

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

In The Matter of the Appeal of:

TINA TRESSEL,

Appellant,

v.

SWEET HOME SCHOOL DISTRICT,

Respondent.

**FDA CASE No. 21-04**

**DISMISSAL ORDER**

**INTRODUCTION**

Tina Tressel (“Appellant”) appealed her dismissal as a teacher from the Sweet Home School District (“the District”). The Fair Dismissal Appeals Board (“FDAB” or the “Panel”) held a hearing on September 30, 2022. The District was represented by Nancy Hungerford of Hungerford Law Firm. Appellant appeared with several representatives who did not identify themselves for the record. The hearing was conducted before the appointed panel consisting of Panel Chair Robert Sconce and Board members Joshua Wetzell and Jim Westrick.

**FINDINGS OF FACT**

1. Appellant filed an appeal with the FDAB dated November 12, 2021, appealing her dismissal as a contract teacher with the Sweet Home School District on November 15, 2021.
2. Under OAR 586-030-0037(9), the FDAB held a pre-hearing conference with the parties on April 13, 2022 (hereinafter “Prehearing Conference”) to discuss the hearings process and set a hearing date.
3. At the Prehearing Conference, the District appeared with its legal counsel, Nancy Hungerford. Appellant appeared with multiple individuals who spoke on her behalf. These

individuals were introduced as counsel for Appellant and included Brandon Wingerter (“Wingerter”), Ron Vrooman (“Vrooman”), and Charlie White (“White”).<sup>1</sup>

4. Wingerter, Vrooman, and White were not licensed on April 13, 2022 to practice law or appear as legal counsel for Appellant.

5. Panel counsel attempted to discuss with the parties the logistics for scheduling a hearing, including whether the hearing would be conducted in-person or virtually via the videoconference platform Zoom.<sup>2</sup>

6. Lay representative Wingerter asked Panel counsel, who was speaking on behalf of the Panel, whether she was “under the influence of any drug at the moment.”<sup>3</sup> After an exchange with Wingerter pursuing this line of questioning, lay representative White spoke for Appellant regarding the need for a face-to-face hearing.<sup>4</sup>

7. When Panel counsel began to address Wingerter’s concerns, she was interrupted by lay representative Vrooman, who told Panel counsel, “Excuse me. It is not your turn to speak.”<sup>5</sup>

8. Panel counsel made multiple attempts to discuss scheduling the hearing during the conference.<sup>6</sup> Referring to FDAB, White stated, “[Y]ou folks have no jurisdiction” over Appellant and asserted that the people who had affected Appellant’s rights “do so at your individual peril.” Apparently describing the requirement that teachers receive the COVID-19 vaccine or provide proof of a religious or medical exemption, White asserted, “Nazi is as Nazi does.”<sup>7</sup>

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<sup>1</sup> Conference TR 7 (Apr 13, 2022).

<sup>2</sup> *Id.* at 1-11.

<sup>3</sup> *Id.* at 9.

<sup>4</sup> *Id.* at 10-11.

<sup>5</sup> *Id.* at 11:19-21.

<sup>6</sup> *Id.* at 5-6, 12-14, 15:22-16:19, 19:6-19, 21:4-22, 27:23-28:6, 30-31, 31:22-32:4, 34:4-18.

<sup>7</sup> *Id.* at 25-27.

9. After Panel counsel attempted to discuss and plan for a mutually agreed upon hearing date, lay representative White told Panel counsel, “Excuse me. You’re wasting our time.”<sup>8</sup>

10. Panel counsel ultimately made a final attempt to ask Appellant about her availability for a hearing date. Appellant refused to provide hearing dates.<sup>9</sup> During the exchange, Appellant’s representative Wingerter interrupted Panel counsel’s request of the school district’s counsel. Wingerter interjected, “Would you be willing to submit to a drug test?” After both Panel counsel and the school district’s counsel responded that the question was inappropriate, Wingerter stated, “Well, I think you need to submit to a drug test.”<sup>10</sup>

11. At the Prehearing Conference, the Panel did not schedule a hearing date.

12. In an effort to preserve Appellant’s right for an opportunity for a hearing, on April 26, 2022, FDAB issued an electronic invitation for a Zoom hearing scheduled on May 3, 2022. Appellant declined this invitation.

13. Through emails on June 7, July 26, and September 7, 2022, Ed Dover (“Dover”), a lay representative, filed documents with the FDAB, the District, and Appellant, and argued on behalf of Appellant. In the July 26, 2022 email, Dover directed the FDAB to stop “harassing” Appellant.

14. On July 25, 2022, FDAB notified Appellant and the District that the Panel was available to hold a virtual hearing on August 29, September 7, or September 9, 2022. The parties were not able to agree on one of these three dates.

15. On August 2, 2022, the District proposed alternative hearing dates to FDAB. On

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<sup>8</sup> *Id.* at 31:1-7.

<sup>9</sup> *Id.* at 36:1-3.

<sup>10</sup> *Id.* at 36:23 to 37:8.

August 3, 2022, FDAB notified Appellant of additional available virtual hearing dates: September 29, September 30, or October 3, 2022. Appellant agreed to a hearing date of September 30.

16. During this conferral process, Appellant objected to the hearing not being held in-person and requested that the FDAB copy her “counsel,” which included lay representatives Ron Vrooman, Charlie White, Eric Dover, Cynthia Palmatier, and Brandon Wingerter.

17. On August 5, 2022, FDAB issued a Notice of Hearing setting a virtual hearing on September 30, 2022, via videoconference. The Notice included a copy of OAR 586-030-0015 through OAR 586-030-0080 and described the FDAB hearings process. The Notice stated, in relevant part:

“If you notify the FDAB that you will not appear, fail to appear at the scheduled hearing, or fail to appear at a scheduled [hearing] on time, the FDAB may proceed without you or issue a final order by default. If the FDAB issues a final order by default or based on a failure to appear, the FDAB designates the relevant portion of its files on this matter, including all materials that submitted relating to this matter, as the record for purpose of proving a prima facie case.”

18. On September 7, 2022, after Dover submitted an e-mail on behalf of Appellant, the District objected to outside parties circulating materials to FDAB.

19. On September 9, 2022, FDAB issued a letter order entitled “Order on lay representation and document submission.” The FDAB panel ordered that Appellant was permitted to appear before FDAB either *pro se* or represented by a licensed attorney. In the letter order, the FDAB Panel ordered that “[d]ocuments or filings that are not submitted by the parties or their legal counsel \* \* \* will not be considered by the FDAB Panel for admission into evidence.” The FDAB Panel notified Appellant that it would “entertain rescheduling the hearing in this matter, presently set for September 30, 2022 if Appellant desires and needs time to retain legal counsel[.]”

20. Also on September 9, 2022, FDAB issued a letter order entitled “Order of

Hearings Process (exhibits and witnesses),” which required compliance with FDAB rules for the hearings process and created a schedule for witness and exhibit production.

21. On behalf of Appellant, Dover emailed arguments and documents to the FDAB, the District, and Appellant on September 13, September 16, and September 20, 2022.

22. Appellant emailed the FDAB on September 18, 2022 to demand that her “counsel” receive a link to attend the virtual hearing. Her list of counsel did not include any individuals licensed to practice law.

23. On September 20, 2022, FDAB issued a letter order entitled, “Order on lay representation and document submission.” In the order, FDAB notified Appellant that it did not have authority to recognize Vrooman, Palmatier, Dover, White, and Wingerter “as counsel for the Appellant and will not be doing so in this case.”

24. On September 27, 28, and October 21, 2022, Dover emailed FDAB on behalf of Appellant.

25. On September 27, 2022, Appellant provided the following list of witnesses who were also identified as “counsel” for Appellant: Ron Vrooman, Charlie White, Brandon Wingerter, Cynthia Palmatier, and Eric Dover.

26. None of Appellant’s witnesses were or are attorneys licensed by the Oregon State Bar.

27. On September 28, 2022, by email, the District moved for the exclusion of witnesses.

28. The FDAB Panel convened the hearing on September 30, 2022. At the beginning of the hearing, the FDAB Panel Chair responded to the District’s motion by directing Appellant to not have witnesses in the same room with her until called to testify.<sup>11</sup>

29. Appellant was accompanied by multiple lay representatives. None of the individuals identified by Appellant as her representatives identified themselves to the FDAB

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<sup>11</sup> Hearing TR 4 (Sept 30, 2022).

Panel as attorneys licensed by the Oregon State Bar.

30. The Panel Chair clarified that Appellant could have someone present to assist her, but again directed Appellant that she could not have witnesses with her until called to testify.<sup>12</sup> Appellant responded: “Is this a request? Because I did not – I mean, my objection (inaudible).”<sup>13</sup>

31. At the hearing, Appellant’s lay representatives declined to recognize that the FDAB panel was convening a contested case hearing, describing the FDAB Panel as a “board.”<sup>14</sup> Appellant’s lay representatives repeatedly asserted that they were appearing as Appellant’s “lawful” counsel.<sup>15</sup> At one point, Appellant challenged the Panel’s authority to exclude witnesses and to decline to recognize Appellant’s representatives as counsel. Appellant asked, “[D]o you have authority over the Constitution of the United States?”<sup>16</sup> One of Appellant’s lay representatives disputed that the FDAB panel could make rulings, describing FDAB as having authority over only “rules” and asserting, “Rules are rules. They’re not law.”<sup>17</sup> In response to the Panel Chair explaining that only licensed attorneys could represent Appellant during the hearing, one of Appellant’s representatives responded, “You don’t have the authority to state that or make that demand.”<sup>18</sup>

32. The Panel Chair asked Appellant multiple times if she was willing to comply with the procedures of FDAB, including FDAB’s order that she was not permitted to be represented by lay representatives. Appellant refused to comply and refused to state that she would comply with the orders and procedures of FDAB.

33. Panel Member Joshua Wetzel interjected and explained that the proceeding was an “FDAB hearing, right, to appeal your termination decision. This is your opportunity to do so. In order to do it, you need to do it within the rules and procedures that were set up that you were

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 5:11-12.

<sup>15</sup> *Id.* at 5:24-25.

<sup>16</sup> *Id.* at 6:7-9.

<sup>17</sup> *Id.* at 6:17-18.

<sup>18</sup> *Id.* at 9:7-13.

properly notified on. With that being said, we just want to see if you're going to abide by those or not before we make a decision.”<sup>19</sup> In response, Appellant asserted that FDAB rules “go against the current laws,” and one of her representatives interjected, correcting Appellant, and said, “Constitution.”<sup>20</sup> The Panel Chair assured Appellant that the FDAB had authority to make rulings to control the hearing. Appellant responded, “I deny that because you—” and the Panel Chair then proceeded to stop the hearing.

34. The Panel Chair notified Appellant on the record that the Panel would end the hearing and “we will notify you that your appeal has been denied.”<sup>21</sup>

### **PANEL RULINGS**

Preliminary hearing rulings by the Panel involved determinations based on the FDAB contested case hearings process. The FDAB followed ORS 342.805 through ORS 342.930 and OAR 586-030-0015 through OAR 586-030-0085 for this contested case.

#### **In-Person Hearing Request**

The FDAB statutes and rules do not explicitly require an in-person hearing. FDAB rules explicitly permit preliminary hearings “by phone or in person.” OAR 586-030-0025(1); OAR 586-030-0037(9). The FDAB considers due process protections preserved to the same extent whether the parties appear in-person or by videoconference. When scheduling this case for hearing, the State of Oregon and the FDAB were emerging from restrictions imposed due to COVID-19. The FDAB was concerned about the resurgence of the COVID-19 virus and the difficulty of securing a venue that met the safety concerns of all the parties and witnesses. For this reason, on August 5, 2022, the Panel set this matter for a video hearing.

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<sup>19</sup> *Id.* at 10:16-23.

<sup>20</sup> *Id.* at 10:24 to 11:2.

<sup>21</sup> *Id.* at 11:23-25.

### Public Hearing Request

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

### Witness Exclusion

On September 28, 2022, the District moved to exclude witnesses from the proceedings while they were not testifying. At the beginning of the hearing on September 30, 2022, the Panel directed Appellant to not allow witnesses in the same room with her until they were called to testify.

OAR 586-030-0060 generally provides rules for the conduct of contested case proceedings. While that rule generally allows parties to examine their own witnesses, no rule requires the FDAB to allow those witnesses to attend the hearing before giving their testimony.

Excluding witnesses from the hearing avoids the risk that their testimony will be affected by the testimony of other witnesses. The Panel has the inherent authority, in conducting the hearing, to exclude witnesses. In addition, under OAR 586-030-0060(6), “the general procedure and conduct of the hearing will be similar to a court proceeding, although not as formal.” In court proceedings, witnesses may be excluded, either at the request of a party or on the court’s own motion. OEC 615.

The Panel granted the District’s motion to exclude witnesses from the hearing when they were not testifying.

### Lay Representation

ORS 342.905(5)(b) provides that “the contract teacher shall have the right \* \* \* to be represented by counsel[.]” Further, in contested case proceedings, a party may not be represented by a *non-attorney* representative unless specifically authorized by law. *See* ORS 183.457. Although ORS 183.457(1) permits persons in contested cases to be represented by lay



representatives in contested cases before the agencies enumerated in that subsection, the FDAB is not included on that list. Therefore, Appellant was not permitted to be represented in proceedings before FDAB by lay representatives.

### **DISCUSSION**

The appeal is dismissed. As explained below, Appellant failed to follow the rules and orders of the FDAB that were repeatedly and clearly communicated to her and, in so doing, failed to comply with OAR 586-030-0037(1), which requires that parties to FDAB proceedings cooperate before and during the hearing. In addition, Appellant failed to comply with OAR 586-030-0060(5), which requires that parties, representatives, and witnesses conduct themselves in “a respectful manner at all times” in proceedings before FDAB. Appellant and her representatives failed to do so.

To begin, through its power under the Oregon Constitution, Article IV, sections 1 and 27, the Oregon Legislature, in ORS 342.930, created the Fair Dismissal Appeals Board. Further, in ORS 342.930(9), the legislature authorized the FDAB to “adopt rules necessary for the administration” of ORS 342.930, 342.905, and 342.910. Through this authority, the FDAB adopted administrative rules that govern the proceedings before the Board. *See* OAR 586-030-0015 through OAR 586-030-0085. One rule, OAR 586-030-0037(1), imposes on all parties to an FDAB proceeding “the affirmative obligation to cooperate to the fullest extent possible in advance of and during the hearing.” Moreover, pursuant to OAR 586-030-0060(6), “the general procedure and conduct of the hearing” before an FDAB Panel “will be similar to a court proceeding, although not as formal.”

Here, Appellant failed to “cooperate to the fullest extent possible” in the Board’s proceedings, as required by OAR 586-030-0037(1). Rather than cooperate, Appellant repeatedly ignored or disputed the FDAB Panel’s directives and orders. To begin, Appellant and her representatives repeatedly interrupted and failed to cooperate with the FDAB Panel’s attempt at

the Prehearing Conference to schedule prehearing and hearing procedures and dates. Not only did Appellant fail to cooperate, she and her representatives effectively disputed FDAB's authority to adjudicate her appeal at all.

Later, FDAB notified Appellant multiple times that she could proceed, at her option, either *pro se* or be represented by a licensed attorney. For example, the Notice of Hearing issued on August 5, 2022, provided:

“You may be represented by legal counsel at the hearing. Most persons are not represented by legal counsel. You are not required to be represented by legal counsel unless you are an agency, trust, corporation, or association. Legal aid organizations may be able to assist a party who has limited financial resources.”

Despite that notice, a lay representative, Dover, submitted documents to FDAB on Appellant's behalf, including on September 7, 2022. Thereafter, on September 9, 2022, the FDAB Panel issued a letter order directing (and reminding) Appellant that she could be represented by licensed attorneys or could proceed *pro se*, and ruling that any documents submitted by someone other than Appellant or her attorney, if any, would not be considered. Despite that order, on September 18, 2022, Appellant asked FDAB to copy Vrooman, Palmatier, Dover, White, and Wingerter as her “counsel.” In response, on September 20, 2022, by letter order, the FDAB Panel notified Appellant that the Panel did not have the “authority to recognize these individuals as counsel for the Appellant and will not be doing so in this case.”

Appellant disregarded these clear directives in the August 5 Notice of Hearing, the September 9 letter orders, and the September 20 letter order. On September 27, September 28, and October 21, on behalf of Appellant, Dover submitted documents to FDAB despite the FDAB Panel's September 9 order. Then, on September 30, Appellant appeared at the hearing with multiple individuals who were not attorney representatives and who had been identified as by Appellant as witnesses. The Panel Chair informed Appellant on the record that individuals identified as witnesses could not be in the room with Appellant unless called to testify. The Panel Chair informed Appellant that she could “have someone sit, take notes, help you that we aren't

able to hear, but I need you to adjust your room so that we have that setup.” Appellant declined to comply. The individuals who appeared with Appellant repeatedly challenged the FDAB Panel’s authority to make rulings, to determine that they were not valid representatives, and to exclude witnesses. Ultimately, Appellant herself suggested that the FDAB Panel’s exclusion of witnesses was tantamount to an assertion by FDAB it had authority “over the Constitution of the United States.” Despite the Panel Chair’s assurance that Appellant, appearing *pro se*, could use as an assistant any of her representatives who was not a witness, Appellant did not comply with the FDAB Panel’s directive.

Ultimately, after Appellant failed to acknowledge to the Panel that she would comply with FDAB’s rules, another FDAB Panelist interjected, and reminded Appellant that the hearing was her opportunity to make her arguments and that, in order to do so, “you need to do it within the rules and procedures that were set up that you were properly notified [of]. With that being said, we just want to see if you’re going to abide by those or not before we make a decision.” In response, Appellant asserted that FDAB’s rules “go against the current laws[,]” and denied that FDAB had proper authority to run the hearing.<sup>22</sup> Because Appellant declined to ask her witnesses to leave the hearing until called to testify, and declined to recognize the FDAB Panel’s authority over the hearing, the Panel Chair adjourned the proceedings.

On this record, we conclude without difficulty that Appellant failed to cooperate with the rules and orders of the FDAB. Appellant and her representatives failed to cooperate with the FDAB Panel counsel’s attempts to schedule a hearing or prehearing procedures at the Prehearing Conference. Further, Appellant was notified at least four times—on August 5, September 9, September 20, and on the record at the September 30 hearing—that lay representatives could not represent her. Despite that clear notice, Appellant not only continued to appear with multiple lay representatives, but those representatives, on Appellant’s behalf, submitted documents to FDAB despite the direction not to do so, repeatedly disputed the authority of the FDAB Panel, and

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<sup>22</sup> Hearing TR 10:24 to 11:7 (Sept. 30, 2022).

declined to recognize FDAB's authority to adjudicate Appellant's appeal. Ultimately, at the September 30 hearing, Appellant failed to comply with the Panel Chair's order that her witnesses be excluded until called to testify. Appellant's failure to cooperate precluded the hearing from proceeding with a common procedural safeguard—exclusion of fact witnesses. By all this conduct throughout this case, Appellant failed to comply with OAR 586-030-0037(1), which requires cooperation with FDAB.

In addition to Appellant's failure to comply with OAR 586-0030-0037(1), we conclude that Appellant failed to comply with OAR 586-030-0060(5), which provides, "Parties, witnesses and counsel shall conduct themselves in a respectful manner at all times and are subject to sanction—up to summary dismissal of their claims—for violation of this rule."

Here, to begin, Appellant's representatives were insulting to FDAB's Panel counsel and were uncooperative at the pre-hearing conference in April 2022. One representative, White, told the Panel, "You're wasting our time." Another representative, Vrooman, interrupted the Panel's counsel to advise her "It is not your turn to speak." One representative stated that those people who had affected Appellant's rights "do so at your individual peril." Inexplicably, one of Appellant's representatives asked the Panel's counsel whether she was "under the influence of any drug" during the conference. Later in the conference, that representative asked again whether counsel would be willing to submit to a drug test, and then asserted his view that "I think you need to submit to a drug test."

Later, as described above, Appellant disregarded the Panel's clear direction in the August 5 Notice of Hearing, September 9 letter order, and September 20 letter order that Appellant could not use lay representatives. Ignoring that clear direction, Dover filed documents on Appellant's behalf. In addition, Appellant brought *multiple* lay representatives to the September 30 hearing, where they repeatedly interrupted the Panel Chair and repeatedly asserted that the FDAB did not have authority to make rulings, to exclude witnesses, or to require that representatives be licensed attorneys. By interrupting the Panel Chair, Appellant's representatives precluded the

Chair from opening the hearing in an orderly manner, ultimately requiring another Panel Member to attempt to exert control over the hearing by telling Appellant that “we just want to see if you’re going to abide by those [FDAB rules and procedures] or not before we make a decision.” Appellant’s conduct—directly and through her representatives—in proceedings before FDAB from April 13 through September 30 did not comply with the FDAB rule that all parties must “conduct themselves in a respectful manner at all times[.]” OAR 586-030-0060(5).

Because Appellant, as described above, failed to comply with OAR 586-0030-0037(1) and OAR 586-030-0060(5), the Panel concludes that dismissal of Appellant’s appeal is warranted. In the alternative, the Panel concludes that Appellant’s failure to comply with OAR 586-0030-0037(1) serves as an independent ground for dismissal, and that Appellant’s failure to comply with OAR 586-030-0060(5) serves as an independent ground for dismissal.

### **ORDER**

The Appeal is dismissed.

DATED January 3, 2023

*/s/ Robert Sconce*

Robert Sconce, Panel Chair

DATED January 3, 2023

*/s/ Joshua Wetzel*

Joshua Wetzel, Panel Member

DATED January 3, 2023

*/s/ Jim Westrick*

Jim Westrick, Panel Member

**Notice: Under ORS 342.905(9), this order may be appealed in the manner provided for in ORS 183.480, and any appeal must be filed within 60 days from the date of service of this Order.**

### CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2023, I served a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** by the method indicated below:

Christina Tressel 26015 1 <sup>st</sup> Street Crawfordsville, OR 97336 Email: <a href="mailto:cjtressel@gmail.com">cjtressel@gmail.com</a>	<input type="checkbox"/>	HAND DELIVERY
	<input type="checkbox"/>	U.S. MAIL – CERTIFIED, RETURN RECEIPT REQUESTED
	<input type="checkbox"/>	OVERNIGHT MAIL
	<input type="checkbox"/>	TELECOPY (FAX)
	<input checked="" type="checkbox"/>	ELECTRONICALLY
Nancy Hungerford 222 High Street Oregon City, OR 97045 Email: <a href="mailto:nancy@hungerfordlaw.com">nancy@hungerfordlaw.com</a>	<input type="checkbox"/>	HAND DELIVERY
	<input type="checkbox"/>	U.S. MAIL – CERTIFIED, RETURN RECEIPT REQUESTED
	<input type="checkbox"/>	OVERNIGHT MAIL
	<input type="checkbox"/>	TELECOPY (FAX)
	<input checked="" type="checkbox"/>	ELECTRONICALLY

*/s/ Emily Nazarov*  
Emily Nazarov  
Executive Secretary  
Fair Dismissal Appeal Board