

1 **BEFORE THE FAIR DISMISSAL APPEALS BOARD**
2 **OF THE**
3 **STATE OF OREGON**

4 In The Matter of the Appeal of
5 DEBI MEIER,

6 Appellant,

7 v.

8 SALEM-KEIZER SCHOOL DISTRICT,
9 District.

Case No.: FDA-13-01

**ORDER ON DISTRICT'S PETITION FOR
RECONSIDERATION**

10
11 **INTRODUCTION**

12 On August 29, 2013, the District filed a Petition for Reconsideration, seeking
13 reconsideration of Conclusions of Law ¶ 3 and ¶ 4, but “not challenging the Panel’s
14 reinstatement and back pay award.”¹ Appellant filed Objections to Respondent’s Petition for
15 Reconsideration, dated September 10, 2013. For the reasons discussed below, the Panel grants
16 the Petition in part and denies the Petition in part.

17 **DISCUSSION**

18 **I. Conclusion of Law ¶ 3.**

19 The Panel denies the District’s request that the Panel modify Conclusion of Law ¶ 3. The
20 District argues that the information AV provided to Appellant, “as a matter of law, was
21 reportable suspected sexual abuse.”² The Panel disagrees.

22 The Panel agrees with Appellant that the District did not establish that AV described
23 sexual abuse to Appellant. Sexual abuse means abuse “as described in ORS chapter 163.” ORS
24 419B.005(1)(a)(D). Sexual abuse requires sexual contact. “Sexual contact” between people is
25 “any touching of the sexual or other intimate parts of a person or causing such person to touch

26 ¹ See Petition for Reconsideration, p. 7.

² Petition for Reconsideration, p. 4.

1 the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual
2 desire of either party.” ORS 163.305(6). Sexual abuse thus requires both (1) the touching of the
3 sexual or other intimate parts of a person, (2) for the purpose of arousing or gratifying the sexual
4 desire of either party. In this case, this Panel cannot find that, pursuant to this two-part test, AV
5 described sexual abuse to Appellant.

6 The Panel agrees with the Appellant that the District did not establish that AV told
7 Appellant that her brother actually *touch*ed any sexual or intimate body part of AV. In its
8 Petition, the District argues that Findings of Fact ¶¶ 15 and 16 support a conclusion that AV
9 described sexual abuse to Appellant. Finding of Fact ¶ 15 states:

10

11 Appellant asked AV what she needed to talk about. AV stated abruptly: “A little
12 more than a year ago my brother molested me.” Appellant replied: “Well, tell me
13 what that means to you. When you say that, what does that mean?” Appellant
14 asked this question to clarify what “molest” meant to AV. By being around AV
15 as a student aide, Appellant had become aware AV had relatively low cognitive
abilities and wanted to be sure what she meant by “molest” when she used the
word. She also observed AV “seemed like she always did” and “didn’t seem
upset or anything.”

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16 Finding of Fact ¶ 15. Finding of Fact ¶ 16 states:

16

17 AV said her brother had touched her. Appellant asked where. AV gestured by
18 waving her hand in a circular motion in front of her upper torso area, making a
large circle in the air from approximately her neck down to her stomach area.
19 AV did not use words to describe her brother touching any part of her body.
Appellant probed with more questions to find out if there had been any sexual
20 contact. AV seemed “very comfortable telling [Appellant] everything.” AV did
not report anything to Appellant to lead her to think any sexual contact had
21 occurred.

21

22 Finding of Fact ¶ 16. The Panel disagrees that these findings, read together, support an inference
23 that AV described *actual touching* by AV’s brother of AV’s breast. The District argues that the
24 combination of AV’s use of the word “molest” with AV’s circular hand motion was sufficient to
25 describe actual contact with AV’s breast. In light of all the evidence presented at the hearing,
26 this Panel disagrees.

26

1 In addition, the evidence also did not support a finding that AV said anything from which
2 Appellant could conclude that AV's brother was acting for the purpose of arousing or gratifying
3 the sexual desire of either AV or her brother. Therefore, this Panel cannot conclude that the
4 evidence demonstrates that AV described sexual contact to Appellant.

5 For these reasons, the Panel declines to modify its conclusion stated in Conclusion of
6 Law ¶ 3.

7 **II. Conclusion of Law ¶ 4.**

8 The Panel grants the District's request that the Panel modify Conclusion of Law ¶ 4 to
9 the following limited extent. In its Petition, the District seems to argue that the Panel
10 misinterpreted the District's *policy* with regard to reporting child abuse.

11 The District did not, however, dismiss Appellant solely for violating District policy. In
12 the District's Statement of Facts Relied Upon to Support Statutory Grounds for Dismissal of
13 Debi Meier, admitted as Exhibit D-1, the District relied upon ORS 342.865(1)(d) as a basis for
14 dismissal. ORS 342.865(1)(d) provides that a contract teacher may be dismissed or a contract
15 teacher's contract may be nonextended for "[n]eglect of duty, including duties specified by
16 written rule." The District prepared a lengthy written narrative of its basis for alleging that
17 Appellant neglected a duty. In each instance, the District alleged that Meier violated law *and*
18 District policy. *See, e.g.*, Exhibit D-1, p. 3 ("Ms. Meier has admitted to failing to report
19 suspected child abuse as required by the law *and* District policy"); p. 3 ("Ms. Meier violated
20 state law *and* District policy"); p. 5 ("Ms. Meier violated the law *and* District policy in many
21 ways") (emphases added). The District did not allege that Appellant was discharged because she
22 violated *only* District policy, or that she neglected her duty under *either* law or District policy.
23 Therefore, for clarity, we amend Conclusion of Law ¶ 4 as follows, to specify that Appellant was
24 alleged to have violated duties under both law *and* District policy:

25 The factual allegation that Appellant had reasonable cause to believe that AV
26 reported sexual abuse to Appellant in May 2012, such that Appellant had a duty under
law and District policy to report sexual abuse, is not true or substantiated.

1 The District's Petition appears to argue that the District may require its employees to report
 2 suspected abuse that would not constitute "sexual abuse" as defined by law. That may be the
 3 District's goal or position with respect to its policy. The District appears to argue that our Order
 4 is inconsistent with that goal or position. We do not understand our Order to preclude the
 5 District from requiring its employees to report suspected abuse that would not constitute abuse as
 6 defined by law.

7 **ORDER**

8 For the reasons stated above, Conclusion of Law ¶ 4 is amended as follows:

9
 10 The factual allegation that Appellant had reasonable cause to believe that AV
 11 reported sexual abuse to Appellant in May 2012, such that Appellant had a duty
 under law and District policy to report sexual abuse, is not true or substantiated.

12
13 DATED this 10/17, 2013

14
 15 
 16 _____
 David Krumbein, Panel Chair

17
 18 _____
 Dennis Ross, Panel Member

19
 20 _____
 Carolyn Ramey, Panel Member

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

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Dennis Ross, Panel Member

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CERTIFICATE OF SERVICE

I hereby certify that on 10/17/13, I served a true and correct copy of ORDER ON DISTRICT'S PETITION FOR RECONSIDERATION by the method indicated below:

Table with 3 columns: Recipient Name and Address, Selection checkboxes, and Delivery Method. Includes recipients John S. Bishop, II and Rebekah Jacobson.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

[Handwritten signature]

Lisa M. Umscheid, OSB 925718
Senior Assistant Attorney General
Of Attorneys for Fair Dismissal Appeals Board

Cindy Hunt, FDAB