

2009-2010 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 (no cases)

B. IMMORALITY

1. *Peter Porath v. Woodburn School District*, FDA-08-01 (2009):

A teacher was dismissed on the grounds of neglect of duty and immorality after an incident in May 2008 in which he charged out of the classroom and pushed a group of students back, and in which he pushed a student into a wall with sufficient force to cause a dent in the wall. At the time of this incident, he was still on probation from the TSPC for a prior incident in 2005 in which he had bitten a student. The teacher was dismissed in October 2008. After a three-day hearing before the FDAB panel in February 2009, the panel concluded that the facts were true and substantiated and adequate to support the grounds of neglect of duty and immorality. The panel also concluded that there was no basis upon which to conclude that the dismissal was arbitrary, unreasonable or clearly an excessive remedy.

With regard to the ground of immorality, the panel stated that “the statutory ground of immorality refers generally to conduct that is selfish, or in some cases malicious, and that generally shows disregard for the rights or sensitivities of others. Conduct that has been determined to meet the statutory ground of immorality is ‘other directed’ in that it harms the legitimate interest of third party entities or individuals.” In this case, the panel found that the teacher engaged in conduct that ignored obvious risks to students. His conduct focused on his own needs and desires and showed a disregard for the rights and sensitivities of the individuals to whom he caused harm.

This case was appealed to the Court of Appeals on May 22, 2009. As of the date of this update, it is still pending.

C. INSUBORDINATION (no cases)

D. NEGLIGENCE OF DUTY

1. *Peter Porath v. Woodburn School District*, FDA-08-01 (2009):

A teacher was dismissed on the grounds of neglect of duty and immorality after an incident in May 2008 in which he charged out of the classroom and pushed a group of students back, and in which he pushed a student into a wall with sufficient force to cause a dent in the wall. At the time of this incident, he was still on probation from the TSPC for a prior incident in 2005 in which he had bitten a student. The teacher was dismissed in October 2008. After a three-day hearing before the FDAB panel in February 2009, the panel concluded that the facts were true and substantiated and adequate to support the grounds of neglect of duty and immorality. The panel also concluded that there was no basis upon which to conclude that the dismissal was arbitrary, unreasonable or clearly an excessive remedy.

With regard to the ground of neglect of duty, the panel concluded that there is no question that a teacher has a duty to refrain from physical abuse of students, and a duty to keep students safe and to refrain from negligent or intentional actions that would result in injury to students. In this case, the teacher's actions were sufficient to demonstrate a neglect of these duties.

This case was appealed to the Court of Appeals on May 22, 2009. As of the date of this update, it is still pending.

- E. PHYSICAL OR MENTAL INCAPACITY (no cases)**
- F. CONVICTION OF FELONY OR CRIME INVOLVING MORAL TURPITUDE (no cases)**
- G. INADEQUATE PERFORMANCE (no cases)**
- H. FAILURE TO COMPLY WITH SUCH REASONABLE REQUIREMENTS AS THE SCHOOL BOARD MAY PRESCRIBE TO SHOW NORMAL IMPROVEMENT AND EVIDENCE OF PROFESSION TRAINING AND GROWTH (no cases)**
- I. ANY CAUSE WHICH CONSTITUTES GROUNDS FOR REVOCATION OF THE TEACHER'S TEACHING CERTIFICATE (no cases)**
- J. PROCEDURAL MATTERS**
 - (a) Status of Teachers and Administrators (no cases)**
 - (b) Timeliness of Appeal (no cases)**
 - (c) Pay Reductions (no cases)**
 - (d) Layoffs, Resignations and Retirement**
- 1. *Chris Gilman v. Medford School District 549C*, FDA 10-03 (2010)**

The teacher in this case resigned his position as a contract teacher, following which the school district board voted to accept the recommendation to dismiss him. The Fair Dismissal Appeals Board has jurisdiction to hear appeals by contract teachers, if they have been dismissed or if their contract is not extended. Under current law, a teacher's contract can be terminated (1) by a resignation with 60-days statutory notice (ORS 342.553), (2) by a resignation, quit or leave, without giving the proper statutory notice but risking disciplinary consequences from the Teacher Standards and Practices Commission for doing so (ORS 342.553), (3) by mutual agreement (ORS 342.545(2)), (4) by dismissal or non-extension for specified statutory reasons (ORS 342.865), or (5) by termination due to sickness or other unavoidable circumstances (ORS 342.545(1)). FDAB does not have

jurisdiction over resignations or mutual agreements. Its jurisdiction is limited to dismissals and non-extensions of contract. Because the teacher resigned, and the school district's acceptance was unnecessary for the resignation to be effective, FDAB did not have jurisdiction over this appeal and dismissed it.

(e) Evidentiary Matters (no cases)

(f) Miscellaneous Issues (no cases)

K. REMEDIES

(a) Reinstatement (no cases)

(b) Back Pay (no cases)