2024-2025 SUPPLEMENT
TO
COMPILATION OF FAIR DISMISSAL APPEALS BOARD CASES

Cases Interpreting Causes for Dismissal
Under ORS 342.865
And
Selected Procedural Matters

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A. INEFFICIENCY

***Brooke Deaton v. Sutherlin School District*,** FDA-24-04 (2025)

Appellant's termination from her position as a middle school physical education teacher resulted from her failure to supervise students and provide instruction during the period from February 2024 through April 22, 2024. She taught her P.E. classes with a co-teacher.

Before the events that resulted in her dismissal, Appellant received a written reprimand in 2019, which directed her "to refrain from discussing legal matters from your personal life with any student or staff member" during work time and to "refrain from speaking about other district personnel in a negative or derogatory manner as outlined in your collective bargaining agreement."

On February 6, 2024, during their P.E. class, Appellant and her co-teacher sat on a bench at the side of the gym for 15 minutes at the beginning of the P.E. class. Neither of them left the bench while larger students repeatedly surrounded a smaller student and took his basketball away, apparently taunting him, and ultimately closed him in the equipment room for several minutes by leaning against the door. Appellant also did not supervise the locker room during this time, although students were going in and out of the locker room.

On April 1, 2024, at the end of a class period, Appellant remained in the gym with her co-teacher and did not supervise the locker room while students were changing to get ready for the next class period.

On April 2, 2024, Appellant remained in the upstairs portion of the gym, adjusting the "walls" of a structure made of gymnastics mats that Appellant and other witnesses described as the "fort." The walls obstructed Appellant's view of the gym below. Appellant remained in the "fort" while a student entered the gym.

On April 22, 2024, Appellant and her co-teacher held their combined P.E. class at the high school field across the street from the middle school. After the class, Appellant and her co-teacher left the field and crossed the street walking side by side with their backs to the field, while the students remained on the field behind them. The students then walked unsupervised in groups back to the middle school, crossing the street while unsupervised. Students reported later to the principal that they were late for their next class because Appellant and her co-teacher left them on the field.

Appellant was placed on administrative leave during an investigation into her conduct. The letter directed her not to "have conversations with students, staff, community members or others regarding the investigation."

During the investigation, Appellant sent a text to the school board chair, with whom she had a friendship, stating, "I guess I'm getting fired? No one told me." Later in the investigation, she texted him again, writing that she was contacting him in his capacity as board chair. She listed several people she had unsuccessfully tried to contact, including a union representative,

and wrote, “Can you please give me some guidance on who I can talk to about my concerns?” Before the chair responded, Appellant texted “[n]ever mind” and wrote that her union representative had contacted her.

After receiving a letter from the superintendent notifying her that he would be recommending dismissal to the school board, Appellant posted a comment in a Facebook group that stated that she would be terminated at the July 15 school board meeting and that she believed the school board would “cover up the district’s wrongdoing.”

After a meeting Appellant attended, in which the school board asked Appellant questions, the board voted to dismiss Appellant on the grounds of neglect of duty, inefficiency, and insubordination.

The panel concluded that the substantiated facts were adequate to support the charge of inefficiency. “Inefficiency” refers to a teacher’s use of time training, and resources to meet the requirements of the job, and inefficiency exists where that use is defective or lacking. *Ferguson v. Dayton School Dist*., FDA-04-06 at 23 (2004), *aff’d*, Or App A127323 (2006).

The panel found that Appellant used class time to talk with her co-teacher, while being unengaged with the students she was responsible for supervising. The panel found that Appellant began her class with 15 minutes of unstructured free time, rather than instruction. The panel found that Appellant’s failure to supervise and failure to provide instruction during this 15-minute time was sufficient to establish inefficiency.

B. IMMORALITY (no cases cited)

C. INSUBORDINATION

***Brooke Deaton v. Sutherlin School District*,** FDA-24-04 (2025)

Appellant’s termination from her position as a middle school physical education teacher resulted from her failure to supervise students and provide instruction during the period from February 2024 through April 22, 2024. She taught her P.E. classes with a co-teacher.

Before the events that resulted in her dismissal, Appellant received a written reprimand in 2019, which directed her “to refrain from discussing legal matters from your personal life with any student or staff member” during work time and to “refrain from speaking about other district personnel in a negative or derogatory manner as outlined in your collective bargaining agreement.”

On February 6, 2024, during their P.E. class, Appellant and her co-teacher sat on a bench at the side of the gym for 15 minutes at the beginning of the P.E. class. Neither of them left the bench while larger students repeatedly surrounded a smaller student and took his basketball away, apparently taunting him, and ultimately closed him in the equipment room for several minutes by leaning against the door. Appellant also did not supervise the locker room during this time, although students were going in and out of the locker room.

On April 1, 2024, at the end of a class period, Appellant remained in the gym with her co-teacher and did not supervise the locker room while students were changing to get ready for the next class period.

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Appellant was placed on administrative leave during an investigation into her conduct. The letter directed her not to "have conversations with students, staff, community members or others regarding the investigation."

During the investigation, Appellant sent a text to the school board chair, with whom she had a friendship, stating, "I guess I'm getting fired? No one told me." Later in the investigation, she texted him again, writing that she was contacting him in his capacity as board chair. She listed several people she had unsuccessfully tried to contact, including a union representative, and wrote, "Can you please give me some guidance on who I can talk to about my concerns?" Before the chair responded, Appellant texted "[n]ever mind" and wrote that her union representative had contacted her.

After receiving a letter from the superintendent notifying her that he would be recommending dismissal to the school board, Appellant posted a comment in a Facebook group that stated that she would be terminated at the July 15 school board meeting and that she believed the school board would "cover up the district's wrongdoing."

After a meeting Appellant attended, in which the school board asked Appellant questions, the board voted to dismiss Appellant on the grounds of neglect of duty, inefficiency, and insubordination.

The panel concluded that the true and substantiated facts were not adequate to justify the statutory ground of insubordination. Insubordination within the meaning of ORS 342.865(1)(c) means disobedience of a direct order or unwillingness to submit to authority; it must be accompanied by a defiant intent or attitude on the part of the teacher. *Bellairs v. Beaverton Sch. District*, 206 Or App 186, 199, 136 P3d 93 (2006). To establish insubordination, there must be credible evidence that the district imposed a lawful order or directive, that it clearly communicated that order or directive, and that the teacher willfully refused to obey the order. *Sherman v. Multnomah Education Service Dist*., FDA-95-4 at 22-23 (1996).

The panel declined to consider Appellant's 2019 reprimand as a directive for its analysis because Appellant's 20-day notice relied only on the April 2024 administrative leave letter. That letter prohibited Appellant from having conversations "regarding the investigation." Neither of Appellant's texts to the board chair were about the investigation. The panel concluded that even assuming that the administrative leave letter was a lawful order, Appellant did not willfully refuse to obey it.

The panel also found that Appellant's two texts did not demonstrate the type of defiant intent or attitude required by FDAB precedent. When the board chair did not respond to her texts, she did not persist in her communication, such as by sending follow-up texts. Further, in her second text, she rescinded her question about who to contact after her union representative contacted her, demonstrating that she was genuinely seeking guidance rather than seeking to communicate about the investigation. There was no other contextual or other evidence sufficient to conclude that Appellants text evince a defiant intent.

Laura Martin v. Gresham-Barlow School District**,** FDA-24-06 (2025)

This case arose from a teacher's dismissal after a two-year absence on unapproved, unpaid leave during the 2023-2024 and 2024-2025 school years.

Appellant was an English teacher at Sam Barlow High School. Over the course of her employment, Appellant and the district had engaged in interactive processes to identify workplace modifications to accommodate Appellant, who has asthma.

At the beginning of the 2022-2023 school year, Appellant was absent from work. The district provisionally granted Appellant medical leave under the Family and Medical Leave Act (FMLA) and Oregon Family Leave Act (OFLA). After the FMLA and OFLA leaves exhausted, Appellant did not respond to multiple communications from the district asking Appellant whether she intended to request other leaves or return to work. Ultimately, in February 2023, the superintendent notified Appellant that he intended to recommend Appellant's dismissal. In response, Appellant's counsel asked the district to grant Appellant an unpaid leave of absence for the remainder of the 2022-2023 school year.

At the outset of the 2023-2024 school year, Appellant and the district engaged in an interactive process to discuss reasonable accommodations to enable Appellant to return to work for the year. The district granted or substantially granted most of Appellant's requested accommodations. At the end of August 2023, a human resources employee wrote to Appellant informing her that the District was willing to grant her an unpaid leave of absence for the 2023-2024 school year as an accommodation, and "requesting" that Appellant inform the district by September 5 about whether she would accept the accommodations offered and return to work.

Appellant responded on September 5, 2023 stating that she did "not wish to take unpaid leave for another year." Appellant also advocated for additional accommodations. A district representative responded, explaining why the district declined the requested accommodations. She asked Appellant to identify by September 12 whether she accepted the accommodations or would take leave under FMLA, OFLA, or Paid Leave Oregon. The email informed Appellant

that if she did not respond by the deadline, "the district will assume you have chosen to enter into unpaid leave for the 2023-2024 school year."

After using her remaining FMLA/OFLA leave, beginning September 2023, Appellant was in an unpaid status.

The collective bargaining agreement between the district and the Gresham-Barlow Education Association requires teachers who are on unpaid leave of any kind to submit to human resources by March 1 "notification of intent to return to active employment the next school year or written request to extend the leave for the following school year." Appellant did not submit a notification by March 1. The district attempted to invite and negotiate Appellant's return to work.

In May 2024, the superintendent informed Appellant that he was scheduling a pretermination hearing. The district's purpose was to determine whether Appellant would be returning to work for the 2024-2025 school year in light of the fact that litigation filed by Appellant and her spouse against the district alleging retaliation and discrimination had been concluded in the district's favor. When Appellant expressed uncertainty about her employment status, the district adjourned the hearing to provide time for Appellant to decide what she wanted to do.

In June 2024, the district emailed Appellant to ask whether she intended to return to work for the 2024-2025 school year under the most recently offered accommodations or whether her medical condition had changed. The districted directed her to provide a response by June 11, and explained that if she did not respond, the district would "understand you to be indicating your intent to be absent without approved leave, and termination proceedings will be reinstated." Appellant did not respond.

The district moved forward with a second pretermination hearing. Appellant declined to attend. The superintendent subsequently recommended that Appellant be dismissed on the grounds of neglect of duty and insubordination.

At the school board meeting to consider the recommendation, the superintendent explained that the dismissal recommendation was based solely on Appellant's absence without approved leave during the 2023-2024 school year, continued absence without an approved leave, and failure to provide the district with any indication of when she would return to work. Through her counsel, Appellant countered that the district's communications stated that if Appellant did not respond to the district, it would assume that she had chosen to take unpaid leave for 2023-2024, which is what occurred. Appellant's counsel also argued that the district's decision was retaliatory because Appellant had raised concerns with the district's use of bond proceeds.

The school board dismissed Appellant on the grounds of neglect of duty and insubordination.

The panel concluded that the true and substantiated facts were not adequate to justify the statutory ground of insubordination. Insubordination within the meaning of ORS 342.865(1)(c) means disobedience of a direct order or unwillingness to submit to authority; it must be

accompanied by a defiant intent or attitude on the part of the teacher. *Bellairs v. Beaverton Sch. District*, 206 Or App 186, 199, 136 P3d 93 (2006). To establish insubordination, there must be credible evidence that the district imposed a lawful order or directive, that it clearly communicated that order or directive, and that the teacher willfully refused to obey the order. *Sherman v. Multnomah Education Service Dist*., FDA-95-4 at 22-23 (1996).

The district relied on two communications to support dismissal on the ground of insubordination. In the first purported directive, a human resources employee wrote to Appellant that the district was "*requesting* that [Appellant] inform the District" of Appellant's intention to report to work, request an unpaid leave of absence, or offer questions or clarifications about the proposed accommodations. The panel reasoned that this communication was merely a request, not a directive. It was the district's attempt to understand what Appellant wanted as part of the interactive process. It was not an order or directive sufficient to support dismissal on the basis of insubordination.

In the second communication, the district informed the Appellant that if she did not reply by the deadline, the district would "understand you to be indicating your intent to be absent without approved leave, and termination proceedings will be reinstated." The panel reasoned that this communication was notice to Appellant, not a directive. It informed Appellant that it would end her employment if she did not let the district know whether she wanted the accommodations the district had offered or, if her medical condition had changed, would cooperate with the district so that it could consider additional accommodations.

Bill Martin v. Gresham-Barlow School District**,** FDA-24-02 (2025)

This case arose from a teacher's unwillingness to request or accept an approved unpaid leave of absence as part of an Americans with Disabilities Act interactive process, resulting in the teacher being absent without approved leave for the 2023-2024 school year.

Appellant was a science teacher at Sam Barlow High School. At the beginning of the 2022-2023 school year, Appellant was absent from work. The district provisionally approved leave under the Family and Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA). After the FMLA and OFLA leaves exhausted, Appellant did not respond to multiple communications from the district asking Appellant whether he intended to request other leaves or return to work. Ultimately, in February 2023, the superintendent notified Appellant that he intended to recommend Appellant's dismissal based on abandonment of employment. In response, Appellant's counsel asked the district to grant Appellant an unpaid leave of absence for the remainder of the 2022-2023 school year. The district granted the leave for the 2022-2023 school year.

At the beginning of the 2023-2024 school year, Appellant did not report to work. Thereafter, Appellant and the district engaged in an interactive process to discuss whether the district could offer reasonable accommodations for Appellant's diabetes and post-traumatic stress disorder. The district granted or provisionally granted some, but not all, of Appellant's requested accommodations. For example, the district declined to cap Appellant's class size at a maximum of 24 students. Ultimately, in October 2023, Appellant did not agree to accept the

accommodations offered by the district and told the district he was "not interested" in requesting a year of unpaid leave.

On the advice of its counsel, the district did not pursue a pretermination meeting with Appellant because litigation filed by Appellant and his wife against the district alleging retaliation and discrimination was pending. That litigation was dismissed by the court in January 2024.

With the litigation resolved, the district proceeded with a pretermination meeting in May 2024. Later in May 2024, the superintendent recommended that the district dismiss Appellant on the grounds of neglect of duty and insubordination. At the school board meeting, the superintendent explained that Appellant chose not to accept reasonable accommodations or unpaid leave and that he had not been in contact with the district since October 2023. Appellant also made a presentation, focused on his belief that the district had improperly used bond funds in a construction project at the high school, which in his view rose to the level of fraud.

A representative for Appellant also made a presentation at the meeting, asserting that the district was retaliating against Appellant for raising concerns about the district's use of bond funds, because Appellant had asserted his and his spouse's rights to be free from retaliation, and because Appellant had declined accommodations that were legally insufficient.

The school board dismissed Appellant on the grounds of neglect of duty and insubordination.

The panel concluded that the true and substantiated facts were not adequate to justify the statutory ground of insubordination. Insubordination within the meaning of ORS 342.865(1)(c) means disobedience of a direct order or unwillingness to submit to authority; it must be accompanied by a defiant intent or attitude on the part of the teacher. *Bellairs v. Beaverton Sch. District*, 206 Or App 186, 199, 136 P3d 93 (2006). To establish insubordination, there must be credible evidence that the district imposed a lawful order or directive, that it clearly communicated that order or directive, and that the teacher willfully refused to obey the order. *Sherman v. Multnomah Education Service Dist*., FDA-95-4 at 22-23 (1996).

The district relied on two communications to support dismissal on the ground of insubordination. In the first purported directive, a human resources employee wrote to Appellant that the district was "*requesting* that [Appellant] inform the District" of Appellant's intention to report to work or request an unpaid leave of absence. The panel reasoned that this communication was merely a request, not a directive. It was the district's attempt to induce Appellant to disclose whether he wanted unpaid leave or the offered reasonable accommodations. It was not an order or directive sufficient to support dismissal on the basis of insubordination.

In the second communication, the district notified Appellant that if he did not respond to specific questions about his intent to return to work or request leave by a deadline, the district would "begin the termination process." The panel reasoned that this communication, properly understood, was *notice* to Appellant, not a directive.

The panel also found that the district did not meet its burden to prove disobedience by Appellant or unwillingness to submit to authority. The panel reasoned that, after Appellant received the first purported directive, Appellant did respond. He stated that he was not interested in continuing the interactive process, essentially disengaging from that process. The panel concluded this was not an indication of unwillingness to submit to authority; rather, it was merely Appellant's choice not to engage further in the interactive process, which is a process for the employee's benefit.

Appellant did not respond to the second purported directive. In that communication, the district notified Appellant that if he did not respond, the district would begin the termination process—conveying that Appellant's nonresponse would be interpreted to mean that Appellant was not requesting leave. The panel reasoned that, by choosing to be silent, Appellant merely conveyed that he was not requesting leave. That choice was not an unwillingness to submit to authority; it was a communication that Appellant was not requesting leave.

D. NEGLECT OF DUTY

***Brooke Deaton v. Sutherlin School District*,** FDA-24-04 (2025)

Appellant's termination from her position as a middle school physical education teacher resulted from her failure to supervise students and provide instruction during the period from February 2024 through April 22, 2024. She taught her P.E. classes with a co-teacher.

Before the events that resulted in her dismissal, Appellant received a written reprimand in 2019, which directed her "to refrain from discussing legal matters from your personal life with any student or staff member" during work time and to "refrain from speaking about other district personnel in a negative or derogatory manner as outlined in your collective bargaining agreement."

On February 6, 2024, during their P.E. class, Appellant and her co-teacher sat on a bench at the side of the gym for 15 minutes at the beginning of the P.E. class. Neither of them left the bench while larger students repeatedly surrounded a smaller student and took his basketball away, apparently taunting him, and ultimately closed him in the equipment room for several minutes by leaning against the door. Appellant also did not supervise the locker room during this time, although students were going in and out of the locker room.

On April 1, 2024, at the end of a class period, Appellant remained in the gym with her co-teacher and did not supervise the locker room while students were changing to get ready for the next class period.

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On April 22, 2024, Appellant and her co-teacher held their combined P.E. class at the high school field across the street from the middle school. After the class, Appellant and her co-teacher left the field and crossed the street walking side by side with their backs to the field, while the students remained on the field behind them. The students then walked unsupervised in groups back to the middle school, crossing the street while unsupervised. Students reported later to the principal that they were late for their next class because Appellant and her co-teacher left them on the field.

Appellant was placed on administrative leave during an investigation into her conduct. The letter directed her not to "have conversations with students, staff, community members or others regarding the investigation."

During the investigation, Appellant sent a text to the school board chair, with whom she had a friendship, stating, "I guess I'm getting fired? No one told me." Later in the investigation, she texted him again, writing that she was contacting him in his capacity as board chair. She listed several people she had unsuccessfully tried to contact, including a union representative, and wrote, "Can you please give me some guidance on who I can talk to about my concerns?" Before the chair responded, Appellant texted "[n]ever mind" and wrote that her union representative had contacted her.

After receiving a letter from the superintendent notifying her that he would be recommending dismissal to the school board, Appellant posted a comment in a Facebook group that stated that she would be terminated at the July 15 school board meeting and that she believed the school board would "cover up the district's wrongdoing."

After a meeting Appellant attended, in which the school board asked Appellant questions, the board voted to dismiss Appellant on the grounds of neglect of duty, inefficiency, and insubordination.

The panel concluded that the substantiated facts were adequate to support the statutory ground of neglect of duty. Neglect of duty means a teacher's failure to engage in conduct designed to bring about a performance of his or her responsibilities, either by engaging in repeated failures to perform duties of relatively minor importance or a single instance of a failure to perform a critical duty. *See Meier v. Salem-Keizer School District*, FDA-13-01 at 30 (2013), *aff'd*, 284 Or App 497, 508-509 (2017), *rev den*, 362 Or 175 (2017).

The panel found that Appellant repeatedly failed to perform two critical duties: supervising students and instructing students. The panel reasoned that Appellant's failure to position herself among students and supervise them on February 6 resulted in bigger students knocking a smaller student to the ground and involuntarily confining him in the equipment room. The panel also found that on April 1 and 2, Appellant did not supervise students while in the gym and, on April 22, failed to supervise students as they walked back from the high school across the street to return to the middle school. The panel found that Appellant's lack of supervision created an unsafe environment for students.

The panel also found that Appellant neglected her duty to instruct students. On February 6, Appellant's class started with 15-minutes of unstructured free time. The evidence also indicated that Appellant provided limited instruction to students while on the high school field. The panel found that by failing to provide instruction and failing to change her unsuccessful teaching approach, Appellant neglected the critical duty of providing instruction.

The panel also found that the district met its burden to demonstrate Appellant's intentionality or "fault," as required by previous FDAB cases. The panel found that Appellant was aware of her responsibilities and expectations and had readily available alternatives, and yet chose conduct that did not align with those responsibilities and expectations.

Laura Martin v. Gresham-Barlow School District**,** FDA-24-06 (2025)

This case arose from a teacher's dismissal after a two-year absence on unapproved, unpaid leave during the 2023-2024 and 2024-2025 school years.

Appellant was an English teacher at Sam Barlow High School. Over the course of her employment, Appellant and the district had engaged in interactive processes to identify workplace modifications to accommodate Appellant, who has asthma.

At the beginning of the 2022-2023 school year, Appellant was absent from work. The district provisionally granted Appellant medical leave under the Family and Medical Leave Act (FMLA) and Oregon Family Leave Act (OFLA). After the FMLA and OFLA leaves exhausted, Appellant did not respond to multiple communications from the district asking Appellant whether she intended to request other leaves or return to work. Ultimately, in February 2023, the superintendent notified Appellant that he intended to recommend Appellant's dismissal. In response, Appellant's counsel asked the district to grant Appellant an unpaid leave of absence for the remainder of the 2022-2023 school year.

At the outset of the 2023-2024 school year, Appellant and the district engaged in an interactive process to discuss reasonable accommodations to enable Appellant to return to work for the year. The district granted or substantially granted most of Appellant's requested accommodations. At the end of August 2023, a human resources employee wrote to Appellant informing her that the District was willing to grant her an unpaid leave of absence for the 2023-2024 school year as an accommodation, and "requesting" that Appellant inform the district by September 5 about whether she would accept the accommodations offered and return to work.

Appellant responded on September 5, 2023 stating that she did "not wish to take unpaid leave for another year." Appellant also advocated for additional accommodations. A district representative responded, explaining why the district declined the requested accommodations. She asked Appellant to identify by September 12 whether she accepted the accommodations or would take leave under FMLA, OFLA, or Paid Leave Oregon. The email informed Appellant that if she did not respond by the deadline, "the district will assume you have chosen to enter into unpaid leave for the 2023-2024 school year."

After using her remaining FMLA/OFLA leave, beginning September 2023, Appellant was in an unpaid status.

The collective bargaining agreement between the district and the Gresham-Barlow Education Association requires teachers who are on unpaid leave of any kind to submit to human resources by March 1 "notification of intent to return to active employment the next school year or written request to extend the leave for the following school year." Appellant did not submit a notification by March 1. The district attempted to invite and negotiate Appellant's return to work.

In May 2024, the superintendent informed Appellant that he was scheduling a pretermination hearing. The district's purpose was to determine whether Appellant would be returning to work for the 2024-2025 school year in light of the fact that litigation filed by Appellant and her spouse against the district alleging retaliation and discrimination had been concluded in the district's favor. When Appellant expressed uncertainty about her employment status, the district adjourned the hearing to provide time for Appellant to decide what she wanted to do.

In June 2024, the district emailed Appellant to ask whether she intended to return to work for the 2024-2025 school year under the most recently offered accommodations or whether her medical condition had changed. The districted directed her to provide a response by June 11, and explained that if she did not respond, the district would "understand you to be indicating your intent to be absent without approved leave, and termination proceedings will be reinstated." Appellant did not respond.

The district moved forward with a second pretermination hearing. Appellant declined to attend. The superintendent subsequently recommended that Appellant be dismissed on the grounds of neglect of duty and insubordination.

At the school board meeting to consider the recommendation, the superintendent explained that the dismissal recommendation was based solely on Appellant's absence without approved leave during the 2023-2024 school year, continued absence without an approved leave, and failure to provide the district with any indication of when she would return to work. Through her counsel, Appellant countered that the district's communications stated that if Appellant did not respond to the district, it would assume that she had chosen to take unpaid leave for 2023-2024, which is what occurred. Appellant's counsel also argued that the district's decision was retaliatory because Appellant had raised concerns with the district's use of bond proceeds.

The school board dismissed Appellant on the grounds of neglect of duty and insubordination.

The panel concluded that the true and substantiated facts were adequate to justify the statutory ground of neglect of duty. Neglect of duty means a teacher's failure to engage in conduct designed to bring about a performance of his or her responsibilities, either by engaging in repeated failures to perform duties of relatively minor importance or a single instance of a failure to perform a critical duty. *See Meier v. Salem-Keizer School District*, FDA-13-01 at 30 (2013), *aff'd*, 284 Or App 497, 508-509 (2017), *rev den*, 362 Or 175 (2017).

The panel reasoned that Appellant failed to perform the critical duties of reporting to work and communicating with the district about whether he intended to report to work. The panel reasoned that reliable attendance and communication about attendance are critical duties because a teacher's failure to perform these duties can cause substantial interference with student supervision and instruction or administrators' ability to put substitute teachers in place. In addition to this general duty, the collective bargaining agreement requires teachers on unpaid leave to notify the district by March 1 of their intent to return to work the next year or request additional leave.

The panel was not persuaded by Appellant's argument at the school board meeting that the district had, in fact, placed Appellant on an approved leave for the 2023-2024 school year. After the district's communication about that, Appellant clearly declined an unpaid leave.

The panel was not persuaded that Appellant's concerns about the district's use of bond funds played any role in the decision to dismiss Appellant. The panel concluded that there was no evidence in the record (other than Appellant's assertions) that the district's dismissal decision was motivated by Appellant's concerns.

In keeping with previous FDAB cases, the panel also examined the degree of Appellant's intentionality or "fault." The panel reasoned that Appellant was aware from multiple district communications about the importance of reporting to work and communicating about her intentions to report to work. Despite that awareness, Appellant disregarded her duty to tell the district whether she would report to work for the 2023-2024 and 2024-2025 school years, including after the adjournment of the May 2024 pretermination meeting specifically to provide her time to consider whether she wanted to work during the 2024-2025 year. That record was sufficient to prove intentionality within the meaning of FDAB's caselaw.

Bill Martin v. Gresham-Barlow School District**,** FDA-24-02 (2025)

This case arose from a teacher's unwillingness to request or accept an approved unpaid leave of absence as part of an Americans with Disabilities Act interactive process, resulting in the teacher being absent without approved leave for the 2023-2024 school year.

Appellant was a science teacher at Sam Barlow High School. At the beginning of the 2022-2023 school year, Appellant was absent from work. The district provisionally approved leave under the Family and Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA). After the FMLA and OFLA leaves exhausted, Appellant did not respond to multiple communications from the district asking Appellant whether he intended to request other leaves or return to work. Ultimately, in February 2023, the superintendent notified Appellant that he intended to recommend Appellant's dismissal based on abandonment of employment. In response, Appellant's counsel asked the district to grant Appellant an unpaid leave of absence for the remainder of the 2022-2023 school year. The district granted the leave for the 2022-2023 school year.

At the beginning of the 2023-2024 school year, Appellant did not report to work. Thereafter, Appellant and the district engaged in an interactive process to discuss whether the

district could offer reasonable accommodations for Appellant's diabetes and post-traumatic stress disorder. The district granted or provisionally granted some, but not all, of Appellant's requested accommodations. For example, the district declined to cap Appellant's class size at a maximum of 24 students. Ultimately, in October 2023, Appellant did not agree to accept the accommodations offered by the district and told the district he was "not interested" in requesting a year of unpaid leave.

On the advice of its counsel, the district did not pursue a pretermination meeting with Appellant because litigation filed by Appellant and his wife against the district alleging retaliation and discrimination was pending. That litigation was dismissed by the court in January 2024.

With the litigation resolved, the district proceeded with a pretermination meeting in May 2024. Later in May 2024, the superintendent recommended that the district dismiss Appellant on the grounds of neglect of duty and insubordination. At the school board meeting, the superintendent explained that Appellant chose not to accept reasonable accommodations or unpaid leave and that he had not been in contact with the district since October 2023. Appellant also made a presentation, focused on his belief that the district had improperly used bond funds in a construction project at the high school, which in his view rose to the level of fraud.

A representative for Appellant also made a presentation at the meeting, asserting that the district was retaliating against Appellant for raising concerns about the district's use of bond funds and because Appellant had asserted his and his spouse's rights to be free from retaliation, and because Appellant had declined accommodations that were legally insufficient.

The school board dismissed Appellant on the grounds of neglect of duty and insubordination.

The panel concluded that the true and substantiated facts were adequate to justify the statutory ground of neglect of duty. Neglect of duty means a teacher's failure to engage in conduct designed to bring about a performance of his or her responsibilities, either by engaging in repeated failures to perform duties of relatively minor importance or a single instance of a failure to perform a critical duty. *See Meier v. Salem-Keizer School District*, FDA-13-01 at 30 (2013), *aff'd*, 284 Or App 497, 508-509 (2017), *rev den*, 362 Or 175 (2017).

The panel reasoned that Appellant failed to perform the critical duties of reporting to work and communicating with the district about whether he intended to report to work. The panel reasoned that reliable attendance and communication about attendance are critical duties because a teacher's failure to perform these duties can cause substantial interference with student supervision and instruction or administrators' ability to put substitute teachers in place.

The panel was not persuaded that Appellant's concerns about the district's use of bond funds played any role in the decision to dismiss Appellant. The panel concluded that there was no evidence in the record (other than Appellant's assertions) that the district's dismissal decision was motivated by Appellant's concerns.

In keeping with previous FDAB cases, the panel also examined the degree of Appellant's intentionality or "fault." The panel reasoned that Appellant was aware from multiple district communications about the importance of reporting to work and communicating about his intentions to report to work. Despite that awareness, Appellant disregarded his duties. That record was sufficient to prove intentionality within the meaning of FDAB's caselaw.

E. PHYSICAL OR MENTAL INCAPACITY (no cases cited)

F. CONVICTION OF FELONY OR CRIME INVOLVING MORAL TURPITUDE (no cases cited)

G. INADEQUATE PERFORMANCE (no cases cited)

H. FAILURE TO COMPLY WITH SUCH REASONABLE REQUIREMENTS AS THE SCHOOL BOARD MAY PRESCRIBE TO SHOW NORMAL IMPROVEMENT AND EVIDENCE OF PROFESSIONAL TRAINING AND GROWTH (no cases cited)

I. ANY CAUSE WHICH CONSITUTES GROUNDS FOR REVOCATION OF THE TEACHER'S TEACHING CERTIFICATE (no cases cited)

J. PROCEDURAL MATTERS

(a) FDAB Jurisdiction – Status of Teachers & Administrators

***Vytas Nagisetty v. Beaverton School District*,** FDA-25-02 (2025)

In this case, the panel granted the school district's motion to dismiss. Appellant was not a contract teacher and therefore the Fair Dismissal Appeals Board has no jurisdiction because it may hear appeals by contract teachers, not probationary teachers. *See* ORS 342.905.

The district employed Appellant as a temporary teacher for the 2016-2017 school year. His employment terminated at the end of that school year because his temporary teacher's contract expired. He did not work for the district for the five school years from 2017-2018 through 2021-2022.

The district employed Appellant as a probationary teacher for the 2022-2023 and 2023-2024 school years.

The district also employed Appellant as a probationary teacher for the 2024-2025 school year. On February 18, 2025, the superintendent notified Appellant that, pursuant to ORS 342.835(2), the superintendent intended to recommend the nonrenewal of Appellant's employment contract. At its March 2025 board meeting, the school board adopted the recommendation for nonrenewal of Appellant's contract.

After hearing oral argument on the district's motion to dismiss, the panel concluded that Appellant was not a contract teacher. To be a "contract teacher, one must (1) be regularly employed by a school district for a probationary period of three successive school years and (2) be retained by the school district for the next succeeding year." *Smith v. Salem-Keizer Sch. Dist*., 188 Or App 237, 243, 71 P3d 139, *rev denied*, 336 Or 60 (2003).

The panel reasoned that Appellant's employment history did not satisfy either requirement. First, Appellant did not serve a probationary period of three successive school years before the 2024-2025 school year. In reaching that conclusion, the panel rejected Appellant's argument that his employment in the 2016-2017 school year qualified as his first probationary year. During that year, Appellant did not work as a probationary teacher; instead, he was a temporary teacher. Further, the undisputed evidence indicated that Appellant's contract for the 2024-2025 contract was a probationary teacher's contract, not a contract teacher's contract.

The panel also rejected Appellant's argument that the three probationary years are not required to be consecutive years. The panel reasoned that ORS 342.815(3) provides that a contract teacher is a teacher who "has been *regularly employed*" for "a probationary period of three successive school years." The panel construed the phrase "three successive years" in the context of the statute as a whole, and that context includes the phrase "regularly employed." Considering that context, the panel concluded that before a teacher is a contract teacher, the teacher must have been employed on a regular basis, at regular, recurring intervals for the three-year probationary period.

The panel concluded that it was unnecessary to determine whether any nonconsecutive year could quality as part of regular employment for a probationary period of three successive years because that question was not presented. Rather, the question in this case was whether a five-year gap between ostensible probationary years constitutes "regular" employment. The panel concluded that the legislature in ORS 342.815(3) did not intend that a five-year gap in ostensible probationary employment would constitute *regular* probationary employment.

Second, Appellant was not, at the end of a three-year probationary period, retained by the school district for the next succeeding year, as required by ORS 342.815(3). When Appellant was retained at the end of the 2023-2024 school year, Appellant had served a probationary period of only two successive years (2022-2023 and 2023-2024). Therefore, when he was retained for the next year, 2024-2025, Appellant was still a probationary teacher, not a contract teacher.

The conclusion that Appellant was not a contract teacher was dispositive; therefore, the panel did not consider whether the appeal was untimely, the alternative basis for the school district's motion.

Pamela K. Triplett v. Lebanon Community School District, FDA-24-03 (2024)

This case arose from a teacher's allegations that (1) her job duties and responsibilities did not correspond with the position description for her role as a "temp roving teacher", and (2) her resignation was "forced" and equated to an improper constructive discharge. Appellant submitted her resignation effective April 10, 2023, and submitted her appeal on August 2, 2024.

On September 22, 2022, the District hired Appellant as a "temp roving teacher," with a start date of September 22, 2022 and an end date of June 15, 2023. On October 17, 2022, Appellant signed a document entitled, "2022-23 Temporary Probationary Teacher's Contract," which identified her "probationary status" as "temporary," and listed an employment start date of September 22, 2022 and an employment end date of June 15, 2023. The contract did not contain a term shortening the time to become a contract teacher, as permitted by ORS 342.815(3).

In a letter dated March 13, 2023, the Superintendent sent Appellant a letter that read, in part: "As a temporary employee, your contract will expire at the end of the 2022-2023 school year. This letter serves as an official notice and reminder that your contract will not be automatically renewed for the 2023-24 school year. Please, feel free to apply for any future job openings for our District. Lebanon School District appreciates your contribution to the success of our students." On March 14, 2023, Appellant signed the acknowledgement portion of the District's March 13, 2023 letter, acknowledging the following statement: "I hereby acknowledge receipt of the District's Notification to Teachers and understand my contract as a Temporary teacher will expire at the end of the 2022-2023 school year."

Due to various complaints and issues, Appellant submitted her resignation from the District effective April 10, 2023. Appellant alleged that her union representative made comments that resulted in Appellant feeling she had "no choice" but to resign. Appellant submitted her appeal to FDAB on August 2, 2024.

After a pre-hearing conference held pursuant to OAR 586-030-0037(9), the panel concluded that (1) Appellant was not a contract teacher within the meaning of ORS 342.815(3), and therefore (2) FDAB lacked jurisdiction in this case because Appellant was not a contract teacher. Contract teachers have the right to appeal a dismissal or contract non-extension to the Fair Dismissal Appeals Board pursuant to ORS 342.905.

Aside from "probationary teachers", Oregon statutes define two other categories of teachers who are not contract teachers. A "substitute teacher" is "any teacher who is employed to take the place of a probationary or contract teacher who is temporarily absent." ORS 342.815(8) (emphasis added). A "temporary teacher" is "a teacher employed to fill a position designated as temporary or experimental or to fill a vacancy which occurs after the opening of school because of unanticipated enrollment or because of the death, disability, retirement, resignation, contract non-extension or dismissal of a contract or probationary teacher." ORS 342.815(10).

Appellant presented no facts to support the conclusion that Appellant was a contract teacher. It is undisputed that the District hired Appellant as a temporary roving substitute teacher. A teacher who is a temporary teacher or a substitute teacher does not have appeal rights to FDAB. *See Salem-Keizer Sch. Dist*., 188 Or App at 246, 71 P3d at 144 (a contract teacher "is entitled to a contested case hearing and is under FDAB's jurisdiction"); *Finholt v. Salem-Keizer School District,* FDA-07-08 and FDA-07-10 at 4 (2008) (FDAB "jurisdiction is limited to dismissals and non-extensions of contract teachers with regard to their teaching positions").

(b) FDAB Jurisdiction – Timeliness of Appeal

Pamela K. Triplett v. Lebanon Community School District, FDA-24-03 (2024)

This case arose from a teacher's allegations that (1) her job duties and responsibilities did not correspond with the position description for her role as a "temp roving teacher", and (2) her resignation was "forced" and equated to an improper constructive discharge. Appellant submitted her resignation effective April 10, 2023, and submitted her appeal on August 2, 2024.

On September 22, 2022, the District hired Appellant as a "temp roving teacher," with a start date of September 22, 2022 and an end date of June 15, 2023. On October 17, 2022, Appellant signed a document entitled, "2022-23 Temporary Probationary Teacher's Contract," which identified her "probationary status" as "temporary," and listed an employment start date of September 22, 2022 and an employment end date of June 15, 2023. The contract did not contain a term shortening the time to become a contract teacher, as permitted by ORS 342.815(3).

In a letter dated March 13, 2023, the Superintendent sent Appellant a letter that read, in part: "As a temporary employee, your contract will expire at the end of the 2022-2023 school year. This letter serves as an official notice and reminder that your contract will not be automatically renewed for the 2023-24 school year. Please, feel free to apply for any future job openings for our District. Lebanon School District appreciates your contribution to the success of our students." On March 14, 2023, Appellant signed the acknowledgement portion of the District's March 13, 2023 letter, acknowledging the following statement: "I hereby acknowledge receipt of the District's Notification to Teachers and understand my contract as a Temporary teacher will expire at the end of the 2022-2023 school year."

Due to various complaints and issues, Appellant submitted her resignation from the District effective April 10, 2023. Appellant alleged that her union representative made comments that resulted in Appellant feeling she had "no choice" but to resign. Appellant submitted her appeal to FDAB on August 2, 2024.

In an email dated September 23, 2024, the Executive Secretary notified the parties that a prehearing conference would be scheduled on the subject of whether FDAB had jurisdiction to hear this appeal. In a prehearing conference held pursuant to OAR 586-030-0037(9), the panel concluded that FDAB lacked jurisdiction in this case because the appeal was untimely. ORS 343.905 (1)(a) provides "(1) If the district school board dismisses the teacher or does not extend the contract of the contract teacher, the teacher or the teacher's representative may appeal that decision to the Fair Dismissal Appeals Board established under ORS 342.930 by depositing by certified mail addressed to the Superintendent of Public Instruction and a copy to the superintendent of the school district: (a) In the case of dismissal, within 10 days, as provided in ORS 174.120, after receipt of notice of the district school board's decision, notice of appeal with a brief statement giving the reasons for the appeal."

Appellant resigned with an effective employment end date of April 10, 2023. However, she did not submit her appeal until August 2, 2024—more than one year later. Therefore, the appeal was untimely and FDAB lacked jurisdiction.

(c) FDAB Jurisdiction – Pay Reductions (no cases cited)

(d) FDAB Jurisdiction – Layoffs, Resignations & Retirement

Pamela K. Triplett v. Lebanon Community School District, FDA-24-03 (2024)

This case arose from a teacher's allegations that (1) her job duties and responsibilities did not correspond with the position description for her role as a "temp roving teacher", and (2) her resignation was "forced" and equated to an improper constructive discharge. Appellant submitted her resignation effective April 10, 2023, and submitted her appeal on August 2, 2024.

On September 22, 2022, the District hired Appellant as a "temp roving teacher," with a start date of September 22, 2022 and an end date of June 15, 2023. On October 17, 2022, Appellant signed a document entitled, "2022-23 Temporary Probationary Teacher's Contract," which identified her "probationary status" as "temporary," and listed an employment start date of September 22, 2022 and an employment end date of June 15, 2023. The contract did not contain a term shortening the time to become a contract teacher, as permitted by ORS 342.815(3).

In a letter dated March 13, 2023, the Superintendent sent Appellant a letter that read, in part: "As a temporary employee, your contract will expire at the end of the 2022-2023 school year. This letter serves as an official notice and reminder that your contract will not be automatically renewed for the 2023-24 school year. Please, feel free to apply for any future job openings for our District. Lebanon School District appreciates your contribution to the success of our students." On March 14, 2023, Appellant signed the acknowledgement portion of the District's March 13, 2023 letter, acknowledging the following statement: "I hereby acknowledge receipt of the District's Notification to Teachers and understand my contract as a Temporary teacher will expire at the end of the 2022-2023 school year."

Due to various complaints and issues, Appellant submitted her resignation from the District effective April 10, 2023. Appellant alleged that her union representative made comments that resulted in Appellant feeling she had "no choice" but to resign. Appellant submitted her appeal to FDAB on August 2, 2024.

After a prehearing conference held pursuant to OAR 586-030-0037(9), the panel concluded that FDAB lacked jurisdiction in this case because Appellant resigned her employment. The District's decision to accept Appellant's resignation did not constitute a "dismissal" or "non-extension" under ORS 342.805 et seq.

FDAB lacks jurisdiction when a teacher resigns. *Pierce v. Douglas School District No. 4*, 297 Or 363, 365, 686 P2d 332 (1984); *Lynch v. Klamath County School District*, FDA-12-12 at 6 (2013) (if a teacher resigns, "it is well-established that FDAB lacks jurisdiction to hear the appeal"); *Hardy v. Baker School District 5J*, FDA-12-05 at 3 (2012) (resignation of employment "precludes jurisdiction"); *Gilman v. Medford School District 549C*, FDA-10-03 at 4 (2010) (FDAB does "not have jurisdiction over resignations"); *Zellner v. Forest Grove School District*, FDA-05-01 at 5 (2006) (FDAB "does not have jurisdiction to hear an appeal if the teacher or administrator resigned from their position or otherwise informs the school district of their intention not to return to their current position").

It was not disputed that the District did not issue a written notice of non-extension or communicate a written decision to dismiss Appellant. Rather, as both the appeal and the District's personnel records reflected, Appellant resigned her employment.

Even assuming both that Appellant was a contract teacher and that she was asserting a constructive discharge, FDAB had no jurisdiction in this case. FDAB does not have jurisdiction over purported "constructive" discharges—that is, resignations that are effectively involuntary because they are tendered in lieu of dismissal—where there is no dismissal notice or letter for the Panel to review. See, e.g., *Baker School District 5J*, FDA-12-05 at 5 (relying on ORS 342.905 and concluding that a dismissal sufficient to support FDAB's jurisdiction must result from some action by the school board that includes "statutory grounds cited").

(e) Evidentiary Matters

Appellant's termination from her position as a middle school physical education teacher resulted from her failure to supervise students and provide instruction during the period from February 2024 through April 22, 2024. Appellant objected to admission of an investigation and reprimand of Appellant in 2019 as irrelevant and overly prejudicial. The panel overruled the objection and admitted the 2019 investigation and reprimand.

(f) Miscellaneous Issues

***Brooke Deaton v. Sutherlin School District*,** FDA-24-04 (2025)

Appellant's termination from her position as a middle school physical education teacher resulted from her failure to supervise students and provide instruction during the period from February 2024 through April 22, 2024. On the first morning of hearing, Appellant filed a "motion for summary judgment." Appellant argued that the district's dismissal decision considered evidence not referenced or present in her personnel file in violation of ORS 342.895(3)(a), which provides, in part, "If the statutory grounds specified [in the notice of recommended dismissal] are those specified in ORS 342.865(1)(a), (c), (d), (g), or (h), then evidence shall be limited to those allegations supported by statements in the personnel file of the teacher on the date of the notice to recommend dismissal[.]"

The panel denied the motion. The panel relied on *Sch. Dist. No. 48, Washington Cnty. v. Fair Dismissal Appeals Bd*., 14 Or App 634 (1973). There, the court interpreted the statute as imposing a limitation on the subject matters concerning which evidence can be received, and not as limiting admissibility to statements or other evidence that actual appears in the personnel file. The panel reasoned that Appellant's personnel file contained documentation supporting the subject matters of Appellant's dismissal for neglect of duty, inefficiency, and insubordination.

K. REMEDIES (no cases cited)

(a) Reinstatement (no cases cited)

(b) Back Pay (no cases cited)