

1 **FINDINGS OF FACT^{1/}**

2 1. In July 2008, Gilbert was hired under a one-year contract by the Reynolds School
3 District to serve as the principal of Reynolds High School. On July 1, 2011, Gilbert entered a
4 three-year contract with Reynolds School District to continue serving as principal until June 30,
5 2014.

6 2. Reynolds School District never employed Gilbert as a teacher.

7 3. Gilbert's administrative license expired on July 30, 2011.

8 4. Gilbert received a non-renewable emergency administrative license from the
9 Teacher Standards and Practices Commission ("TSPC"). Gilbert's non-renewable emergency
10 administrative license was set to expire on November 30, 2011. Before November 30, 2011,
11 Reynolds School District requested that TSPC extend Gilbert's emergency license for one
12 additional year to allow Gilbert to secure six credit hours necessary to satisfy his licensure
13 requirements. TSPC granted an extension until January 31, 2012.

14 5. On January 31, 2012, Gilbert was placed on unpaid leave effective February 1,
15 2012 because he no longer held a valid administrative license.

16 6. Gilbert remained on unpaid leave until his termination on June 20, 2012.

17 7. Reynolds School District Superintendent Joyce Henstrand terminated Gilbert's
18 employment on June 20, 2012.

19 8. The Reynolds School Board unanimously upheld the Superintendent's
20 termination decision at its board meeting on August 2, 2012.

21 9. Reynolds School District did not utilize the procedure described in ORS 342.895
22 to terminate Gilbert's employment.

23 **CONCLUSIONS OF LAW**

24 1. Appellant was an administrator within the meaning of ORS 342.815(1).

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26 ¹ The panel makes the findings in paragraphs 1 through 9 based on the Stipulated Facts submitted
by the parties.

1 ORS 342.905(1). “Teacher” is defined as follows:

2 Notwithstanding ORS 342.120, “teacher” means any person who holds a teaching
3 license or registration *as provided in ORS 342.125* or 342.144 or who is otherwise
4 authorized to teach in the public schools of this state and who is employed half-
time or more as an instructor or administrator.

5 ORS 342.815(9) (emphasis added). ORS 342.125 includes administrative licenses. The parties
6 agreed at oral argument that the term “teacher” includes administrators.

7 Because the term “teacher” is statutorily defined to include administrators, the panel
8 concludes that the Oregon Court of Appeals’ reasoning in *Wagenblast v. Crook County School*
9 *District*, 75 Or App 568, 707 P2d 69 (1985), applies both to teachers and to administrators, and
10 requires dismissal of this appeal. In *Wagenblast*, FDAB dismissed a teacher’s appeal for lack of
11 jurisdiction, and the Oregon Court of Appeals affirmed. In *Wagenblast*, the Teacher Standards
12 and Practices Commission notified the district that the teacher did not hold a valid teaching
13 certificate. In response, the district superintendent informed the teacher that she was terminated.
14 The Oregon Court of Appeals held that FDAB did not have jurisdiction:

15 When district dismissed her, petitioner was not a “teacher” within the meaning of
16 the Fair Dismissal Law. She did not hold “a teacher’s certificate as provided in
17 ORS 342.125” nor was she otherwise authorized to teach in the public schools of
18 the state. See ORS 342.815(8). Accordingly, FDAB lacked jurisdiction to
determine whether the district had legal authority to terminate petitioner or
whether it had legal authority to terminate her in the manner it did. See
ORS 342.905.

19 *Wagenblast*, 75 Or App at 573, 707 P2d at 72.

20 The reasoning in *Wagenblast* applies here. An administrator may appeal a termination in
21 “the same manner as provided for the appeal of a dismissal or a nonextension of a contract
22 teacher.” ORS 342.845(5)(a). Under *Wagenblast*, a teacher who appeals a dismissal must have
23 a valid teaching license. The definition of “teacher,” as both parties agree, includes
24 administrators. See ORS 342.815(9). It follows that a “teacher” who is an administrator and
25 who seeks to appeal *as an administrator* must, to appeal to FDAB, have the valid license
26 necessary to work as an administrator. Here, the parties stipulated that Appellant did not have a

1 valid administrative license at the time of his termination.^{2/} Therefore, under *Wagenblast*, FDAB
2 lacks jurisdiction to hear this appeal because Appellant did not have a valid license.

3 Finally, we conclude that there is no merit to Appellant's argument that he had a valid
4 teaching license, and was required *only* to have a valid teaching license in order to appeal to
5 FDAB his termination *as an administrator*. We note that the parties did not stipulate to the
6 status of Appellant's teaching license at the time of his termination, but we do not need to
7 resolve any factual dispute.^{3/} Even assuming that Appellant had a valid teaching license at the
8 time of his termination, Appellant's teaching license is irrelevant to the jurisdictional analysis.
9 There is no Oregon case that supports Appellant's argument. Both parties stated at oral
10 argument that there is no legislative history that supports Appellant's interpretation of the statute.
11 Neither party submitted legislative history that supports a conclusion that an administrator may
12 appeal to FDAB without a valid administrative license.

13 Further, although it is not necessary to the resolution of Respondent's motion, the panel
14 notes that Appellant's argument overlooks the clause in ORS 342.845(5)(a) that provides that an
15 administrator may appeal a termination in "the same manner as provided for the appeal of a
16 dismissal or a nonextension of a contract teacher." A "contract teacher" is "any teacher who has
17 been regularly employed by a school district for a probationary period of three successive school
18 years, and who has been retained for the next succeeding school year." ORS 342.815(3). For a
19 contract teacher to appeal, the teacher must both (a) be "a contract teacher" and (b) as required
20 by *Wagenblast*, have a valid teaching license at the time of dismissal to work as a teacher.
21 Appellant seems to be arguing that an equivalent two-part jurisdictional analysis is not required

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23 ^{2/} See Stipulated Facts, ¶¶ 3-4.

24 ^{3/} Appellant submitted TSPC license information and characterized the status of Appellant's
25 license as "active." Affidavit of Matthew E. Malmshemer, ¶ 10. Respondent submitted a copy of
26 Appellant's standard teaching license showing effective dates of July 31, 2007 through July 30, 2012.
Affidavit of Rebekah R. Jacobson, ¶ 3(a). Respondent characterized the same TSPC license information
submitted by Appellant differently than Appellant; Respondent described the "renewal of Jeffrey L.
Gilbert's teaching license [as] currently pending." Affidavit of Rebekah R. Jacobson, ¶ 3(b).

1 in administrator appeals. Specifically, Appellant argues that FDAB has jurisdiction over an
2 administrator's appeal if the appellant has *any* license. Although the following reasoning is not
3 necessary to the resolution of Respondent's motion, we agree with Respondent that an
4 administrator must satisfy a two-part jurisdictional test that is equivalent to the two-part test used
5 in contract teacher appeals. Respondent argues that to support FDAB's jurisdiction in an
6 administrator appeal, the appealing administrator must both (a) be an administrator, and (b) have
7 a valid license to work as an administrator. Respondent correctly points out that Appellant's
8 interpretation of the statute would create for administrator appeals a different jurisdictional
9 analysis than the analysis used in contract teacher appeals. The panel observes that Appellant's
10 argument that a different test should be used for administrators than the test used for contract
11 teachers would, if adopted, create a result contrary to ORS 342.845(5)(a), which states that an
12 administrator may appeal in "the same manner" as provided for the appeal of a dismissal or a
13 nonextension of a contract teacher.

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ORDER

For the reasons discussed above, Respondent's Motion to Dismiss For Lack of Jurisdiction is hereby granted.

DATED this 5th day of November, 2012.


Dennis Ross - Panel Member

Christy Perry - Panel Member

Fred Marble - 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.

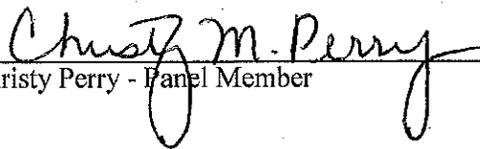
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ORDER

For the reasons discussed above, Respondent's Motion to Dismiss For Lack of Jurisdiction is hereby granted.

DATED this ____ day of November, 2012.

Dennis Ross – Panel Member



Christy Perry - Panel Member

Fred Marble – Panel Member

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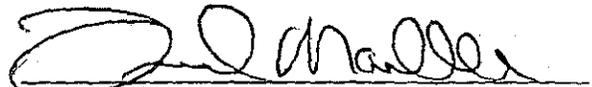
ORDER

For the reasons discussed above, Respondent's Motion to Dismiss For Lack of Jurisdiction is hereby granted.

DATED this ____ day of November, 2012.

Dennis Ross - Panel Member

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1 **ORDER**

2 For the reasons discussed above, Respondent's Motion to Dismiss For Lack of
3 Jurisdiction is hereby granted.

4 DATED this ___ day of November, 2012.

5 _____
6 Dennis Ross – Panel Member

7 _____
8 Christy Perry - Panel Member

9 _____
10 Fred Marble – Panel Member

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

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I served a true copy of the foregoing FINDINGS OF FACT,
3 CONCLUSIONS OF LAW, DISCUSSION, AND ORDER ON MOTION TO DISMISS on the
4 following parties, on the date set forth below, contained in a sealed envelope, deposited in the
5 United States mail at Salem, Oregon with postage paid, sent via certified mail, return receipt
6 requested, and addressed to the parties at their regular addresses as follows:

7
8 Christopher Lundberg
9 Attorney at Law
10 Haglund Kelley Jones & Wilder LLP
11 200 SW Market Street, Ste 1777
12 Portland, OR 97201-5771

13 Attorney for Appellant

Rebekah R. Jacobson
Attorney at Law
Garrett Hemann Robertson PC
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PO Box 749
Salem, OR 97308-0749

Attorney for Respondent

14 DATED this 5th day of November, 2012.

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16 
17 Lisa Umscheid, OSB# 92571
18 Sr. Assistant Attorney General
19 Of Attorneys for Fair Dismissal Appeals Board
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