

BEFORE THE FAIR DISMISSAL APPEALS BOARD
OF THE
STATE OF OREGON

In The Matter of the Appeal of

MARIA HERNANDEZ,

Appellant,

v.

GRESHAM-BARLOW SCHOOL DISTRICT,

District.

Case No.: FDA-26-01

DISMISSAL ORDER

INTRODUCTION

On February 4, 2026, Appellant Maria Hernandez (Appellant) filed an appeal seeking this Board's review of the circumstances leading to her separation from employment with the Gresham-Barlow School District (District). On February 27, 2026, the District notified the Fair Dismissal Appeals Board (FDAB) Executive Secretary that it intended to file a motion to dismiss. On March 2, 2026, Appellant notified the FDAB Executive Secretary that she intended to file a motion for summary determination. Accordingly, counsel for the Panel established a briefing schedule for the parties to submit legal briefs and supporting evidence for the Panel to consider. The parties submitted briefs and evidence. The Panel considered the District's Motion to Dismiss, Appellant's Motion for Summary Determination, the District's Opposition to Motion for Summary Determination, and Appellant's Response to Motion to Dismiss. Pursuant to OAR 586-030-0025, and after reviewing both parties' submissions, the Panel decided that hearing oral argument from the parties and/or holding a limited evidentiary hearing was not necessary in order for the Panel to reach a decision.

Based on the parties' submissions and written arguments, and for the reasons that follow, the Panel concludes that the Fair Dismissal Appeals Board has no jurisdiction in this case. The Panel therefore grants the District's Motion to Dismiss, denies Appellant's Motion for Summary Determination, and dismisses the appeal.

FINDINGS OF FACT¹

1. The District employed Appellant as a probationary teacher for the 2023-2024 school year.²
2. The District employed Appellant as a probationary teacher for the 2024-2025 school year.³
3. The District renewed Appellant’s employment as a probationary teacher for the 2025-2026 school year.⁴
4. During the 2025 legislative session, the Oregon legislature passed House Bill 2900 (HB 2900).⁵ HB 2900 amended the definition of “contract teacher” under ORS 342.815.⁶ HB 2900 went into effect on January 1, 2026.⁷
5. On December 11, 2025, the District took action to non-renew Appellant as a probationary teacher.⁸
6. On December 12, 2025, the District notified Appellant in writing of its action to non-renew her probationary contract.⁹ The letter stated, “The end of your current contract will be effective with your last day of work on June 12, 2026.”¹⁰

CONCLUSIONS OF LAW

1. Appellant was not a contract teacher within the meaning of ORS 342.815(3).
2. The Fair Dismissal Appeals Board lacks jurisdiction in this case because Appellant was not a contract teacher.

DISCUSSION

The District moves to dismiss this appeal on two grounds. First, the District asserts that Appellant was not a contract teacher at the time of her contract non-renewal. The District argues that only contract teachers, and not probationary teachers, may appeal to the FDAB. The District argues

¹ These findings of fact are based on the undisputed facts as stated in the District’s Motion to Dismiss and Appellant’s Motion for Summary Determination.

² Mot. to Dismiss at 1; Attachment to Mot. to Dismiss at 1-5; Mot. for Summ. Determination at 1.

³ Mot. to Dismiss at 2; Attachment to Mot. to Dismiss at 6; Mot. for Summ. Determination at 1.

⁴ Mot. to Dismiss at 2; Attachment to Mot. to Dismiss at 7-8; Mot. for Summ. Determination at 1, Ex. A.

⁵ Mot. to Dismiss at 2; Mot. for Summ. Determination at 6.

⁶ Mot. to Dismiss at 2; Mot. for Summ. Determination at 6.

⁷ Mot. to Dismiss at 2; Mot. for Summ. Determination at 6.

⁸ Mot. to Dismiss at 2; Mot. for Summ. Determination at 5.

⁹ Mot. to Dismiss at 2; Attachment to Mot. to Dismiss at 9; Mot. for Summ. Determination at 6, Exh. B.

¹⁰ Attachment to Mot. to Dismiss at 9; Mot. for Summ. Determination, Exh. B.

that because Appellant was a probationary teacher at the time of her contract non-renewal, this Panel has no jurisdiction over this appeal. Second, the District argues that FDAB has no jurisdiction over this appeal because Appellant’s appeal was not timely. For the reasons explained below, this Panel concludes that it has no jurisdiction over this appeal because Appellant was not a contract teacher. Because the Panel concludes that Appellant was not a contract teacher, it does not rule on whether her appeal was timely.

A. Teacher Employment Status and FDAB Jurisdiction.

We begin with an overview of the categories of public school teachers in Oregon. The “legislature has divided the world of public school district teachers into two mutually exclusive sets: contract and probationary teachers.” *Smith v. Salem-Keizer Sch. Dist.*, 188 Or App 237, 243, *rev denied*, 336 Or 60 (2003).

Contract teachers have the right to appeal a dismissal or contract non-extension to the FDAB pursuant to ORS 342.905, which provides:

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[.]

ORS 342.905(1).

Until January 1, 2026, ORS 342.815 defined a “contract teacher” as a teacher who (1) had been regularly employed by a school district for a probationary period of three successive school years and (2) had been retained for the next succeeding school year. ORS 342.815(3) (2001) (prior to 2025 amendment).

Effective January 1, 2026, ORS 342.815 was amended to define a “contract teacher” as:

- (A) Any teacher who has been regularly employed by a fair dismissal district for an initial probationary period of three successive school years, and who has been retained for the next succeeding school year; or
- (B) Any teacher who has been regularly employed by a fair dismissal district for two successive years, who has already satisfied the initial three-year probationary term in another Oregon school district, and who has been retained for the next succeeding school year.

ORS 342.815(3)(a).

In contrast, a “probationary teacher” is “any teacher employed by a fair dismissal district who is not a contract teacher.” ORS 342.815(6). A probationary teacher has only limited procedural rights. A probationary teacher “shall be given a written copy of the reasons for the dismissal, and upon request shall be provided a hearing thereon by the [district] board, at which time the probationary teacher shall have the opportunity to be heard either in person or by a representative of the teacher’s choice.” ORS 342.835(1); *see also* ORS 342.835(2) (a probationary teacher is entitled to notice of non-renewal of a probationary teacher contract, “and upon request shall be provided a hearing before the district board”). A probationary teacher who seeks to appeal the non-renewal of a probationary teacher’s contract must appeal “to the circuit court for the county in which the headquarters of the school district is located[.]” ORS 342.835(3).

As noted above, FDAB’s jurisdiction is defined by ORS 342.905, which states, “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...[FDAB]...” within the time periods set forth in the statute. For a dismissal, such appeal and notice must be made within ten days after the teacher’s receipt of notice of the district’s action. ORS 342.905(1)(a). For a contract non-extension, such appeal and notice must be made within fifteen days after receipt of the written notice of non-extension of contract. ORS 342.905(1)(b).

B. Appellant’s Employment Status at the Time of Nonrenewal.

Consistent with FDAB’s jurisdictional scheme, the threshold question is Appellant’s employment status on the date she received notice that her contract would not be renewed.

Here, Appellant received notice of nonrenewal on December 12, 2025, and the undisputed facts demonstrate that Appellant was not a contract teacher under the pre-2026 definition. In order for Appellant to have been a contract teacher on December 12, 2025, she must have (1) served a probationary period of “three successive school years” and (2) been retained “for the next succeeding school year.” *See* ORS 342.815(3) (2001) (prior to 2025 amendment). The undisputed facts

demonstrate that Appellant’s employment history does not satisfy either requirement for contract teacher status.

To begin, it is undisputed that Appellant did not serve a probationary period of three successive school years with the District before the 2025-2026 school year. Rather, it is undisputed that Appellant entered a third probationary contract year for the 2025-2026 school year. In addition, it is undisputed that Appellant was not “retained for the next succeeding school year” at the end of a three-year probationary period. When Appellant was retained at the end of the 2024-2025 school year, Appellant had served a probationary period of only two successive years (2023- 2024 and 2024-2025). Therefore, when she was retained for the next year, 2025-2026, Appellant was still a probationary teacher, not a contract teacher.

Because FDAB has jurisdiction over only appeals filed by contract teachers, it does not have jurisdiction over this case.

In arguing for a different result, Appellant asserts the amended definition of “contract teacher,” effective January 1, 2026, should apply. We understand Appellant to argue that because she remains employed by the District through the end of the 2025-2026 contract year, she attained contract teacher status on January 1, 2026. Therefore, according to Appellant, she is a contract teacher and FDAB has jurisdiction.

We disagree. As discussed above, the legally operative act is Appellant’s receipt of notice of her contract non-renewal, which in this case occurred before the statutory amendment. Consistent with timeliness determinations for FDAB appeals, continued employment through the end of the contract term does not alter the jurisdictional consequences of the notice date. *See* ORS 342.905(1). To find otherwise and adopt Appellant’s position would be contrary to FDAB’s jurisdictional scheme.

Appellant also argues that this case bears a “strong resemblance” to *Smith v. Salem-Keizer Sch. Dist. and Fair Dismissal Appeals Board*, 188 Or App 237 (2003), in which the court of appeals reversed an FDAB panel’s conclusion that a teacher was probationary because he was terminated

before completing his third year. Appellant argues that “[t]he instant case is similar [to *Smith*] in that the text of the statute is clear.”¹¹ Appellant’s argument is unavailing.

Appellant contends that “[a]s in *Smith*, the clear text and context of the statute controls.”¹² In *Smith*, the Court examined “the text of ORS 342.815(3), a two-pronged statute that defines the term “contract teacher.”” *Smith*, 188 Or App at 244. The dispute in *Smith* centered on whether the facts satisfied the two prongs of that statute. Critically, the parties did *not* dispute which version of the statute applied; they disputed only how the facts applied to the statute. *See id.* at 244-246. Moreover, *Smith* did not involve a statutory amendment.

The issue presented here is fundamentally different. Unlike in *Smith*, the parties do not dispute the application of the facts to the statute: Appellant does not claim that she met the statutory definition of “contract teacher” under the pre-2026 version of ORS 342.815(3),¹³ and the District concedes that, absent intervening events, Appellant would have obtained contract teacher status on January 1, 2026.¹⁴ Rather, the dispositive issue is one of timing: which version of ORS 342.815 applies for purposes of determining FDAB jurisdiction. As explained earlier, the operative event for jurisdiction is Appellant’s receipt of notice of contract non-renewal. Appellant received that notice before the statutory amendment took effect. Because the statute in effect at the time of the legally operative act governs, the application of the facts to the amended statute is irrelevant. For these reasons, Appellant’s argument that *Smith* “bears a strong resemblance” to this case is unpersuasive.

Consequently, under the particular circumstances of this case, Appellant did not meet the statutory definition of “contract teacher” in effect at the time she received notice of nonrenewal.¹⁵

¹¹ Mot. for Summ. Determination at 4.

¹² Mot. for Summ. Determination at 5.

¹³ *See generally* Mot. for Summ. Determination.

¹⁴ Oppo. to Mot. for Summ. Determination at 6.

¹⁵ Appellant does not argue that the amended version of ORS 342.815 applies retroactively. Even if she had, ORS 342.815, as amended, contains no indication that the legislature intended the new definition of “contract teacher” to confer contract teacher status before its effective date. Whether a statute applies retroactively is a question of legislative intent, determined using the ordinary tools of statutory construction. *Village at Main Street Phase II, LLC v. Dept. of Rev.*, 356 Or 164, 183 (2014). This analysis requires examination of the statute’s text, context, and legislative history to discern the legislature’s intent. As a general matter, the Oregon Supreme Court presumes that amendments apply prospectively unless the legislature clearly signals an intent to apply them retrospectively. *Black v. Arizala*, 337 Or 250, 271 (2004). The Court also avoids construing amendments to have retroactive effect when doing so would impair existing rights, create new obligations, or impose additional duties with respect to past transactions. *Id.* Here, ORS 342.815 is silent on retroactive

Because Appellant was not a contract teacher, FDAB does not have jurisdiction to hear this appeal. Our conclusion that Appellant was not a contract teacher is dispositive; therefore, we do not consider whether Appellant's appeal was untimely.

ORDER

For the reasons discussed above, the District's motion is granted and the appeal is dismissed.

DATED this 4th day of June 2026

/s/ Patrick Maguire
Patrick Maguire, Panel Member

DATED this 4th day of June 2026

/s/ Sascha McKeon
Sascha McKeon, Panel Chair

DATED this 4th day of June 2026

/s/ Bob Sconce
Bob Sconce, 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.

application, and its creation of additional pathways to contract teacher status is not remedial in nature. Therefore, under the approach taken by the Oregon courts, it presumptively applies prospectively only.

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2026, I served a true and correct copy of the **DISMISSAL**

ORDER by the method indicated below:

Elizabeth A. Joffe Andrew Toney-Noland Kathy Hamaoka Attorneys at Law McKanna Bishop Joffe LLP 1635 NW Johnson Street Portland, OR 97209 Email: ljoffe@mbjlaw.com Email: atoney-noland@mbjlaw.com Email: khamaoka@mbjlaw.com	[] [] [] [] [X]	HAND DELIVERY U.S. MAIL OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY
Brian Hungerford The Hungerford Law Firm LLP 653 S Center Street Oregon City, OR 970445 Email: Brian@hungerfordlaw.com	[] [] [] [] [X]	HAND DELIVERY U.S. MAIL OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY

/s/ Molly Christ
 Molly Christ, OSB #206949
 Assistant Attorney General
 Labor & Employment Section
 General Counsel Division
 Oregon Department of Justice
Molly.Christ@doj.oregon.gov