedules, compliance with BOLI requirements, compliance with IEP's, and appropriate diversification of responses to varieties of student behavior.

b. The district will also suggest appropriate staff development opportunities.

8. At Ms. Clark's request the Principal and/or the Director of Student Services or their designee will model any aspect of professional procedures that Ms. Clark would be expected to deal with in her professional duties.

9. At Ms. Clark's request, she may bring in assessment data and the Principal and/or the Director of Student Services or their designee will assist Ms. Clark in designing appropriate plans that incorporate the data.

10. Ms. Clark may request peer assistance by communication with her supervisor. Such assistance would be confidential.[46]

48. The PAI also states that that "[t]he Principal and/or The Director of Student Services will discuss progress on the Program of Assistance for Improvement at weekly meetings and/or post-observation conference."[47]

49. Appellant, through her union, expressed concern about the vagueness of the PAI's statement of deficiencies, and these not being based on observations tied to formal evaluations. The union did not agree that the PAI was necessary or reasonable.[48]

50. At hearing, Mr. Jupe agreed that it is important for teachers on a PAI to have a specific understanding and reference point for the deficiencies identified by the District, and that

[46] D-68, p. 3.
[47] D-68, p. 4.
[48] TR4 26-27, 49-50, 62.

"global statements that aren't tied to specific concerns are not particularly useful." Mr. Jupe also agreed that he would expect administrators to investigate, communicate, and obtain feedback from a teacher on a PAI regarding concerns to allow the teacher to be successful on a PAI.[49]

51. At hearing, with regard to specifics regarding the deficiencies related to program adherence referred to in the PAI, Mr. Jupe stated, "There was just a general – it was happening a lot." He did not provide specifics.[50]

Appellant Moves to Another School the Same Month as PAI

52. At the end of November 2013, Ms. Steiner and Mr. Jupe implemented a decision to consolidate special education services in the District and move Warren special education students to another school, Grant Watts.[51]

53. In December 2013, the same month she was placed on the PAI, Appellant was reassigned to Grant Watts, where she would be working in the behavioral classroom that included Warren's three most behaviorally challenged students (including twins Jo and Je). Another teacher would have a high needs classroom at Grant Watts for medically challenged students.[52]

54. Appellant had experience with working with behaviorally challenged students, especially those on the autism spectrum; however, she had never been responsible for a classroom consisting only of behaviorally challenged children.[53]

55. In December 2013, the District released Appellant from her regular resource room duties at Warren to give her time to transition to the behavioral classroom at Grant Watts. Appellant had approximately three days to observe the behavioral classroom at Grant Watts and a half day to review student IEPs during December because of previously scheduled special education meetings, a mandatory training, two field trips, three snow days, and the need to pack and move her classroom that month.[54]

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[49] TR1 115, 130-131.
[50] TR1 126.
[51] D-36; A-185; TR3 186.
[52] *Id.*
[53] TR1 134; TR4 94-95; D-68, p. 1.
[54] TR2 157.

Appellant's Performance at Grant Watts in 2014

56. Appellant began working at Grant Watts Elementary on January 6, 2014.[55]

57. In January, Appellant notified Ms. Steiner that the current behavioral room schedule at Grant Watts allowed only thirty minutes a week for teacher prep time and staff breaks. Appellant requested substitute assistance.[56]

58. In January and February 2014, the new program at Grant Watts was a work-in-progress. The District experimented with sharing EAs between the two special education rooms; it determined that this model was not workable in mid-February 2014. Ms. Steiner asked for Appellant's input on splitting EA teams and providing additional staff support through the new District-wide behavioral specialist, Ivy Domont. In February, Ms. Steiner arranged for the hire of additional EAs. The additional EAs did not start work until mid-February, and staffing levels were not set until late February 2014.[57]

February 6, 2014 Letter of Reprimand and Two-Day Suspension

59. On January 27, 2014, EA Gala Richey observed a student wrapping a curtain around his neck in a cubicle in the behavioral classroom. There were two adjoining cubicles with curtains. Ms. Richey loudly told the boy to stop. Ms. Richey "could tell he wasn't really hurting himself," but she believed it was safety issue. Appellant approached Ms. Richey and the student and said something to the effect of, "leave him alone. He is not going to hurt himself with that." Appellant removed the curtain from the boy's shoulders and put it up on a high shelf, out of reach.[58]

60. That same day, Ms. Richey observed the boy playing with the curtains again. Ms. Richey told the student to stop, and he grabbed the curtain and ripped it down.[59]

61. Appellant found the curtains on the table and planned on re-stapling the curtains at a later time.[60]

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[55] TR2 10, 132.
[56] A-141.
[57] TR2-14, 158, 215, 217, 229-230; A-149.
[58] TR2 238; TR3 234-238.
[59] D-58.
[60] TR2 238, D-61.

62. Appellant used the curtained cubicles to create a dark, quiet, calming space for behavioral students. Appellant testified that the curtains were made of very light fabric similar to velour. Ms. Richey described the curtains as "[not] real heavy" and "velvetish." They were attached to the top of the cubicles with staples; they ripped very easily and Appellant often had to re-staple them. [61]

63. Ms. Richey reported the curtain incident to Grant Watts principal Dana Larson on January 28, 2014. Mr. Larson testified that he visited Appellant's classroom. Mr. Larson saw that the curtains were removed. Mr. Larson testified that he gave Appellant a "directive" regarding the curtains. He then continued to investigate the matter. There is no directive noted in Mr. Larson's investigatory report. When asked at hearing what his conversation with Appellant was, Mr. Larson testified that he asked her, "Is everything taken care of here, now? Is this no longer an issue?" Mr. Larson also testified that because the curtains had been removed, he "assumed it [the curtain] wasn't coming back up."[62]

64. On or around January 30, 2014, Appellant re-attached the curtains. The boy started playing with the curtains again. Ms. Richey snapped a picture of the curtain draped around his neck like a shawl and sent the picture to Mr. Larson.[63]

65. In Mr. Larson's investigation report, he describes the boy as having wrapped the curtain around his neck and leaning "in such as manner to create a noose-like effect on his neck and body."[64]

66. There is no rule or policy barring curtains in classrooms. Other teachers' classrooms also have curtains hanging.[65]

67. The same day that Ms. Richey first observed the student playing with a curtain, January 27, 2014, around 9:30 a.m., Ms. Richey found a bowl of over-the-counter drugs sitting on a counter in Appellant's classroom, unsecured. The bowl included cough drops, lozenges, a large bottle of Ibuprofen with a child-proof lid, and nasal spray.[66]

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[61] TR3 233-239; TR2 238-239.
[62] TR2 84-85; D-61.
[63] TR2 84-85; TR3 239; D-61.
[64] D-61.
[65] TR2 82.
[66] TR2 82; TR4 166.

68. Ms. Richey asked to whom the bowl of medication belonged. Appellant responded that they were hers and asked Ms. Richey to put them in the locked cupboard. Ms. Richey took a picture of the bowl and provided it to Mr. Larson.[67]

69. On February 6, 2014, Mr. Larson issued a Letter of Reprimand and two-day unpaid suspension to Appellant for the curtain and the medication incident.[68]

70. The Letter of Reprimand stated that Appellant's unpaid suspension "will include Friday, February 7, 2014 and will run through Monday, February 10, 2014. You will return to work on Tuesday, February 11, 2014. If school is closed on Friday due to inclement weather, then your unpaid suspension will start on Monday, February 10, 2014 and run through Tuesday, February 11, 2014; you will return to work on Wednesday, February 12, 2014."[69]

71. School was canceled for a snow day on Friday, February 7, 2014. Over the weekend, Appellant e-mailed a parent and Ms. Steiner to notify them that she would not be able to attend a meeting on February 11, 2014. Later, in his recommendation for Appellant's dismissal, Mr. Larson characterized Appellant's e-mailing activity on Friday, February 7, as "not follow[ing] a clear directive" to refrain from working during a suspension. Appellant's Letter of Reprimand, however, states that Appellant's suspension would "start on Monday" if school was closed on Friday for inclement weather.[70]

March 19, 2014 Letter of Reprimand

72. The twins, Jo and Je, would occasionally run away from the classroom and out of the school building.[71]

73. On March 7, 2014, Je left the school building and ran into the parking lot. Appellant ran after him and slipped on a ramp and injured her knee. Outside, a car had to slam on its brakes to miss Je. A parent encountered Je and brought him inside.[72]

74. Appellant did not return to her classroom for a week and was assigned to light duty at another school.[73]

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[67] TR4 166; TR3 232; TR2 242; D-58.
[68] D-64.
[69] D-64.
[70] A-153-154; D-87.
[71] TR2 35.
[72] TR3 269.
[73] A-170; TR3 270-271.

75. On March 10, 2014, Mr. Larson met with Appellant and directed Appellant to not run after students, even if the student was running into the street or parking lot.[74]

76. On March 18, 2014, Je left the building. Appellant ran after him, out of the building.[75]

77. According to her testimony, when Appellant got outside, someone pointed her towards a trailer under which Je was hiding. When Appellant got to the trailer, she squatted down and asked Je to come out. He refused. At that point, Appellant saw Je touching and pulling something under the trailer, which caused her concern. Appellant put her hands on Je's hands or forearms and guided him out from under the trailer. Je was not struggling. Appellant then let go of the twin and he ran away. He was eventually found by police.[76]

78. On March 18, 2014, Mr. Larson issued a Letter of Reprimand to Appellant related to the running incident.[77]

Mid-PAI Review

79. On March 4, 2014, a "Mid-PAI Meeting" took place with Appellant, her union, Ms. Steiner, and Mr. Larson. The PAI was scheduled to end on March 21, 2014. The end date was later moved to April 3.[78]

80. Mr. Larson prepared a summary for the March 4 meeting ("Mid-PAI Summary") and provided it to Appellant. The Mid-PAI Summary consists of a table with three columns respectively labeled "Date," "Event(s)," and "Details."[79]

81. An example of an event described by Mr. Larson in the document is: (Date) "January 7, 2014," (Event) "Teacher Concern About New Student," and (Detail) "Teachers were not provided with Safety Plans, Behavior Support Plans or copies of IEP's prior to student enrolling in their classes / Two meetings were scheduled (after the request)."[80]

82. The Mid-PAI Summary contains thirty-seven rows of "Event(s)." Included in these entries are five requests by Appellant for support (*e.g.*, substitutes, scheduling help), or

[74] TR2 119; TR4 31, 274; D-87.
[75] TR3 279-280; TR4 143.
[76] D-85.
[77] D-75.
[78] *Id.*
[79] *Id.*
[80] *Id.*

Appellant requesting meetings, or Appellant requesting to schedule observations with the District (1/6, 1/12, 1/28, 2/17, 2/18).[81]

83. The Mid-PAI Summary contains six events of student behavior (1/14, 1/21, 2/20, 2/21, 2/27), including an entry described as "confusion and chaos" (2/21). There is no indication that concrete feedback or direction was provided to Appellant or how precisely she was viewed as being the cause of the behaviors. One incident, in fact, occurred while Appellant was away (2/20).[82]

84. The Mid-PAI Summary contains Appellant's request for bereavement leave (1/21), snow days (2/6), entries noting personnel investigations and discipline – relating to conduct, not performance – (2/3, 2/6, 2/11), as well as events deemed "acts of insubordination" related to Appellant's delay to sign the final PAI (2/13).

85. The Mid-PAI Summary contains six entries of unidentified "teacher" or "teachers" "expressing concern" over incidents in Appellant's classroom (1/7, 2/13, 2/18, 2/20, 2/25, 2/26). These entries do not indicate that Appellant was provided with feedback or determined to be the cause of the "concern."[83]

86. The Mid-PAI Summary contains six critical entries regarding Appellant's conduct during meetings (1/6, 1/17, 2/5, 2/19, 2/27, 3/3) (tardiness, interrupting, used wrong forms, struggle with focus, holding opinions that "team members disagree" with). These entries do not indicate that Appellant was provided feedback about the conduct at issue.[84]

87. The Mid-PAI Summary contains four entries regarding problems with drafting a classroom schedule (1/7, 1/17, 1/28, 2/14). These entries do not indicate that Appellant was provided with precise directives regarding schedules.[85]

88. At the bottom of the Mid-PAI, Mr. Larson states, "I have significant concerns that [Appellant] continues to demonstrate deficiencies in the three areas listed above. Within those deficiencies, I am particularly concerned about the following things: (i) Mrs. Clark's failure to produce and implement a complete schedule, without gaps, that allows for students on her caseload to be successful. (ii) An overall decline in behavior among students on Mrs. Clark's

[81] D-75.
[82] *Id.*.
[83] *Id.*
[84] *Id.*
[85] *Id.*

caseload leading to disrespectful and unsafe acts toward themselves and others, (iii) Mrs. Clark's inability to successfully collaborate with other teachers and with assistants assigned to support students on her caseload."[86]

89. The Mid-PAI Summary criticized Appellant for not having an agenda at an eligibility meeting on January 6, 2014, which is not required nor always done. After the January 6 meeting, Appellant always had an agenda.[87]

90. The Mid-PAI Summary criticized Appellant for allowing a February 19 Safety Plan meeting to run over by ten minutes and using an old behavior plan in the meeting. Appellant was following Ivy Domont's model of using the prior plan as a template to obtain parental input. The length of her meetings had not been identified as a concern in her PAI.[88]

91. The Mid-PAI Summary criticized Appellant for failing to provide Grant Watts teachers with Safety Plans, Behavior Support Plans, or copies of IEPs prior to students enrolling in early January.[89]

92. The Mid-PAI Summary criticized Appellant for posting a large paper schedule in a room not used by students. Appellant had not been instructed on potential confidentiality concerns; Ms. LaMarsh had recommended to Appellant that she use a master schedule.[90]

93. The Mid-PAI Summary criticized Appellant for being tardy to a January 9, 2014 IEP meeting, without an agenda or a statement of parent rights prepared. Ms. Steiner prepared observation notes and recommendations to Appellant to avoid these issues in the future.[91]

94. The Mid-PAI Summary criticized Appellant for conduct during a January 17, 2014 scheduling meeting. She arrived 42 minutes late because she had to first travel to school to provide students with activities for the morning. At the meeting, Appellant interrupted attendees and became "emotional" about one of the twin's suspension from school and the proposal of providing him one-on-one support. Ms. Steiner later emailed Mr. Larson and Mr. Jupe about this meeting and noted that Appellant had made a request for more EA support, stating, "Being able

[86] D-75.
[87] TR3 208.
[88] TR3 259-260.
[89] D-36.
[90] TR3 216; D-18, p. 3.
[91] D-46.

to move forward and support Cheri in her plan, take care of student needs and also keep [Grant Watts] a great place for all kids is a daunting task. I will continue to mull over this."[92]

95. The Mid-PAI Summary criticized Appellant for rewarding a misbehaving student on January 21, 2014 with four pennies and juice when EAs were trying other ways to limit his behavior. Appellant did so because EAs had not been trained on using the "pre-loading" technique of reinforcement, so Appellant stepped in. Appellant also stated that another teacher and Ms. Domont had recommended this technique with another student. Her approach was successful: the student stopped misbehaving and resumed his day. Mr. Larson testified that he had "talked to [Appellant] about food, as well as Ms. Steiner, but did not elaborate what his or Ms. Steiner's precise directive was about using food as a reward or motivator.[93]

96. The Mid-PAI Summary criticized Appellant for using one official documentation form for two individual students in a team meeting on February 5, 2014.[94]

97. The Mid-PAI Summary criticized Appellant for an incident on February 27, 2014 during which a student was out-of-control, to the point that authorities had to be called to assist. When the student had calmed and was constrained by his mother's arms, Mr. Jupe observed Appellant bending down on one knee and offering the student a token, which he described as "absolutely contraindicated in the situation, and in fact was more likely to reinflame the situation than improve it." Appellant explained that she had given the token because the student apologized.[95]

98. The Mid-PAI Summary criticized Appellant for coming 12 minutes late to an 8:00 a.m. meeting on March 3, 2014. Appellant testified that she did not know she needed to attend the meeting, as she was already familiar with the material.[96]

99. The Mid-PAI Summary criticized Appellant for her conduct during an IEP meeting on March 10, 2014 attended by Mr. Larson. During that meeting, Appellant blamed the lack of ink in the printer on another teacher, and made an "inappropriate comment" to parents to

[92] D-46; D-59.
[93] D-76; TR2 73.
[94] D-87.
[95] D-72; D-87.
[96] TR4 113.

the effect of, "See, Mr. Larson, my classroom can be a peaceful, quiet place for students to take a break. Doesn't that make you feel good to hear that?"[97]

100. The Mid-PAI contains critical entries on Appellant's progress on developing schedules. Appellant provided a schedule on January 24, which the District characterized as incomplete. (At the end of the PAI, the District maintained that Appellant did not provide a functional schedule until March 14, 2014). Appellant struggled with developing and maintaining schedules during January and February, when the staffing levels and program structure were still in flux. The District did not present evidence that it had deemed staffing levels "adequate" prior to the end of February, as assumed under the PAI.[98]

101. Mr. Larson testified that he was "in and out" of Appellant's classroom during the January 2014 to April 2014 timeframe. Appellant testified that, apart from special education meetings and sporadic visits to check on students, Mr. Larson did not observe her working with students or offer her concrete feedback.[99]

102. Ms. Steiner formally observed Appellant once for twenty minutes on February 26, 2014.[100] She ranked Appellant on four observed criteria. Appellant received two "basic" ratings and two "unsatisfactory" ratings. Appellant received a basic rating in the areas of: (1) knowledge of students' special needs and (2) for selecting materials and resources that support goals. Appellant received unsatisfactory ratings in the areas of: (1) clearly stated and assessable goals, and (2) for relationships with colleagues. Ms. Steiner described EAs as appearing unable to work independently with students and that "students do not view them as an authority figure." A student asked to work on cars, and an EA did not know where the cars were. Appellant located the cars. According to Ms. Steiner, Appellant engaged students while they were engaged with EAs, not allowing the student and EAs to develop an effective and productive relationship. Ms. Steiner also described Appellant as intervening when a student was unwilling to follow an EA's instruction to put away his iPad. When the student released the iPad at Appellant's urging, she rewarded him with a penny. Ms. Steiner stated that another EA seemed unsure of a student's behavioral plan and unsure which reward system to follow. Ms. Steiner described Appellant as using multiple types of behavior tools, which caused confusion. Ms. Steiner recommended more

[97] D-87.
[98] TR2 230; TR4 104-105; D-56; D-59; D-87.
[99] TR2 94-100; TR3 211-212.
[100] TR2 63, 225-226; D-87; TR4 225.

training for EAs, organizing materials and supplies for easier access, and allowing EAs to work independently with students.[101]

103. Ms. Steiner's findings were presented to Appellant on March 4, 2014 at the Mid-PAI meeting.

104. Ms. Steiner also expressed concern about Appellant's use of food in her program. Appellant reached out to Ms. Domont for assistance in changing the use of food in established behavioral plans.[102]

105. At hearing, Ms. Steiner testified that during the duration of the PAI, the only specific training or resources provided to Appellant consisted of having Ivy Domont visiting Appellant's classroom to provide input on how to run the classroom. Ivy Domont is not a supervisor or administrator. There was no evidence presented at hearing that Ms. Domont provided specific feedback or direction on the deficiencies identified in the PAI.[103]

106. Appellant testified that Ms. Domont kept saying over and over, "You are doing fine. You are doing great. You have a great relationship with these kids. I love the way you are working with..."[104]

107. Appellant watched a webinar on self-regulation on her own initiative, not at the direction of Mr. Larson or Ms. Steiner.[105]

End of PAI and dismissal

108. On April 3, 2014, the District held its final PAI meeting with Appellant. Mr. Larson presented Appellant with an updated PAI Summary ("End PAI Summary"). With a couple of exceptions, the summary includes everything identified in the Mid-PAI Summary described above.[106]

109. As with the Mid-PAI Summary, the End-PAI Summary includes entries that do not relate to performance deficiencies identified in the PAI. For instance, it contains five entries on the status of Appellant's health or injury (3/7, 3/8, 3/9, 3/11, 3/18).[107]

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[101] D-71.
[102] A-164; D-74.
[103] TR2 227-229.
[104] TR4 102.
[105] TR3 272.
[106] D-87.
[107] *Id.*

110. The End-PAI Summary criticized Appellant for missing two IEP deadlines– a serious breach – for two students. Appellant has no documented history of missing deadlines or of paperwork problems prior to Grant Watts and the issue was not identified as a deficiency in her PAI.[108]

111. The End-PAI Summary criticized Appellant for appearing at Grant Watts on March 10, 2014, when she had been placed on light duty away from the building. Appellant claimed she had returned to the building briefly to return a book.

112. The End-PAI Summary criticized Appellant for undermining an EA and causing an escalation of a twin Je's behavior on March 18, 2014. The student's behavior plan called for staff to give Je twenty seconds to become learning ready. When the EA began counting quietly to twenty, Appellant interrupted and invited Je to join her social group. Mr. Larson's testimony, nor his Mid-PAI Summary, indicate whether he met with Appellant to discuss this incident.[109]

113. The End-PAI Summary also contains entries about discipline issued to Appellant for conduct (see Findings of Fact 59-78).[110]

114. At the end of the End-PAI Summary, below the table, Mr. Larson wrote, "In summary, I conclude that [Appellant] has failed to satisfactorily complete the Program of Assistance for Improvement dated December 19, 2014. She has not made sufficient improvement in the three Areas of Deficiency outlined in the plan as evidence by the chart above. I will be glad to provide copies of supporting documents per your request." Mr. Jupe relied on Mr. Larson's recommendations and assessment when Mr. Jupe made his dismissal recommendation to the Board.

115. The District claims that it conducted observations and provided feedback at least eight times during the PAI period: January 6 (eligibility meeting, no agenda and disorganized), January 24 (feedback about being tardy, acting emotional and interrupting at a January 17 scheduling meeting), February 5 (feedback reminded Appellant to use individualized paperwork for students at IEP meeting), February 19 (Mr. Larson was critical of Appellant using an old plan, as Ms. Domont had done), February 26 (Ms. Steiner's twenty-minute observation), February 27 (Mr. Jupe observing Appellant rewarding student), March 3 (Appellant came twelve minutes later to an IEP meeting she believed she did not have to attend), March 10 (Mr. Larson

[108] D-68, D-81.
[109] D-68; D-84; TR2 45-47.
[110] D-87.

attended an IEP meeting during which Appellant made comments about the printer being out of toner and an "inappropriate" remark to Mr. Larson).[111]

116. Ms. Steiner testified that Appellant used excessive amounts of release time to complete IEPs and activities that other special education teachers in the District with equivalent or lesser caseloads typically completed as part of their work day.[112]

117. On April 4, 2014, Mr. Jupe placed Appellant on paid administrative leave and notified her that he was recommending her termination to the school board "due to her failure to satisfactorily complete the Program of Assistance dated December 19, 2014, and her multiple actions leading to reprimand and a suspension without pay.[113]

118. In a letter dated April 30, 2014, Mr. Jupe issued his Notice of Recommendation for Dismissal ("Notice of Dismissal") for inefficiency, inadequate performance, and neglect of duty. The recommendation was based on Mr. Larson's End-PAI Summary and supporting documentation.[114]

119. The Notice of Dismissal was based on the following factual allegations that Appellant, as paraphrased:

a. Was "consistently" documented as providing sub-standard performance;
b. Displayed "inappropriate reactions and professional communications with co-workers" in the September 16, 2013 and September 30, 2013 meetings at Warren;
c. Demonstrated "inappropriate interpersonal behavior" that was "erratic and unsteady" and "occurred in the presence of both staff members and students" on October 22, 2013;
d. Endangered the safety of students and her own health by running after students on March 18, 2014;
e. Working in contradiction with her return to work limitations on or about March 10, 2014;
f. Failed to satisfactorily complete the PAI by:

[111] D-46; D-47; D-48; D-57; D-59; D-62; D-69; D-71; D-72; D-87.
[112] TR4 204-205.
[113] D-88.
[114] D-9; TR1 135.

(1) failing to complete viable and workable student schedules "that allows for students on her caseload to be successful";

(2) coming late to a meeting on January 17, 2014 about schedules;

(3) being argumentative and interrupting during this meeting;

(4) hanging up paper schedules on January 27, 2014, inappropriately divulging student information and confusing EAs;

(5) engaging in "gross neglect of duty" with regard to the curtain and medication incidents, which resulted in her February 6, 2014 Letter of Reprimand and Unpaid Suspension;

(6) failing to adequately prepare or conduct necessary business meetings;

(7) failing to provide teachers with Safety Plans, Behavior Support Plans or copies of IEPs in a timely fashion;

(8) engaging in work while on an unpaid suspension "in contradiction to directives that had been given to you";

(9) Multiple failures to adequately deal with student disruptions in the classroom, as demonstrated by an overall decline in behavior leading to disrespectful and unsafe acts;

(10) Continued failure to adequately communicate and collaborate with co-workers.

(11) Failing to meet two student eligibility dates in March 2014;

(12) Making inappropriate comments during a March 20, 2014 IEP meeting;

(13) Working in contradiction to her return to work limitations on or about March 10, 2014;

(14) Undermining a co-worker and escalating student behavior on March 18, 2014.[115]

120. After Appellant was provided with an opportunity for a hearing and presented the Board with information on her dismissal and February 6, 2014 Letter of Reprimand, on May 30, 2014, the District School Board notified Appellant that she was dismissed from employment

[115] D-9.

based on the recommendation of Mr. Jupe's letter and adopting the facts and findings set forth in that letter.[116]

CONCLUSIONS OF LAW

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

2. The factual allegation that Appellant displayed "inappropriate ... professional communications with co-workers" in a PBIS team meeting on September 30, 2013, for which Appellant received a Letter of Reprimand, is true and substantiated.

3. The factual allegation that Appellant displayed "inappropriate reactions" in a PBIS team meeting on September 30, 2013, is not true and substantiated.

4. The factual allegation that Appellant displayed "inappropriate reactions and professional communications with co-workers" on September 16, 2013 in an incident involving a school secretary, for which Appellant received a non-disciplinary letter of counseling, is not true and substantiated.

5. The factual allegation that Appellant demonstrated "inappropriate interpersonal behavior" that was "erratic and unsteady" and "occurred in the presence of both staff members and students" on October 22, 2013 is not true and substantiated.

6. The factual allegation that Appellant failed to provide teachers with Safety Plans, Behavior Support Plans or copies of IEPs on January 6, 2014 is true and substantiated.

7. The factual allegation that on January 17, 2014, Appellant came late, became emotional, interrupted, and was argumentative at a meeting on January 17, 2014 is true and substantiated.

8. The factual allegation that Appellant failed to satisfactorily complete the PAI by hanging up paper schedules on January 27, 2014 is not true and substantiated.

9. The factual allegation that Appellant failed to ensure the health and safety of her students by leaving out medication her classroom on or around January 28, 2014, resulting in her February 6, 2014 Letter of Reprimand and unpaid suspension, is true and substantiated.

[116] D-8; D-90.

10. The factual allegation that Appellant failed to ensure the health and safety of her students with regard to leaving up curtains in her classroom, a charge included in her February 6, 2014 Letter of Reprimand and unpaid suspension, is not true and substantiated.

11. The factual allegation that Appellant "worked" at Grant Watts, in contradiction with her return to work limitations, on March 10, 2014, is not true and substantiated.

12. The factual allegation that Appellant violated a directive by running after students on March 18, 2014, for which she was disciplined, is true and substantiated.

13. The factual allegation that Appellant engaged in work on March 10, 2014 while on an unpaid suspension is not true and substantiated.

14. The factual allegation that Appellant undermined a co-worker and escalated student behavior on March 18, 2014 is not true and substantiated.

15. The factual allegation that Appellant made "inappropriate comments" during a March 20, 2014 IEP meeting is not true and substantiated.

16. The factual allegation that Appellant failed to meet two student eligibility dates in March 2014 is true and substantiated.

17. The factual allegation that Appellant failed to adequately communicate and collaborate with co-workers while on the PAI is not true and substantiated.

18. The factual allegation that Appellant failed to complete viable and workable student schedules during a time of adequate staffing at Grant Watts is not true and substantiated.

19. The factual allegation that Appellant failed to satisfactorily complete the PAI by failing to adequately prepare or conduct necessary business meetings is not true and substantiated.

20. The factual allegation that Appellant failed to adequately deal with student disruptions in the classroom, as demonstrated by an overall decline in behavior leading to disrespectful and unsafe acts, is not true and substantiated.

21. The factual allegation that Appellant failed to satisfactorily complete the PAI is not true and substantiated.

DISCUSSION

I. Applicable Legal Standard.

The applicable legal standard that guides this panel's analysis is 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 "finds 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. Appellant's request to review the February 6, 2014 Letter of Reprimand and Unpaid Suspension is denied.

Both Appellant and the District, in their written closing briefs, included short arguments with regard to whether or not the District had "just cause" to impose Appellant's February 6, 2014 discipline. The panel will not make a decision of whether or not the District had just cause for disciplining Appellant, or whether the discipline should be sustained or denied. This is because the panel concludes that the discipline itself should not have been part of the PAI, and therefore it does not have jurisdiction over the grievance. The conduct that resulted in discipline is analyzed by the panel below, under neglect of duty, but this panel will not reach the merits of the grievance. Appellant and her union may decide to challenge the discipline in another forum.[117]

ORS 342.895(5) provides:

> [N]o grievance or other claim of violation of applicable evaluation procedures, or fundamental unfairness in a program of assistance for improvement, shall be filed while a teacher is on a program of assistance. All statutes of limitation and grievance timelines shall be tolled while the subject claims are held in abeyance under this moratorium provision. Except as provided in this subsection, the moratorium and tolling period ends on the date the program of assistance for improvement is completed, not to exceed one year.[...] A contract teacher who is dismissed or receives notice of contract nonextension, and who appeals to the Fair Dismissal Appeals Board, may raise any claims subject to this moratorium provision before the Fair Dismissals Appeals Board, which shall have exclusive jurisdiction to decide such claims. [...] A program of assistance for improvement shall not be technically construed, and no alleged error or unfairness in a program of assistance shall cause the overturning of a dismissal, nonextension of contract, nonrenewal of contract or other disciplinary actions unless the contract teacher suffered a substantial and prejudicial impairment in the teacher's ability to comply with the school district standards.

[117] The panel notes that its decision to overturn dismissal would not be affected by any finding of whether or not the discipline comported with just cause. Even if the panel had found there was just cause for all, or part, of the disciplinary charges against Appellant, the dismissal would not stand because the District does not satisfy the statutory grounds required for dismissal.

The statute above contains a moratorium on grievances or claim of violations related to evaluation procedures or PAIs. It does not contain a moratorium on all grievances, related to any discipline whatsoever, that may arise during a PAI where the discipline was not part of a PAI. As the panel explained above, the PAI should not be used for disciplinary reasons. Moreover, the conduct underlying the February 6 Reprimand and Unpaid Suspension was wholly separate from the three deficiencies addressed in the PAI.

Here, it is true that the Mid-PAI and End-PAI summaries confusingly *reference* the February 6, 2014 discipline. However, those summaries also reference many other incidents and issues that did not relate to the PAI, and that should not have been used in the District's analysis of whether or not Appellant satisfied the PAI (*e.g.*, Appellant's health status). The panel declines to exert jurisdiction over the grievance.

III. The True and Substantiated Facts are Not Adequate to Justify the Statutory Grounds Cited by the District.

A. The Charged Facts are Not Adequate to Justify Dismissal for Neglect of Duty.

Turning now to the critical facts relied upon by the District to support Appellant's dismissal on statutory grounds, this panel concludes that the true and substantiated facts are inadequate to support dismissal for neglect of duty within the meaning of ORS 342.865(1)(d). Neglect of duty means the "failure to engage in conduct designed to result in proper performance of duty."[118] 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."[119] The true and substantiated facts are not adequate to demonstrate that Appellant repeatedly failed to perform minor duties or failed to perform a critical duty.

1. The District did not establish that the curtain incident and students' escalating behavior involved a neglect of duty.

First, the panel does not find that Appellant endangered students in the curtain incident. Ms. Richey reported that a student had draped the curtain around his neck. Ms. Richey perceived

[118] *Wilson v. Grants Pass School District,* FDA 04-7, p. 9 (2005).
[119] *Id.*, p. 10, *citing Enfield v. Salem-Keizer School District,* FDA-91-1 (1992), *affirmed without opinion,* 118 Or App 162 (1993), *rev. denied,* 316 Or 142 (1993).

the activity as "unsafe," but Appellant reasonably concluded that the student's behavior was harmless because the curtains were made of light-weight material, would not support body weight, and therefore would not cause harm or strangulation. The District did not establish by a preponderance of the evidence that Appellant was directed to permanently remove the curtains after Mr. Larson visited the room following Ms. Richey's initial report. Mr. Larson did not provide a clear directive to Appellant to permanently remove the curtains. Nor did the District have a rule barring curtains; other teachers used curtains in their classrooms. The District's characterization in the discipline letter of the student using the curtain "in such as manner to create a noose-like effect on his neck and body" does not comport with Appellant's credible description of the activity. The "noose-like" descriptor also does not match Ms. Richey's account, nor the picture she took of the incident, which shows the curtain not as a "noose" but as draped around the student's neck and shoulders.

In addition, the panel also finds that the District did not establish by a preponderance of the evidence that Appellant "repeatedly escalat[ed] situations where students were misbehaving, and by responding in an appropriate manner," apart from the running incident discussed below. The District did not establish that Appellant's reward systems or conduct during student behaviors were fundamentally flawed, or different from any other special education teacher's. For instance, Appellant's giving a token to a student who had just apologized for behavior or the use of food in her programs were not shown to be out of the ordinary, or contrary to established special education approaches used in the field.

That leaves two remaining true and substantiated facts for a neglect of duty analysis: the non-prescription medication incident and the running incident. "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."[120] Neglect of duty can be established by repeated failures to perform duties of relatively minor importance, or a single instance of a failure to perform a critical duty. The District has not established that either occurred.

First, the District has not established that Appellant engaged in a repeated failure to perform duties of a relatively minor importance, based on two single instances: leaving non-prescription medication on a counter, and running after a student – instances of conduct for which she was disciplined. The panel may consider multiple incidents, even if the teacher or

[120] *Bellairs v. Beaverton School Dist.*, 206 Or App 186, 196 (2006) (internal citations omitted).

administrator has already been disciplined for them, and together, such multiple instances may constitute a cumulative neglect of duty.[121] In this case, based on prior FDAB decisions, these two incidents, even taken together, cannot be said to rise to the level of a "very serious default of responsibility by appellant" or a demonstration of a pattern of risk-taking that other panels have deemed constitute a neglect of duty.

In *Bellairs*, for instance, a teacher repeatedly, over years, made remarks and engaged in angry outbursts showing personal animosity towards students, parents and staff. He received multiple warnings and directives to stop. In addition, the same teacher failed to turn in grades by the deadline, despite specific instructions to do so.[122] The Court of Appeals upheld the FDAB panel's decision that his actions constituted multiple instances of neglecting his duty to communicate respectfully because the teacher's misconduct demonstrated a "larger *pattern*" of behavior. Additionally, the teacher would be warned about his conduct, yet then purposely continued to act unprofessionally, resulting in repeated outbursts. *Id.*

Here, by contrast, Appellant violated a duty on two occasions involving different behavior and without establishing a pattern. She acknowledged that leaving non-prescription medication on a classroom table was a mistake, and there is no evidence that she intended to repeat this conduct. Appellant admitted to leaving out a basket of non-prescription medication (including Ibuprofen) in the classroom during school hours, where a student could have accessed the medication and swallowed a harmful dose. Appellant denies running after a student and putting him in any danger when she pulled him from under a trailer; however, this panel finds that she did violate a directive against running. However, there is no evidence that she calculatedly defied an order. Rather, she explained that she believed she was helping to avoid harm to the running student by returning him to the safety of the building. Furthermore, leaving out medication (carelessness) and running after a student (impulsivity) concern two different types of behaviors, and not a pattern of ignoring her duty to keep students safe.

This case is also different than *Fisler v. Hermiston School Dist.*, FDA 84-1, pp. 26-27 (1985), where the record showed a "repeated refusal or inexcusable failure to perform" duties – at least six separate instances of ignoring directives, as well as a prior record of similar behavior and, as the panel in that case found, "conduct ranging from a lax concern for her responsibilities

[121] *Id.*
[122] *Id.*

to clear-cut rejection of her duty." By contrast, here, the District established only that Appellant engaged in two instances of bad judgment, and there is no indication that she ignored, showed lax concern, or outright rejected prior directives.

Second, the District did not establish that Appellant engaged in a single instance of a failure to perform a critical duty. The duty to protect students from harm is undoubtedly a critical duty; however, prior FDAB cases demonstrate that the "single instance" cases concern very different types of conduct than the conduct alleged to have occurred here. For instance, *Thomas v. Cascade Union High Sch. District*, FDA 84-7 (1985), concerned a teacher *kicking* a student in anger; *Thyfault v. Pendleton Sch.* District, FDA 90-4 (1992), involved a teacher *forcefully spanking, grabbing, and pulling* a student, also in anger; *Fisler v. Hermiston Sch. District*, FDA 84-1 (1985), involved a teacher leaving a chemistry room and store room, filled with dangerous chemicals, open and unattended, after being directed to lock the rooms. Here, the District did not establish that Appellant's actions rose to the level of causing severe harm, or potential severe harm, to children comparable to hitting or risking serious physical injury or damage out of carelessness or lack of control. This panel finds that Appellant endangered herself and her students by running and leaving out medication (she could have fallen, or a student might have attempted to pry open the child-safe Ibuprofen bottle and ingested some if there was an unusual gap in supervision), but the District did not establish that this endangering reached a degree that is comparable to physical violence. The panel concludes that the District did not prove that Appellant failed to perform a critical duty.

B. The Charged Facts Are Not Adequate to Justify Dismissal on the Grounds of Inadequate Performance.

This panel concludes that the true and substantiated facts are not adequate to support dismissal on the basis that Appellant engaged in conduct constituting inadequate performance. Addressing performance duties alleged to be unacceptable under this ground requires proof of (a) the failure to perform job duties in conformance with district standards or requirements when the teacher has been given notice of deficiencies and an opportunity to correct and the failure is repeated or otherwise substantial, or (b) the failure to perform results in some substantial detriment to the district.[123] FDAB case law establishes that this latter statutory ground focuses

[123] *Packard v. Corvallis Sch. Dist. No. 509J*, FDA-97-4, at 20 (Jan. 5, 1998).

on actual performance of duties directly connected with teaching.[124] Thus, to meet this standard, the evidence must show that the conduct caused inadequate performance specifically in the technical aspects of teaching.[125]

Here, the panel finds that the District failed to establish inadequate performance by a preponderance of the evidence because Appellant was not provided with appropriate notice of deficiencies and an opportunity to correct due to a flawed PAI. The District also did not established by a preponderance of the evidence that Appellant caused a "substantial detriment" to the District, or that any detriment related to her actions (or inactions) can be placed wholly at her feet.

1. The District's Claim that Appellant Failed to Satisfactorily Complete the PAI is not true and substantiated.

This case largely hinges on Appellant's December 2013 PAI and the District's claim that Appellant failed to satisfy the PAI by April 2014. This panel concludes that the allegation that Appellant failed to satisfactorily complete the PAI is not true and substantiated. The PAI itself was flawed in substance and in form when it was first imposed on Appellant because it was lacked specificity, was used for disciplinary purposes, imposed outside of the formal evaluation process, and did not allow a reasonable timeline for progress, resulting in Appellant's suffering a substantial and prejudicial impairment in her ability to comply with its directives.[126]

The first problem with the PAI is that it lacked the required degree of specificity that might have allowed Appellant to satisfy its demands. ORS 342.815(7) provides with regard to PAIs:

> (7) "Program of assistance for improvement" means a written plan for a contract teacher that with reasonable *specificity*:
>
> (a) Helps teachers adapt and improve to meet changing demands of the Oregon Educational Act for the 21st Century in ORS chapter 329 if applicable.

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[124] *Thyfault v. Pendleton Sch. Dist. No. 16R*, FDA 90-4 (1991) (citing *Thomas v. Cascade Union High Sch. Dist. 5*, FDA 84-7: 80 Or App 736 (1987), Order on Remand (1987), Order on Appeal after Remand (1987). Appeal on other grounds after Order on Remand, 98 Or App 679 (1989)).

[125] *Vilches v. Multnomah Education Service Dist.*, FDA 02-03, at 21 (June 25, 2002).

[126] This panel is empowered to decide whether the PAI was so fundamentally unfair as to justify the overturning of a dismissal decision, under the "substantial and prejudicial impairment" standard of ORS 342.895(5), cited in Section II, above.

> (b) Identifies *specific* deficiencies in the contract teacher's conduct or performance.

ORS 342.815 (Emphases added). This requirement of specificity is echoed in the collective bargaining agreement ("CBA") between Appellant's union and the District. Article 17.8 states that a PAI "shall include" "specific deficiencies" identified in observations and/or evaluations.

> B. The Program of Assistance for Improvement will be developed by the administrator in cooperation with the employee, shall be in writing, and shall include the following:
>
> 1. The *specific* deficiencies identified in observations and/or evaluations.
>
> 2. The *specific* correction(s) and/or change(s) expected.
>
> 3. The *specific* assistance to be provided by the District.
>
> 4. The timeline for improvement, which shall be reasonable.
>
> 5. Schedule of frequency of conferences with written progress reports.
>
> 6. Identification of assessment techniques to measure performance.

(Emphases added.)

The District's PAI did not contain reasonable specificity. It referenced "disorganization and lack of control," "poor stability for [unidentified] students," and Appellant's "emotional response" and "interactions" with other staff and EAs and "behavior." There is no reference to specific interactions (*i.e.*, time, place, dates) or specific student pedagogical plans or protocols. Specificity would have put Appellant on meaningful notice of the deficiencies claimed. Instead, the PAI's lack of specificity resulted in a prejudicial and substantial impairment to Appellant because she could not meaningfully, measurably comply with the vague directives. At the end of the three-month PAI, the District listed, in conclusory fashion, a litany of Appellant's actions or inactions and claimed these fit into the vaguely described categories of deficiencies. This approach did not conform with the requirements for a PAI demanded by statute, and this lack of conformance caused a substantial impairment to Appellant.

The second reason that the PAI was defective, resulting in substantial impairment to Appellant, is because it contained disciplinary (conduct) matters. The CBA explicitly bars the District from placing teachers on PAIs "for disciplinary reasons." Article 17.8 provides:

> E. Except for contract non-extension or non-renewal, a member will not be placed on a Program of Assistance for Improvement for disciplinary reasons.[127]

One of the three areas of deficiencies identified in the PAI concerned Appellant's (allegedly) problematic professional interactions with staff, parents and students at Warren. The PAI does not provide any specificity as to which precise interactions were a problem; its directives reference nebulous issues with "self-control," "emotional outbursts," tone, and "listening" skills. However, the evidence shows that this area of the PAI was derived from Appellant's interactions with colleagues at Warren that (1) already resulted in discipline for Appellant and/or (2) concerned "emotional outbursts" that were not adequately documented, investigated, or proven to have occurred (most notably, the alleged "outburst" in the presence of students – an allegation that the panel does not find true and substantiated). In light of the CBA's explicit prohibition on using the PAI for disciplinary reasons, this panel finds that it was substantially prejudicial for the District to shoehorn conduct issues, especially conduct for which Appellant was disciplined, into the PAI. If the District had enough evidence to impose discipline for the "emotional outbursts," it could have and should have disciplined Appellant, rather than use the PAI to do so.[128]

The third reason the PAI resulted in substantial prejudice to Appellant is that the PAI did not follow a formal evaluation process, which could have provided notice to Appellant of deficiencies prior to the PAI. The CBA states:

> 17.8 Program of Assistance for Improvement: The results of any performance observation and/or evaluation shall be in writing with a copy to the member. Where significant deficiencies are noted in the *formal evaluation process*, an employee may be placed on a Program of Assistance for Improvement as defined in ORS 342.815(7).[129]

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[127] A-187, p. 29.

[128] The importance of separating disciplinary matters from performance deficiencies in the context of a PAI is further underscored by ORS 342.895(5)'s moratorium on filing challenges to the PAI while it is being administered. Disciplinary matters should be challenged promptly to preserve evidence of specific conduct before facts become too stale to prove. Performance deficiencies, by contrast, are usually based on facts that are more subjective and abstract and should follow a longer time frame during which the District can assist a teacher to be successful, without the pressure of a labor grievance timeline.

[129] A-187, p. 29.

(Emphasis added.) Here, the District placed Appellant on the PAI in December 2013 following concerns in the preceding few months about the level of organization and effectiveness in her classroom. Two of the three deficiencies identified in the PAI are described as (i) failure in supervising EAs and (ii) failure to adhere to program plans and procedures. The evidence shows that the District based these deficiencies primarily, if not wholly, on the October 2013 observation of Ms. LaMarsh, an outside-District consultant. The District did not put on evidence that Ms. LaMarsh or her report contributed to or ever became part of any formal evaluation process for Appellant. In fact, Appellant's most recent formal performance evaluations were extremely positive and could not have formed the basis for the PAI. Accordingly, the District failed to show that it placed Appellant on a PAI "[w]here significant deficiencies are noted in the formal evaluation process." This failure to impose the PAI following or in conjunction with a formal performance evaluation resulted in substantial and prejudicial impairment on Appellant's ability to comply with District standards, as a formal evaluation process preceding the PAI would have provided Appellant with additional notice and, likely, additional observations and detail concerning deficiencies in her classroom approach that could have enabled Appellant to succeed.

A fourth reason the District did not establish that Appellant failed to comply with the PAI is that the PAI did not follow a 'reasonable timeline' that might have allowed Appellant to satisfy it. Article 17.8(B)(4) of the CBA requires a PAI to contain a "timeline for improvement, which shall be reasonable."[130] On paper, the duration of the PAI was four months (December 2013 through March 2014); in reality, due to holidays, transition periods, and injury, Appellant had only ten weeks in the classroom to demonstrate improvement. In addition, the District decided to reassign Appellant to a wholly new school (Grant Watts), a different special education environment, and a different student caseload right after the PAI was implemented. Further, staffing levels and programs at Grant Watts were not finalized, or stable, until the end of February 2014 – a mere month before the PAI ended. This is evidence that the timeline was unreasonable, did not provide Appellant with the opportunity to overcome and correct

[130] ORS 342.815(7)(c) requires PAIs to "se[t] forth corrective steps the contract teacher may pursue to overcome or correct the deficiencies," which assumes a reasonable timeline for teachers to satisfy the program.

deficiencies, and therefore caused substantial prejudice to Appellant in her ability to demonstrate progress.

Finally, a fifth problem with the PAI is the fact that the District did not establish by a preponderance of the evidence that it complied with its own obligations under the PAI – namely, related to the "assistance" prong of the PAI. The lack of assistance deprived Appellant of a meaningful opportunity to demonstrate that she satisfied its terms. The PAI committed the District to provide observations and assistance as follows:

> 1. The Principal and/or The Director of Student Services will conduct formal and/or informal observations in Ms. Clark's classroom and other venues at least weekly for a minimum of thirty minutes, and will subsequently provide oral and written feedback.
>
> 2. The Principal and/or The Director of Student Services will schedule regular meetings with Ms. Clark, at which time she will be provided with feedback, input and suggestions.

The District failed to establish by a preponderance of the evidence that Mr. Larson or Ms. Steiner conducted weekly, thirty-minute long observations, nor that they "subsequently" provided oral *and* written feedback related to the deficiencies identified in the PAI, nor that they scheduled "regular meetings" with Appellant about the PAI. Tellingly, the Mid-PAI and End-PAI Summaries contain multiple entries that are not related in any way to Appellant's identified deficiencies. The Summaries do not capture, and the District did not establish by a preponderance of the evidence, that Appellant received regular, timely, helpful observations and feedback that may have allowed her to succeed. This panel acknowledges that Appellant engaged in problematic conduct while at Grant Watts – *e.g.*, arriving late to meetings, missing IEP deadlines, and running after a student. However, this conduct was not related to or identified in her PAI as problem conduct, and therefore she cannot be said to have been giving clear notice and opportunity to correct this specific conduct prior to April 2014, when she was dismissed.

Ferguson v. Dayton School Dist., FDA 04-06 (2004), *affirmed without opinion*, Or App A127323 (2006), is a highly instructive case. In *Ferguson*, the teacher was placed on a PAI and FDAB concluded she had failed to meet the PAI's requirements. However, *Ferguson* is striking for how different it is from the case at hand. First, the District in *Ferguson* noted specific deficient performance, identified and described in detail, prior to placing the teacher on a PAI. Second, the PAI employed in *Ferguson* contained specific directives – *e.g.*, including baseline

data on IEPs, putting 80% of students on an academic skills plan, and placing required forms in a specific education file in the office. Then, the teacher met with her administrator seven times in two-and-a-half months to discuss the PAI, and was observed on three occasions during that time after which the administrator provided specific feedback on the teacher's PAI goals, and how she was not meeting them. After an interim progress report that identified how precisely the teacher had failed to meet PAI goals (*e.g.*, "Ten (10) student binders were reviewed and data necessary to measure IEP goals was not present in any of the binders"), the teacher's PAI continued until May 2004. During that phase, the teacher and administrator conducted six meetings to discuss PAI matters, and the administrator conducted ten observations of the teacher. Thus, in *Ferguson*, the teacher was provided with specific data, and specific, regular feedback, numerous assessment meetings that concerned the PAI (and did not include data on unrelated events like leave requests or matters of discipline), rigorous observations and, finally, eight full months to comply with the PAI.

Here, unlike *Ferguson*, the panel finds that the District did not impose or execute the PAI in a manner designed to allow Appellant to recognize deficiencies and improve. As explained above, the PAI was vague and unspecific. Tellingly, the Mid-PAI and End-PAI Summaries and meetings criticized Appellant for all matters of conduct not identified in her PAI in any way -- for instance, Appellant's problems with timely submission of paperwork, "acts of insubordination," not having an agenda, letting meetings run over time, tardiness, providing schedules but not the right schedules, and using tokens or food as a reward for students. The Mid-PAI and End-PAI Summaries also did not indicate precisely how many observations took place and their duration, nor – most significantly – whether Appellant received concrete, reasonably prompt feedback or attended regular meetings concerned only with her progress on the PAI. Finally, Appellant had approximately three months to comply with the PAI, and her PAI was not preceded by a formal evaluation indicating any problems, in stark contrast to the *Ferguson* case.

As the FDAB panel in *Ferguson* noted, "A well-written Plan of Assistance, like the one in this case, provides the FDAB with the evidence of notice of job duties and the notice of deficiencies, and if properly managed, it provides the evidence of opportunity to correct deficiencies and the evidence of the repeated failures to perform the required duties."

For the above reasons this Panel concludes that the true and substantiated facts are not adequate to support dismissal on the basis that Appellant has engaged in conduct constituting inadequate performance.

C. The Charged Facts Are Not Adequate to Justify Dismissal on the Grounds of Inefficiency.

As FDAB has recognized, "inefficiency" refers to a teacher's use of time, training and resources to meet the requirements of the job, and the inefficiency exists where that use is defective or lacking. *Ferguson*, FDA 04-06 at 23. Inefficiency may be proven through an accumulation of incidents and situations; a series of incidents which demonstrate a teacher's inability, over time, to meet necessary standards; a failure to use his or her abilities, training, and resources to maximize student productivity and minimize classroom disruptions; or a failure to improve despite "great effort by the District" to assist the teacher. Here, the District based its claim of inefficiency on the allegation that Appellant "failed over an extended period of time to produce the level of performance required of all District teachers despite extensive administrative effort and resources dedicated toward helping you do so."

Here, the panel recognizes that Appellant certainly had performance issues; however, as explained in detail above, the PAI's timeframe, lack of specificity, and lack of follow-through on the District's part prevents a finding that Appellant demonstrated an inability, over time, to meet standards or improve. Most importantly, the District did not prove that it suffered a "substantial detriment" because of Appellant's actions or inactions. The panel was persuaded by evidence that the District's special education issues had many causes, which include: the presence of two extremely challenging students (the twins, who were eventually removed from the District), inadequate staffing levels brought on by claimed medical issues on the part of EAs and, generally, unstable staffing levels with regard to EAs; and placing Appellant in a behavior classroom when she had spent the previous years in a resource room, and expecting her to overcome all challenges of a new room and caseload within mere months of her reassignment. The District failed to show that Appellant's proven performance issues over four months – repeated tardiness, interrupting during meetings, imperfect use of paperwork, and conduct leading to (relatively low-level) discipline – demonstrated an inability to meet necessary standards of providing effective special education to children.

ORDER

The dismissal of Appellant is set aside. Appellant shall be reinstated to her position with full back pay from the date of her dismissal to the date of reinstatement.

DATED this _____, 2015 _____

Karen Stratton, Panel Chair

DATED this _____, 2015 _____

Doug Nelson, Panel Member

DATED this _____, 2015 _____

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.

ORDER

The dismissal of Appellant is set aside. Appellant shall be reinstated to her position with full back pay from the date of her dismissal to the date of reinstatement.

DATED this January 28, 2015

Karen Stratton

Karen Stratton, Panel Chair

DATED this _____, 2015

_____

Doug Nelson, Panel Member

DATED this _____, 2015

_____

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.

ORDER

The dismissal of Appellant is set aside. Appellant shall be reinstated to her position with full back pay from the date of her dismissal to the date of reinstatement.

DATED this _____, 2015

Karen Stratton, Panel Chair

DATED this January 29th, 2015

Doug Nelson, Panel Member

DATED this _____, 2015

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.

ORDER

The dismissal of Appellant is set aside. Appellant shall be reinstated to her position with full back pay from the date of her dismissal to the date of reinstatement.

DATED this _____, 2015

Karen Stratton, Panel Chair

DATED this _____, 2015

Doug Nelson, Panel Member

DATED this January 29, 2015

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

Margaret S. Olney Bennett, Hartman, Morris & Kaplan, LLP Suite 500 210 S.W. Morrison Street Portland, OR 97204-3149	[ ] [X] [ ] [ ] [ ]	HAND DELIVERY U.S. MAIL – CERTIFIED, RETURN RECEIPT REQUESTED OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY
Nancy Hungerford, Brian Hungerford The Hungerford Law Firm 653 S. Center St PO Box 3010 Oregon City, OR 97045	[ ] [X] [ ] [ ] [ ]	HAND DELIVERY U.S. MAIL – CERTIFIED, RETURN RECEIPT REQUESTED OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY

Respectfully submitted,

_____

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