BEFORE THE FAIR DISMISSAL APPEALS BOARD

OF THE

STATE OF OREGON

In The Matter of the Appeal of KRISTEN KIBBEE Appellant, v. BETHEL SCHOOL DISTRICT, District.	Case No.: FDA-13-09 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

INTRODUCTION

Appellant, a contract administrator, was dismissed from her employment with Bethel School District ("Bethel" or the "District") on October 21, 2013. She timely appealed to the Fair Dismissal Appeals Board ("FDAB") on October 23, 2013. A hearing on the merits was conducted in Eugene, Oregon on January 13, 14, and 15, 2014. Appellant was represented by Nathan R. Rietmann, Attorney at Law, and the District was represented by Nancy J. Hungerford, The Hungerford Law Firm. The hearing was conducted before a panel appointed from the FDAB, consisting of Ron Gallinat, Dennis Ross, and Christy Perry. The panel, having considered the evidence and the arguments of counsel, makes the following rulings, findings, conclusions and order.

PROCEDURAL MATTERS

At hearing, the parties stipulated to the admission of the following exhibits: Exhibits A-1 through A-12, Exhibits D-1 through D-19, and Joint Exhibits 1-6. At the conclusion of the hearing, both parties agreed to an extension of 30 days of the statutory requirement that an order be issued within 140 days after the filing of an appeal, consistent with due process.

FINDINGS OF FACT

Background

1. Bethel School District hired Appellant as an Assistant Principal at Cascade Middle School for the 2005-2006 school year. She reported to Principal Glen Martz.[1]

2. In Principal Martz's July 1, 2008 evaluation, Martz noted that Appellant "works very hard, however, at times she has verbal communications with other administrators in which the message is received with an edge to it. She means well in terms of supporting all students in all settings, but she needs to caution herself in how the communication is given and how it is received. This should be a focus of her efforts next year."[2]

3. In June 2009, Bethel School District Superintendent Colt Gill appointed Appellant as Interim Principal of Cascade Middle School. Superintendent Gill chose an interim appointment because he was unsure whether financial problems confronting the District would require the District to reduce administrative positions result in the lay-off of a newly hired principal.[3]

4. In announcing Appellant's appointment to other District administrators by email, Superintendent Gill noted that Appellant had some "rough edges." Superintendent Gill wrote:

> I have appointed Kris Kibbee as CMS principal for next year. This is a one year appointment. I believe Kris offers stability, familiarity, and passion for your Cascade, its kids, and its staff. She has a vision to take it to the next level of success. Kris was clearly the front runner from comments made in the staff input. Kris understands that her performance, especially in the early years in our district, had its rough edges. We both want your support in helping her to become a better leader for Cascade. Her desire is to work collaboratively with her staff and with

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[1] TR (1-14), p. 58; TR (1-15), p. 13. The panel uses the following protocol to refer to the transcript in this case: The numbers in parentheses refer to the date of the testimony (for example, 1-13 for January 13, 2014; 1-14 for January 14, 2014; and 1-15 for January 15, 2014). The page numbers refer to the page numbers for the transcript for the identified hearing day.

[2] Exhibit D-9, Section 07-08, p. 2.

[3] TR (1-14), pp. 65-66.

her fellow administrators to make Cascade the best it can be and become a better administrator in her own right.[4]

5. To assist Appellant, Superintendent Gill also assigned retiring Principal Nancy McCullum as an administrative mentor, who "will support Kris in building the skills she needs to be an effective leader. Nancy will also provide some of the traditional support of a second administrator at a building, but her primary role is supporting Kris in becoming the great leader she believes Cascade deserves."[5]

6. During the 2009-2010 school year, Superintendent Gill heard concerns from staff and community members about Appellant's communication style. Superintendent Gill shared these concerns with Appellant.[6]

7. Superintendent Gill completed Appellant's performance review for the 2009-2010 school year. For this review year, the four possible ratings were "Not Making Progress," "Developing," "Accomplishing," and "Excelling." At the end of the school year, Superintendent Gill rated Appellant as "Developing" in "Visionary Leadership," "Organizational Leadership," and "Interpersonal Leadership."[7]

8. Appellant was a candidate for the principal position at Cascade Middle School when the District recruited for a permanent principal. Superintendent Gill became aware during his interviews of Cascade Middle School staff during the recruitment process that many staff members did not favor Appellant's appointment because of her communications issues and manner of interacting with staff at the school.[8]

9. Superintendent Gill, either directly or through Principal Dana Miller, subsequently suggested that Appellant review the book "Emotional Intelligence 2.0" so that Appellant could improve her interpersonal skills.[9]

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[4] Exhibit A-6, p. 17.
[5] *Id.*; TR (1-14), pp. 66-68.
[6] TR (1-14), pp. 68-69.
[7] Exhibit D-9, Section 09-10, pp. 1-3.
[8] TR (1-14), pp. 76-79.
[9] TR (1-14), pp. 81-82; TR (1-15), p. 21.

10. In the spring of 2010, Dana Miller was hired as the principal of Cascade Middle School. Appellant applied for the position but was not selected. Appellant remained at Cascade Middle School in the position of Assistant Principal.[10]

11. Principal Dana Miller evaluated Appellant for the 2010-2011 school year. For this year, the District used the ratings of "Unsatisfactory," "Basic," "Proficient," and "Distinguished." Miller evaluated Appellant as "basic" in the area of interpersonal leadership for the 2010-2011 year.[11]

12. At the end of the 2011-2012 year, Miller provided Appellant an informal evaluation, but not summative evaluation, consistent with the evaluation of contract administrators on an alternating year cycle. Miller rated Appellant as "Basic" rather than "Proficient" in "Instructional Leadership" as well as "Interpersonal Leadership." Miller noted problematic communications to a math teacher and another staff member in comments Appellant made before staff about maternity leave. Miller noted that Appellant's accomplishing of a goal to improve communication, carried over from the 2010-2011 year, was only at the "Basic" level. Miller wrote, "Again, I would really encourage you to think about the audience, possible misconceptions, and the necessity of comments before making."[12]

13. In June of 2012, the District reduced administrative positions because of financial difficulties facing the District. The District transferred Appellant to the position of Assistant Principal at Meadow View School for the 2012-2013 school year, where she was initially supervised by Principal Brian Flick.[13] Meadow View School is a kindergarten through eighth grade school.[14] Meadow View uses a positive behavior support direction as a foundation for discipline, meaning the school focuses on positive behavior and reinforcement of positive behavior.[15]

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[10] TR (1-14), pp. 77-81.
[11] Exhibit D-9, Section 10-11, p. 3.
[12] Exhibit D-9, Section 11-12.
[13] TR (1-14), pp. 84-87.
[14] TR (1-13), p. 40.
[15] TR (1-13), pp. 52-53.

September 18, 2012 Event

14. On or about September 18, 2012, Appellant called Student L.R. to the front of the cafeteria at Meadow View School when there were numerous other students in the cafeteria. Appellant called L.R. away from her friends for the purpose of talking with L.R. about whether L.R.'s clothing complied with the school's dress code.[16]

15. In front of numerous other students, Appellant talked with L.R. about the school's dress code while both Appellant and L.R. were standing at the front of the cafeteria.[17] There was no evidence presented at hearing that other students could hear the conversation between Appellant and L.R.

16. On September 20, 2012, L.R.'s mother sent an email to Principal Brian Flick in which she complained that Appellant "examined" all the girls in the group for dress code infractions in the cafeteria and that Appellant's method of handling the issue "resulted in drawing attention to the girls who were singled out and embarrassing and shaming them."[18]

17. On or about September 21, 2012, Principal Flick spoke to Appellant about L.R.'s mother's concerns. Appellant stated that she believed she handled the issue appropriately because the other students could not hear what she was saying to L.R.[19]

18. Principal Flick told Appellant that he expected dress code violations to be handled privately so that students are not embarrassed in front of peers.[20]

October 10, 2012 Event

19. On or about October 10, 2012, Appellant spoke to a group of male students who were being too loud in the hallway. One of the male students, Student T.S., uses a wheelchair and was in a wheelchair that day.[21]

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[16] TR (1-13), pp. 55-57; Exhibit D-3, p. 1; TR (1-15), p. 65.
[17] *Id.*
[18] Exhibit D-3, p. 2.
[19] TR (1-13), pp. 55-57.
[20] Exhibit D-3, p. 1; TR (1-13), pp. 55-57.
[21] TR (1-13), pp. 59-60.

20. In front of the other male students, because Appellant did not know T.S.'s name, Appellant referred to T.S. as either "wheelchair boy" or "you in the wheelchair."[22]

21. On October 10, 2012, T.S.'s mother sent an email to Principal Brian Flick, in which T.S.'s mother wrote that she was upset by Appellant' reference to her son as "wheelchair boy."[23] T.S.'s mother reported that T.S.'s feelings were hurt by this reference and that T.S. was embarrassed.[24]

22. On October 10, 2012, Principal Flick met with Appellant to discuss T.S.'s mother's complaint. Appellant denied making the comment "wheelchair boy." Appellant admitted that she referred to T.S. as "you in the wheelchair."[25]

23. Principal Flick told Appellant that she needed to have appropriate interactions with students and to build positive relationships in the school.[26]

January 11, 2013 Event

24. On or about January 11, 2013, in the lunch room, Appellant talked with a group of boys, including Student T.W., about the fact that they had made a mess in the lunch room.

25. The mother of T.W. was present during Appellant's discussion with T.W. and the other boys. Appellant and T.W.'s mother discussed Appellant's communication with the boys.[27]

26. After lunch, Appellant voluntarily told Principal Brian Flick that she had a difficult interaction with a parent at lunch, but she thought the interaction ultimately ended well.[28]

27. Also during the afternoon of January 11, 2013, Appellant called T.W. and two other boys into her office because of a complaint that T.W. had inappropriate physical contact with the two students. After Appellant talked with T.W. and the two boys, the two boys left so

[22] TR (1-13), pp. 60, 62.
[23] Exhibit D-4, p. 1.
[24] *Id.*, TR (1-13), pp. 60-61.
[25] Exhibit D-4, p. 2; TR (1-13), p. 60.
[26] TR (1-13), p. 60.
[27] TR (1-15), pp. 60-62.
[28] TR (1-13), p. 63.

that Appellant could talk one-on-one with T.W. about T.W.'s concerns that he was being harassed by eighth-grade boys.[29]

28. Later that afternoon, the mother of T.W. submitted an "informal concern" to Bethel School District. T.W.'s mother complained that Appellant had "yelled at the whole table" of boys during the lunch break on January 11, 2013.[30]

29. The mother of T.W. subsequently submitted a second "informal concern" to Bethel School District. T.W.'s mother complained that Principal Brian Flick was not handling her complaint about Appellant.[31]

30. On or about January 14, 2013, Principal Flick talked with Appellant about the complaint made by the mother of T.W. that Appellant had talked to T.W. in the afternoon when she called T.W. and several other boys into her office. Principal Flick talked to Appellant about T.W.'s mother's concern that Appellant had talked privately to T.W. about her interaction with his mother. Appellant denied that she had talked to T.W. about her lunch room interaction with T.W.'s mother.[32]

May 2, 2013 Event

31. On May 2, 2013, Appellant noticed a group of female students in the cafeteria wearing shorts that Appellant thought did not meet the school's dress code standard (specifically, that shorts, when worn at a student's natural waist, must be long enough to reach lower than the end of a student's fingertips when the student is standing with hands at her sides).

32. Appellant told a group of eleven or twelve of the students to report to Principal Flick's office after lunch. The girls were from the seventh grade and from the eighth grade. The girls were not all friends.[33]

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[29] TR (1-13), pp. 66, 70-71.
[30] Exhibit D-5, p. 2; *see also* TR (1-13), p. 64.
[31] Exhibit D-5, p. 4.
[32] TR (1-13), pp. 66-69.
[33] TR (1-15), pp. 65-66.

33. Appellant met with eleven or twelve of the students in Principal Flick's office that afternoon.[34] The door was open throughout Appellant's interaction with the students.[35]

34. Appellant talked to the students about the school's standard for the length of shorts.[36]

35. After one student left the room, Appellant noticed that Student A.T.'s shorts were possibly sitting below the student's natural waist (thereby causing the shorts to appear "longer" on the student's legs). Appellant was standing to the left of A.T. Appellant reached over and pulled up A.T.'s shirt above A.T.'s natural waist line. Appellant pulled up A.T.'s shirt in front of the other students. At least some of the other students in the room were able to see the waistband of A.T.'s underwear when A.T.'s stomach and waist area was exposed by Appellant pulling up A.T.'s shirt. A.T. was in the seventh grade at this time.[37]

36. Appellant argued at hearing that the students may have colluded to falsely accuse her, but there was no evidence to support a finding that any of the students colluded to "frame" Appellant or colluded to get Appellant "fired."[38] Instructional Assistant Taycee Lipkin wrote an email to Appellant dated June 19, 2013, in which she wrote, among other things, "I witnessed a group of girls talking about how they were going to get the assistant principal fired."[39] During her testimony, however, Lipkin stated that she meant only that she overheard students talking about the fact that they believed Appellant was going to be fired because of a parent complaint about Appellant's May 2, 2013 interaction with A.T.[40]

37. On May 2, 2012 A.T.'s father sent an email to Principal Flick in which he requested an "immediate meeting" with Principal Flick and Appellant over a "very serious issue." A.T.'s father wrote, "My issue is when Kris Kibbee walked over to [A.T.] and pulled her

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[34] TR (1-13), pp. 87-88.
[35] TR (1-13), pp. 85-87.
[36] TR (1-13), p. 87.
[37] TR (1-13), p. 82.
[38] *See* TR (1-13), p. 91.
[39] Exhibit A-4.
[40] TR (1-15), p. 174.

shirt up to see if she had pulled her shorts down. She did not ask [A.T.], she did not inform her she was going to do this. When she pulled her shirt up (which is completely unacceptable) her underwear were exposed to everyone in the room, which again is totally unacceptable. She then stated to our children that male teachers 'feel uncomfortable around them when they wear those shorts.' I am not sure what your practice is for dealing with this, but in my opinion this is far beyond any reasonable action, and an adult teacher should NEVER put their hands on a student, unless it is for the students safety, especially to lift a shirt up and expose underwear or any part covered by a shirt! I want to have a meeting to discuss this immediately. I will not tolerate this for one second."[41]

38. Principal Flick spoke with A.T.'s father.[42] Principal Flick subsequently interviewed six of the girls present during Appellant's interaction with A.T. on May 2, 2013. Five of the six girls reported that Appellant had lifted A.T.'s shirt up to check to see if her shorts were at A.T.'s natural waistline. The sixth girl had left the principal's office before Appellant lifted A.T.'s shirt.[43]

39. On May 8, 2013, Principal Flick interviewed Appellant about the events of May 2, 2013.[44] Appellant denied touching A.T. or lifting her shirt.[45] Appellant admitted that she met with the group of students as a group in Principal Flick's office, and stated that she did so because she thought she could deal with the issue more quickly if she met with all the students at once in a group.[46]

40. The District gave Appellant a written reprimand as a result of Appellant's interactions with the students on or about May 2, 2013.[47] The reprimand states, in part, "Your handling of this dress code incident is in direct violation of the verbal directives provided to you

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[41] Exhibit D-6, p. 1.
[42] TR (1-13), p. 82.
[43] TR (1-13), pp. 83-86; Exhibit D-6, pp. 2-4.
[44] Exhibit D-6, pp. 4-5.
[45] TR (1-13), pp. 83, 88, 96.
[46] TR (1-13), p. 87.
[47] Exhibit D-6, pp. 6-7.

on September 21, 2012, October 11, 2012, January 11, 2013, and as indicated in your 2012-2013 mid-year evaluation review." The reprimand closed with the following text:

> Your continued inappropriate interactions with students is unacceptable. In the future, you are expected to follow the directives provided to you. You are also directed to maintain positive relationships with both students and parents. Should you fail to follow this directive further discipline, up to and including a possible recommendation for dismissal may occur.

41. In addition, Principal Flick also suspended Appellant for one day without pay because Appellant did not accurately report to him what occurred during her interaction with the students on or about May 2, 2013. The notice to Appellant of the one-day suspension states, "Specifically, during my investigation on May 8, 2013, you denied lifting up the shirt of a student. My investigation, however, indicates that the student's version of events as reported to her parents is an accurate accounting."[48]

Principal Flick's Year-End Evaluation; Appointment of Principal Erika Case

42. In Appellant's 2012-2013 year-end evaluation, Principal Flick rated Appellant as "unsatisfactory" in the category of "ethical leadership."[49]

43. Effective July 1, 2013, Principal Flick was appointed to a district-wide position, District Director of Teaching and Learning.[50] Erika Case became the new principal at Meadow View School and Appellant's new immediate supervisor.[51]

September 12, 2013 Event

44. During the morning of September 12, 2013, LeeAnn Henry, a speech language pathologist employed by the District, was working in the common area of the green pod at Meadow View School, doing first-grade speech screening. Henry was sitting at a round table on the left side of the common area.[52]

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[48] Exhibit D-6, pp. 8-9.
[49] Exhibit D-9, Section 2012-2013.
[50] TR (1-13), p. 98.
[51] TR (1-13), p. 99.
[52] TR (1-13), pp. 138-139; *see also* TR (1-15), p. 85.

45. Appellant was sitting or squatting at a round table to the right of Henry. Appellant was with student C.W., a first-grade student.[53]

46. Student C.W. was known to regularly wander out of his classroom and walk around the school.[54] Various staff members were assigned to monitor and accompany C.W. and to encourage him to return to his classroom. By September 12, 2013, a group consisting of the principal, C.W.'s teachers, Appellant, and a behavior support specialist had already met with C.W.'s mother to discuss ways that school staff could manage C.W.'s to deal with his failure to remain in the classroom.[55] Student C.W. was subsequently diagnosed with a medical condition that may have contributed to his behavior, but C.W. had not been diagnosed as of September 12, 2013. Appellant was monitoring C.W. on the morning of September 12, 2013.[56]

47. While in the common area of the green pod, in an attempt to get C.W. to go back to his classroom, Appellant grasped C.W.'s forearm tightly. Henry saw Appellant grasp C.W.'s forearm tightly. C.W. said words to the effect of "Ow, you're hurting me." Appellant did not immediately release her hold on C.W.'s forearm, but kept her hand on C.W.'s forearm for a short additional time.[57]

48. During the morning of September 12, 2013, Instructional Assistant Debbie Dull was working in her room just off the common area of the green pod. She opened her door and saw Appellant grasping C.W.'s forearm.[58]

49. Henry left the green pod and went to the pink pod after seeing Appellant grasp C.W.'s arm. Henry returned to the green pod approximately 30 minutes later.[59]

50. Upon her return to the green pod, Henry saw Appellant standing by the sink in the common area of the green pod. Henry saw Appellant with her hand on C.W.'s bicep. C.W.

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[53] *Id.;* TR (1-13), p. 225.
[54] TR (1-13), p. 136.
[55] TR (1-15), pp. 73-75.
[56] TR (1-15), pp. 75-76.
[57] TR (1-13), pp. 139-140.
[58] TR (1-13), p. 216.
[59] TR (1-13), pp. 140-142.

dropped to the floor on his back and began to kick his legs in a "scissors" or "bicycle" kick. Appellant did not immediately release her hand from C.W.'s bicep. C.W. said words to the effect of "Let go of me."[60]

51. At one point, Dull heard Appellant tell C.W. that he was being "naughty" and was not making good choices.[61]

52. Before this event, C.W. had been heard by Appellant and, on various occasions, school staff Angela Huffstickler, Sharla Whitten, and Edica Liebl state that someone was hurting him when, in fact, he was not being hurt.[62]

53. Dull did not see the second interaction between Appellant and C.W. in which Appellant grasped C.W.'s bicep.

54. Dull reported the interaction she witnessed between Appellant and C.W. to Principal Case during the afternoon of September 12, 2013. [63]

55. Henry reported both interactions she witnessed between Appellant and C.W. to Principal Case during the afternoon of September 12, 2013.[64]

56. Neither Dull nor Henry reported Appellant's contacts with C.W. to law enforcement or to the Department of Human Services as a mandatory child abuse report (the lack of a report was not an issue in this case or any part of this case).[65]

57. C.W. was not physically injured and was not taken for medical care as a result of his interactions with Appellant.

58. On September 13, 2013, Appellant was interviewed by Principal Case and Assistant Superintendent Chris Parra. Appellant's attorney, Nathan Rietmann, was present by telephone. Appellant denied several times holding C.W.'s arm. She stated that she held only his

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[60] TR (1-13), pp. 140-142.
[61] TR (1-13), pp. 216, 220; TR (1-15), p. 89.
[62] TR (1-15), p. 164; TR (1-15), pp. 193-194; TR (1-15), p. 218.
[63] TR (1-13), p. 220.
[64] TR (1-13), p. 142.
[65] *See, e.g.*, TR (1-13), p. 156.

hand. Appellant stated that she had let go when C.W. stated that Appellant was hurting him. Appellant denied that C.W. was on the ground at any time during their interactions.

59. This panel finds that both Henry and Dull are credible witnesses who provided accurate accounts at the hearing.

60. This panel finds that Appellant did not accurately describe to Principal Case and Assistant Superintendent Parra her interaction with C.W. when she denied that she held on to C.W.'s bicep and when she denied that C.W. was on the floor at any time during their interaction.

Appellant's Dismissal

61. Assistant Superintendent Chris Parra transmitted to Appellant a memorandum dated September 18, 2013 notifying Appellant of a pre-termination hearing scheduled for September 20, 2013. The memorandum stated, "Due to your repeated inappropriate interactions during the 2012-2013 and 2013-2014 school years Superintendent Gill is considering recommending to the Bethel School District Board of Directors your dismissal from employment in the Bethel School District."[66] The memorandum stated that Appellant had "repeatedly engaged in inappropriate interactions with students," "repeatedly failed to follow the directives provided to you," "engaged in corporal punishment," and "repeatedly have been dishonest in reporting of your actions."

62. Appellant requested an extension of time to respond to Assistant Superintended Parra's memorandum. The District granted the extension. On September 27, 2013, Appellant submitted a written response in lieu of attending the pre-termination meeting.[67]

63. Superintendent Gill decided to personally interview Debbie Dull and LeeAnn Henry. He also reviewed Appellant's personnel file and Appellant's written statement submitted in lieu of attending the pre-termination meeting.[68]

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[66] Exhibit A-1, p. 2.
[67] Exhibit A-2.
[68] TR (1-14), pp. 100-104.

64. In a letter dated October 1, 2013, Superintendent Gill notified Appellant that he would be recommending her dismissal to the Bethel Board of Directors at a special school board meeting to be held at noon on October 21, 2013.[69] The letter identified neglect of duty as the basis for dismissal, and cited the five events listed above.

65. In a letter dated October 19, 2013, Appellant submitted a statement and supporting materials in support of her position that dismissal was not warranted.[70] The District provided the materials to the school board members before the hearing.

66. On October 21, 2013, the school board voted unanimously to dismiss Appellant on the basis of neglect of duty, effective immediately.[71]

CONCLUSIONS OF LAW

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

2. The facts set forth above are true and substantiated.

3. With regard to the September 18, 2012 event, the factual allegation that Student L.R. was actually embarrassed when Appellant talked with her about her attire in the cafeteria is not true or substantiated.

4. With regard to the January 11, 2013 event, the factual allegation that Appellant had "negative verbal interactions" with sixth grade boys at lunch is not true or substantiated.

5. With regard to the January 11, 2013 event, the factual allegation that Appellant had a "verbal confrontation" with the parent of Student T.W. in front of students is not true or substantiated.

6. With regard to the January 11, 2013 event, the factual allegation that Appellant called T.W. to her office and talked to or "yelled" at him in private about her interaction with his mother is not true or substantiated.

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[69] Exhibit D-1.
[70] Exhibit A-4.
[71] Exhibit D-2.

7. The true and substantiated facts are adequate to support the charge of neglect of duty as a ground for dismissal.

8. In light of the true and substantiated facts and all the evidence presented at the hearing, the dismissal was not unreasonable, arbitrary or clearly an excessive remedy.

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 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. The True and Substantiated Facts Are Adequate to Justify the Statutory Ground for Dismissal of Neglect of Duty.

A. Overview and Legal Standard.

This panel concludes that the true and substantiated facts are adequate to support dismissal for neglect of duty within the meaning of ORS 342.865(1)(d). The panel concludes that the September 12, 2013 event (Appellant's touching of Student C.W. and her failure to accurately describe what occurred when she was interviewed), standing alone, constitutes neglect of duty sufficient to support dismissal. In the alternative, and as an independent basis for its order, this panel concludes that the September 12, 2013 event combined with the May 2, 2013 event (Appellant's interactions with female students in the principal's office regarding dress code compliance, and then failure to accurately report what occurred to Principal Flick) constitute neglect of duty sufficient to justify dismissal. In the alternative, and as a second independent basis for its decision, the panel also decides that the May 2, 2013 event and the September 12, 2013 event, combined with either or both the September 18, 2012 event (Appellant talking with Student L.R. about her attire in front of other students in the cafeteria) and/or the October 11, 2012 event (Appellant referring to Student T.S. by referring to his use of a wheelchair) constitute a cumulative neglect of duty sufficient to justify dismissal.

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 04-7, p. 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 School Dist.*, 206

Or App 186, 196, 136 P3d 93 (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,* 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).

It is well-established that an FDAB panel, in determining whether true and substantiated facts constitute neglect of duty, is not limited to the most recent, triggering incident. The panel may consider multiple incidents, even if the teacher or administrator has already been disciplined for them. Together, such multiple incidents may constitute a cumulative neglect of duty. In *Bellairs,* the terminated teacher argued that the FDAB panel erred in assuming that multiple minor incidents for which he had already been disciplined could rise to the level of neglect of duty. The court of appeals flatly rejected this argument. The court wrote, "[A] district may consider a teacher's 'past record of defaulting on * * * responsibilities' in determining whether that teacher failed in particular instances to engage in conduct designed to bring about performance of required duties." *Bellairs,* 136 P3d at 99, 206 Or App at 197 (*quoting Fisler v. Hermiston School District,* FDA 84-1, 24-26 (1985)). The *Bellairs* court also cited with approval *Barnes v. Fair Dismissal Appeals Bd.,* 25 Or App 177, 548 P2d 988 (1976), in which the court held that an FDAB panel did not err in upholding a dismissal based on a series of incidents, some of which had occurred more than four years before dismissal.

B. The District Established Duties Applicable to Appellant's Conduct.

We begin our analysis with a discussion of the applicable duties in this case. In general, neglect of duty means the failure of a teacher or administrator to engage in conduct designed to bring about a performance of his or her responsibilities. *Bellairs,* 206 Or App at 196. In addition to this general duty, the District established Appellant's specific duties relevant to the performance of her responsibilities. The District established that is uses a document entitled "Bethel Dimensions of Leadership" as a tool to evaluate administrators and communicate the

District's view of its expectations of administrators. The District established that the following duties were expected of Appellant: (1) As a component of organizational leadership, "Establish and maintain a culturally competent, safe, effective learning environment that is orderly and disciplined"; (2) As components of interpersonal leadership, "Communicate[] effectively to build trust with all stakeholders (including students, staff, families, colleagues, supervisors, and community)," and "Encourage others, by example and practice, to express ideas and feelings. Listen to others' input and concerns, validate their input, and actively seek positive and proactive resolutions"; and (3) As components of ethical leadership, "Act with integrity, cultural sensitivity, fairness, honesty, and in an ethical manner," and "Actively demonstrate sensitivity to the social and cultural context in which the school resides."[72]

Appellant also conceded that, as an administrator, she had (a) a duty to tell the truth in the investigation of a complaint, (b) a duty to follow her supervisor's directions, (c) a duty to build trust with students, parents, and staff, (d) a duty to communicate effectively with students, parents, and staff, (e) a duty to act in a way that provides an inclusive and respectful environment for all students, (f) a duty, while interacting with students, to control her own emotional reactions, (g) a duty to model appropriate behavior for students and staff, including modeling behavior about how to act in contentious situations, (h) a duty to follow rules and agreements with regard to how a particular student is to be handled, (i) a duty to use positive behavior interactions at Meadow View School and to model those interaction for students, (j) a duty to observe respect and sensitivity in dealing with students, including sensitivity to a student's standards of privacy, and (k) when it is known that a student is not comfortable with touch, a duty to observe that student's boundaries and make appropriate adjustments.[73]

C. Alleged Facts That Are Not True and Substantiated.

Because most of the facts on which the dismissal was based <u>are</u> true and substantiated, we next discuss our conclusion that some alleged facts were not true and substantiated. As

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[72] Exhibit D-13.

[73] TR (1-15), p. 110-116.

discussed in detail below, however, our conclusion that some of the facts are not true and substantiated is not a sufficient basis for us to overturn the dismissal. In this case, the true and substantiated facts nonetheless support dismissal.

First, this panel finds that the allegation that Student L.R. was actually embarrassed when Appellant talked with her in the cafeteria in front of, but not within earshot of, other students about L.R.'s attire on or around September 18, 2012 was not true and substantiated. The District did not present L.R. as a witness, nor did it present her mother as a witness. Instead, the District relied solely on the hearsay testimony of Principal Flick. The panel concludes that the evidence on this specific factual allegation was uncorroborated hearsay, and not sufficient to demonstrate that L.R. was actually embarrassed. *See, e.g., Reguero v. Teacher Standards and Practices Commission,* 312 Or 402, 421, 822 P2d 1171 (1991) (hearsay alone is inadequate to support dismissal; hearsay must be corroborated to support dismissal). The District did not prove by a preponderance of the evidence that L.R. was actually embarrassed by her interaction with Appellant. As described further below, the panel finds, however, that Appellant called L.R. up to the front of the cafeteria and talked to her, in view of other students, about L.R.'s attire.

This panel also concludes that the following factual allegations are not true or substantiated: (a) the allegation that Appellant had "negative verbal interactions" with sixth grade boys at lunch on or about January 11, 2013, (b) the allegation that Appellant had a "verbal confrontation" with the parent of Student T.W. in front of students that same day, and (c) the allegation that Appellant met privately with T.W. and talked with him directly about her interaction with his mother. The panel concludes that the evidence is in equipoise; the District did not prove the alleged facts by a preponderance of the evidence.

Specifically, the District presented April Pruitt, the mother of T.W., who testified that Appellant raised her voice at both her son and at her during a lunch break on a day when Ms. Pruitt had brought pizza in for T.W. to share with his friends during lunch, as part of the point-

based positive reinforcement award system agreed to by Principal Flick.[74] The panel notes that Ms. Pruitt's recollection of the sequence of events conflicts with the testimony of Principal Flick, who testified that he did not agree to the "points" system until his meeting with Ms. Pruitt *after* her alleged negative interaction with Appellant in the lunchroom.[75] Appellant denied that she raised her voice to either Ms. Pruitt or T.W. Appellant also presented Dianna Albert, who testified that neither Ms. Pruitt nor Appellant raised their voices.[76] Appellant also presented a statement that Ms. Albert wrote, dated October 16, 2013, approximately nine months after the event.[77] In her statement in which Ms. Albert recounted Appellant's interactions with T.W., however, Ms. Albert stated that Appellant talked with Ms. Pruitt "in a calm manner, but things did not seem to go well." The panel does have some doubts about the reliability of the specificity of Ms. Albert's note, which both states that problems with T.W. were a "daily happening," but also purports to describe the particular interaction between Appellant and Ms. Pruitt with some specificity. In any event, the panel concludes that the contradictions in the testimony are sufficient for the panel to conclude that the District did not prove by a preponderance of the evidence the alleged facts related to the January 11, 2013 event.

As described below, however, the factual allegations related to the remaining four events on which the District's dismissal decision was based are true and substantiated. The District is not required to prove all facts on which the dismissal is based to sustain the dismissal. Even when all facts are not proven, an FDAB panel must affirm the district unless we can say that no reasonable school board would have found the facts sufficient for dismissal. *Jefferson County School District Number 509-J v. Fair Dismissal Appeals Board,* 311 Or 589, 398, 812 P2d 1384 (1991). This panel cannot say that no reasonable school board would have found the true and substantiated facts, as set forth below, sufficient for dismissal. Therefore, we sustain the District's decision.

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[74] TR (1-14), p. 162-163.
[75] TR (1-13), p. 73.
[76] TR (1-15), p. 250.
[77] Exhibit A-4, p. 65.

D. Appellant's Conduct on September 12, 2013 Constituted Neglect of Duty.

This panel concludes that Appellant's conduct on September 12, 2013, standing alone, constitutes neglect of duty sufficient to support dismissal. By September 12, 2013, it was clear to Appellant as well as to others at the school that Student C.W. repeatedly left his classroom and wandered around the school building, and required frequent, if not constant, one-on-one supervision.[78] Appellant testified that she was herself asked by the principal to provide one-on-one monitoring for C.W.[79] Appellant also testified that at the beginning of the 2013-2014 school year Appellant, the principal, C.W.'s teachers, and a behavioral specialist had already met once to discuss putting a behavior plan in place for C.W. because he was refusing to go to class.[80] Appellant knew that C.W. had been born prematurely, had physical issues, and had persistent behavioral issues.[81] The school team devised a plan to motivate C.W. to comply with the school's procedures by giving him the option of two break spaces (the Title 1 room or the office), as well as a dinosaur on which he could place stickers. In other words, Appellant was well-aware at the beginning of the year that C.W. had physical issues, was non-compliant, and would be managed through positive reinforcement and rewards.

Despite that fact, this panel finds that Appellant neglected her duties as an administrator when she grabbed C.W.'s wrist and did not immediately let go when C.W. protested that she was hurting him. This panel also finds that Appellant neglected her duties as an administrator when she held C.W.'s bicep and did not immediately release her hold when C.W. dropped to the ground and began "bicycle" or "scissor" kicking. The panel also finds that Appellant failed to accurately describe to Principal Case and Assistant Superintendent Parra what occurred.

Appellant's physical contact with C.W. constituted neglect of multiple duties. Appellant's conduct neglected the component of Bethel's Dimensions of Leadership that requires administrators to maintain a safe, effective learning environment that is orderly and

[78] *See, e.g.*, TR (1-13), p. 136.
[79] TR (1-15), pp. 71-75.
[80] TR (1-15), p. 73.
[81] TR (1-15), p. 74.

disciplined. Although C.W. was not injured and was not taken for medical treatment, Appellant's treatment of C.W. did not contribute to an orderly and disciplined learning environment. Her conduct also resulted in noticeable and sincere distress for C.W., Ms. Henry, and Ms. Dull and therefore did not contribute to an effective learning environment.

Appellant's conduct also neglected her duties listed in Bethel's Dimensions of Leadership to communicate effectively to build trust and to encourage others, by example and practice, to express feelings. Appellant's conduct also neglected the duty she conceded she has to effectively manage her emotions and to engage in positive behavior interactions. After hearing the testimony, this panel concluded that Appellant became so frustrated with C.W. that she lost her patience with him, and abandoned any attempts to manage his behavior through positive reinforcement. The panel observes that Appellant's conduct on September 12, 2013 was not an isolated instance of an administrator making an instinctive, reactive error in response to an unforeseen event or stimulus. This panel concludes that Appellant both grabbed C.W.'s forearm and did not immediately release it when C.W. protested, and subsequently grabbed C.W.'s forearm and did not immediately release it when C.W. dropped to the floor and began "bicycle" or "scissor" kicking. Even if Appellant's conduct in grabbing C.W.'s forearm could be excusable as an aberration, in this case it was not an aberration. Appellant repeated the same behavior slightly later that morning when she grabbed C.W.'s bicep.

Appellant's conduct also neglected her duty to accurately report what occurred when she was interviewed by the principal and the assistant superintendent. During her testimony, Appellant conceded that she has a duty to tell the truth in the investigation of a complaint.[82] By the time of her interaction with C.W., Appellant had already received, the previous May, a one-day suspension without pay for failing to provide an accurate report of an event after a parent complaint.[83] This panel concludes that Appellant was well-aware of her duty to accurately report events, but she neglected it nonetheless.

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[82] TR (1-15), p. 110-111.

[83] Exhibit D-6, pp. 8-9.

In reaching its conclusions, this panel recognizes the minor inconsistencies in the details given by the two eyewitnesses, LeeAnn Henry and Debbie Dull, but concludes the inconsistencies are not sufficient to undermine the panel's findings. For example, Ms. Henry testified that she was with a student when Appellant grabbed C.W.'s forearm, but Ms. Dull testified that Ms. Henry was not with a student when Appellant grabbed C.W.'s forearm.[84] This panel concludes that those minor inconsistencies are normal variations in perception and memory, and not indicia of lack of candor on the part of either witness. It is not surprising that Ms. Henry and Ms. Dull do not remember the precise placement of individuals and other details in exactly the same way in light of the fact that Appellant's handling of C.W. was clearly upsetting to both of them.

This panel also observes that both witnesses were visibly upset at times during their testimony, a factor the panel took into account in crediting their accounts and determining that they were both credible witnesses. The panel observes that LeeAnn Henry and Debbie Dull were both emotional when they separately described the event to Superintendent Gill during his own review of the event, another fact that the panel concluded weighs in favor of their credibility.[85]

The panel also concludes that neither LeeAnn Henry nor Debbie Dull had a motive to falsely accuse Appellant of inappropriately grabbing or holding on to C.W. Ms. Henry testified that she had "concerns" about Appellant as a supervisor, but Ms. Henry had not taken any steps to request a different evaluator of her performance. Ms. Henry conceded that she could have done so and that the principal would likely have granted her request.[86] Appellant's counsel asked Ms. Dull whether Appellant had ever disciplined her husband, who is a District employee, but Ms. Dull testified that to her knowledge Appellant had never done so, although her husband

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[84] TR (1-13), p. 229 (Dull's testimony about Henry: "She was getting kids, but she did not have a kid there at that time. I think she was doing some paperwork or something. I'm not quite sure."); TR (1-13), p. 138 (Henry's testimony: "I was doing first grade language screening with one student. A little girl.").
[85] TR (1-14), pp. 100-103.
[86] TR (1-13), pp. 157.

and Appellant had "butted heads every once in a while."[87] This panel was not persuaded that it should discount or disregard the testimony of either Ms. Henry or Ms. Dull.

Finally, the panel observes that Appellant herself reported to the team meeting later that day, convened to discuss C.W.'s behavior management, that she had grabbed C.W.'s wrist earlier that day.[88] On balance, the panel believes the accounts of Ms. Henry and Ms. Dull, and concludes that Appellant grabbed C.W.'s forearm and held on even when C.W. said words to the effect of "Ow, you're hurting me," and later the same day, Appellant grabbed C.W.'s bicep and held on to it even after C.W. dropped down to the floor and began "bicycle" or "scissor" kicking.

In sum, this panel concludes that Appellant's interactions on September 12, 2013 with C.W. and her failure to accurately describe them when interviewed constituted neglect of her duties as administrator. Her conduct related to the September 12, 2013 event, considered on its own, was sufficient to support dismissal.

E. In the Alternative, Appellant's conduct on May 2, 2013 *and* September 12, 2013 Constituted Neglect of Duty.

As an alternative, and independent, basis for its decision, this panel concludes that the cumulative effect of Appellant's conduct on September 12, 2013, as discussed above, after her conduct on May 2, 2013, constitutes neglect of her duties as an administrator.

This panel concludes that Appellant was well-aware by May 2, 2013 that Principal Flick wanted her to address potential dress code violations with students privately and in a manner that minimized any potential embarrassment to the student or students involved.[89] While Appellant may not have agreed with that approach, Principal Flick had clearly communicated that expectation to her the year before, in September 2012, after L.R.'s mother complained to

[87] TR (1-13), p. 237.
[88] TR (1-13), p. 148.
[89] Exhibit D-3, p. 1.

Principal Flick about Appellant addressing her daughter about her daughter's attire in front of students in the cafeteria.[90]

Despite this clear communication of Principal Flick's expectations, Appellant nonetheless called a group of female students from the seventh and eighth grades, not all of whom were friends, into Principal Flick's office on May 2, 2013. Appellant examined the length of each girl's shorts while the girls were standing in a group in the principal's office. The fact that Appellant examined all the girls in a large group was corroborated by the testimony of two school secretaries, Darlene Fisher and Jennifer Lister, who both testified that they saw Appellant meet with the students in a group in Principal Flick's office.[91] Appellant's conduct in addressing the girls in a group neglected her duty to follow Principal Flick's directive from the year before that she address possible dress code violations in private with the affected student. Appellant also neglected her duty to act with cultural sensitivity and to actively demonstrate sensitivity to the social and cultural context in which the school resides (the first and third components of the ethical leadership aspect of the Bethel Dimensions of Leadership).[92]

Further this panel concludes that Appellant lifted up Student A.T.'s shirt in front of the other students who were gathered in Principal Flick's office. All three of the students who testified about the incident testified that Student A.T. was immediately to the left of Appellant. All three students testified that Appellant lifted up A.T.'s shirt, revealing the waistband of A.T.'s underwear, which was visible to at least some of the girls in the group. This panel found all three students who testified—A.T., L.R., and E.S.—credible.

Finally, this panel concludes that Appellant was not accurate in her report to Principal Flick about whether she pulled A.T.'s shirt up above her waist. Appellant denied that she pulled A.T.'s shirt up. This panel concludes that Appellant did pull A.T.'s shirt up, but nonetheless denied that fact to Principal Flick.

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[90] Exhibit D-3, p. 2.
[91] TR (1-14), p. 249; TR (1-15), p. 203.
[92] *See* Exhibit D-13.

Appellant's conduct in lifting up A.T.'s shirt and in addressing the girls in a group neglected her duty to follow Principal Flick's directive from the year before, in September 2012, that she address possible dress code violations without embarrassing the student. Appellant should have known that lifting up a middle school student's shirt in front of the student's peers would cause, or would likely cause, embarrassment for the student. Appellant also neglected her duty to act with cultural sensitivity and to actively demonstrate sensitivity to the social and cultural context in which the school resides. Appellant also neglected her duty to accurately report to Principal Flick the fact that she had pulled A.T.'s shirt up above her waist.

This panel recognizes that the evidence related to this event was not entirely consistent. For example, Appellant denied that she was standing next to A.T, which conflicted with the accounts of the three students who testified.[93] The panel also recognizes, with some concern, that Principal Flick spoke with only six of the students involved, when it should have been straightforward to talk with all the students who were present.[94] Nonetheless, this panel found the students who testified at the hearing to be credible. This panel credits the students' accounts as accurate. There was no evidence presented that the students collaborated or that any of them had any motive to be inaccurate in their testimony or harbored any bias against Appellant. This panel concludes, therefore, that the facts related to the event on May 2, 2013 are true and substantiated and, as explained above, in combination with the events on September 12, 2013, the cumulative effect of Appellant's conduct on these two occasions neglected her duty as an administrator.

F. In the Alternative, Appellant's Conduct on September 18, 2012, October 10, 2012, May 2, 2013, and September 12, 2013 Constituted Neglect Of Duty.

In the alternative, and as a second independent basis supporting its opinion, this panel also concludes that the cumulative effect of the September 12, 2013 event and the May 2, 2013

[93] TR (1-15), pp. 56, 67 (contending that the student whom Appellant was standing next to was named "Kaya," a witness who was not presented at hearing).
[94] *See* Exhibit D-6, pp. 2-5.

event, combined with either or both the September 18, 2012 event (Appellant talking with Student L.R. about her attire in front of other students in the cafeteria) and/or the October 10, 2012 event (Appellant referring to Student T.S. by referring to his use of a wheelchair) constitute a cumulative neglect of duty sufficient to justify dismissal.

This panel concludes that the facts related to Appellant's conduct on September 18, 2012 are true and substantiated. The panel finds that Appellant called student L.R. to the front of the cafeteria and talked with her about her attire in view of, although not within earshot of, other students. Although the panel finds that there was no evidence that L.R. was actually embarrassed by the conversation, the District did establish by a preponderance of the evidence that this event did occur. Appellant's handling of a possible dress code violation by addressing a female student in view of her peers neglected Appellant's duty to effectively build trust with students, to act with cultural sensitivity, and to actively demonstrate sensitivity to the social and cultural context in which Meadow View School resides, all duties set forth in the Bethel Dimensions of Leadership.

This panel also concludes that the facts related to Appellant's conduct on October 10, 2012 were also true and substantiated. In front of T.S.'s peers, Appellant addressed Student T.S. as either "wheelchair boy" or "you in the wheelchair." Appellant admitted that she addressed T.S. by reference to his use of a wheelchair because she did not know T.S.'s name. The panel agrees with the District that it does not matter whether Appellant used the phrase "wheelchair boy" or the phrase "you in the wheelchair." Referring to a student by a student's use of a wheelchair is clearly inappropriate and unacceptable, which Appellant should have known given her number of years of service as an educator.

Appellant's conduct in addressing T.S. by referring to his use of a wheelchair neglected her duties as an administrator to help to maintain a culturally competent learning environment, a component of the organizational leadership duty of the Bethel Dimensions of Leadership. This panel specifically notes that Appellant, as an administrator, should have been responsible for

modeling for students respect for individuals with disabling conditions. In this instance, Appellant neglected that duty. Appellant's conduct also violated her duties to communicate effectively to build trust with students, to act with cultural sensitivity, and to actively demonstrate sensitivity to the social and cultural context in which Meadow View School resides.

This panel concludes that these two events, in combination with either or both the May 2, 2013 event and/or the September 12, 2013 event discussed above, are adequate to support dismissal on the basis of neglect of duty.

G. The Dismissal Was Not Unreasonable, Arbitrary or Clearly an Excessive Remedy.

Finally, this panel finds that, in light of all the evidence presented during the three-day hearing in this matter, the District's dismissal of Appellant was not unreasonable, arbitrary or clearly and excessive remedy. The applicable legal principle is contained in ORS 342.905(6), which provides, in part:

> 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). In this case, we cannot say that the dismissal was unreasonable, arbitrary or clearly an excessive remedy. Appellant had received multiple communications from the District to improve her communications and her sensitivity to the way in which others perceived her communications.[95] She nonetheless appeared not to do so, as exemplified in her reference to a student as "wheelchair boy" or "you in the wheelchair." Appellant received a specific directive from Principal Flick to deal with dress code issues privately, yet it is undisputed that Appellant called a group of eleven or twelve female students into Principal Flick's office on May 2, 2013 and addressed the issue in front of a group. Two of the incidents at issue in this case involve

[95] *See, e.g.*, Exhibit D-9, and the performance reviews contained therein.

Appellant touching students: the May 2, 2013 event, in which Appellant pulled Student A.T.'s shirt up, and the September 12, 2013 event in which Appellant held on to Student C.W.'s wrist and then, soon thereafter, held on to his bicep. The District twice warned Appellant that her behavior was not acceptable, in both a written reprimand and with a one-day suspension without pay. In light of this evidence, and the clear indications to Appellant that her performance of her duties was not meeting the District's expectations, this panel cannot find that the dismissal was unreasonable, arbitrary or clearly an excessive remedy.

ORDER

The dismissal of Appellant is sustained and the appeal is dismissed.

DATED this April 8, 2014

Ron Gallinat, Panel Chair

Dennis Ross, Panel Member

Christy Perry, 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.

Appellant touching students: the May 2, 2013 event, in which Appellant pulled Student A.T.'s shirt up, and the September 12, 2013 event in which Appellant held on to Student C.W.'s wrist and then, soon thereafter, held on to his bicep. The District twice warned Appellant that her behavior was not acceptable, in both a written reprimand and with a one-day suspension without pay. In light of this evidence, and the clear indications to Appellant that her performance of her duties was not meeting the District's expectations, this panel cannot find that the dismissal was unreasonable, arbitrary or clearly an excessive remedy.

ORDER

The dismissal of Appellant is sustained and the appeal is dismissed.

DATED this 8 April, 2014

Ron Gallinat, Panel Chair

Dennis Ross, Panel Member

Christy Perry, Panel Member

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Appellant touching students: the May 2, 2013 event, in which Appellant pulled Student A.T.'s shirt up, and the September 12, 2013 event in which Appellant held on to Student C.W.'s wrist and then, soon thereafter, held on to his bicep. The District twice warned Appellant that her behavior was not acceptable, in both a written reprimand and with a one-day suspension without pay. In light of this evidence, and the clear indications to Appellant that her performance of her duties was not meeting the District's expectations, this panel cannot find that the dismissal was unreasonable, arbitrary or clearly an excessive remedy.

ORDER

The dismissal of Appellant is sustained and the appeal is dismissed.

DATED this April 8, 2014

Ron Gallinat, Panel Chair

Dennis Ross, Panel Member

Christy Perry, 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 4-9-14, I served a true and correct copy of FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER by the method indicated below:

Nathan R. Rietmann Attorney at Law 1270 Chemeketa St. NE Salem, OR 97301	[ ] [X] [ ] [ ] [ ]	HAND DELIVERY U.S. MAIL - CERTIFIED OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY
Nancy Hungerford The Hungerford Law Firm LLP 653 S. Center Street P.O. Box 3010 Oregon City, OR 97045	[ ] [X] [ ] [ ] [ ]	HAND DELIVERY U.S. MAIL - CERTIFIED OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY

Respectfully submitted,

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