2023-2024 SUPPLEMENT
TO
COMPILATION OF FAIR DISMISSAL APPEALS BOARD CASES

Cases Interpreting Causes for Dismissal
Under ORS 342.865
And
Selected Procedural Matters

TABLE OF CONTENTS

A. INEFFICIENCY (no cases cited) 2

B. IMMORALITY....2

C. INSUBORDINATION 3

D. NEGLECT OF DUTY 5

E. PHYSICAL OR MENTAL INCAPACITY (no cases cited)....8

F. CONVICTION OF FELONY OR CRIME INVOLVING MORAL TURPITUDE (no cases cited)....8

G. INADEQUATE PERFORMANCE (no cases cited) 8

H. FAILURE TO COMPLY WITH SUCH REASONABLE REQUIREMENTS AS THE SCHOOL BOARD MAY PRESCRIBE TO SHOW NORMAL IMPROVEMENT AND EVIDENCE OF PROFESSIONAL TRAINING AND GROWTH (no cases cited) 8

I. ANY CAUSE WHICH CONSITUTES GROUNDS FOR REVOCATION OF THE TEACHER'S TEACHING CERTIFICATE (no cases cited) 8

J. PROCEDURAL MATTERS
(a) FDAB Jurisdiction – Status of Teachers & Administrators (no cases cited) ...8
(b) FDAB Jurisdiction – Timeliness of Appeal (no cases cited)....8
(c) FDAB Jurisdiction – Pay Reductions (no cases cited) 8
(d) FDAB Jurisdiction – Layoffs, Resignations & Retirement (no cases cited) 8
(e) Evidentiary Matters 8
(f) Miscellaneous Issues (no cases cited)....9

K. REMEDIES
(a) Reinstatement 9
(b) Back Pay 13

A. INEFFICIENCY (no cases cited)

B. IMMORALITY

Willado Penaguirre v. Woodburn School District, FDA-24-01 (2024)

This case arose from an allegation that Appellant sexually and physically abused a student between 2011 and 2015 at the elementary school where Appellant taught. The student (Student) alleged that the abuse occurred in the closet in Appellant's classroom during the several times a week when Student would eat lunch alone with Appellant in his classroom.

Appellant taught Student various subjects during Student's second through fifth-grade years. Years later, between Student's freshman and sophomore years of high school in 2019, Student began receiving therapy because of depression and suicidal ideation. Student told a therapist in 2020 about a dream in which Student was naked and someone was on top of her. The therapist reported the alleged abuse. The Department of Human Services (DHS) Office of Training, Investigations and Safety (OTIS) investigated and closed its investigation as "unable to determine" because the evidence was in conflict and unclear.

The next year, Student was hospitalized for psychiatric reasons. After three hospital admissions, Student was admitted to a residential facility. There, Student discussed her memories of the alleged abuse many times.

In 2022, Student reported the alleged abuse to DHS. During the interview during this second OTIS investigation, Student claimed that her memories had become clearer over time and therapy had unlocked memories of abuse by Appellant. In the interview during the OTIS investigation, Student claimed to have been raped 10 times. (At hearing, Student claimed Appellant raped Student around 20 times, and the total number of incidents of abuse was between 50 to 100 times, mostly in the third and fourth grades.) In this second investigation, OTIS concluded that the allegation of sexual abuse was "founded."

While the second OTIS investigation was underway, the Teacher Standards and Practices Commission (TSPC) conducted an investigation. This investigation resulted in a Stipulation of Facts and Final Order of Public Reprimand and Probation on Appellant indicating that Appellant "may have committed acts of gross neglect of duty and/or gross unfitness" related to gifts he gave Student, visits he made to Student's home, and other visits he had with Student and Student's family after Student had left Appellant's school. However, the stipulation was silent about and unrelated to the abuse allegations.

Once OTIS determined the allegations were "founded," a detective from Woodburn Police Department asked Appellant to come in for an interview. At the time, during the COVID pandemic, Appellant was in Mexico working remotely, but he voluntarily returned to Oregon and sat for an interview. Appellant denied all allegations of abuse. At the time of hearing before the FDAB panel, the Woodburn Police Department and the Marion County District Attorney had not filed criminal charges against Appellant.

Appellant declined to be polygraphed by a police polygrapher, but engaged his own polygrapher, who concluded that Appellant was being truthful when he denied Student's allegations.

The District terminated Appellant on the statutory ground of immorality.

At hearing, the District presented an expert witness who testified about child sex abuse and forensic interviewing. Appellant presented an expert witness who testified about the theory of repressed memory and the creation of false memories over time.

The panel concluded that the true and substantiated facts were inadequate to support dismissal on the basis of immorality. FDAB has defined immorality as selfish or malicious conduct that shows a disregard for the rights or sensitivities of other persons. The teacher's selfishness must be excessive or significant to meet the standard. Conduct is immoral only if the teacher intended to cause actual harm against others, such as causing injury or damage or interfering with an investigation. *See, e.g., Kari v. Jefferson Cty Sch. Dist*., FDA 88-6 (1988), *rev'd on other grounds*, 318 Or 25 (1993).

The panel concluded that Student's significant mental health issues and Dissociative Identify Disorder, as well as Student's extensive therapy, impaired the accuracy of Student's recollections of abuse. In addition, Student's recollection of additional facts, incidents, and details over time undermined the reliability of Student's recollections. Student's visits with Appellant after leaving elementary school and lack of trauma-related behavior also undermined the credibility of the allegations.

The panel also concluded that it was unlikely that the alleged abuse could have occurred in the closet, as alleged. Appellant's habit of eating lunch with third-grade teachers, as well as the open nature of the school and classroom, made the allegations unlikely. Further, the panel was also persuaded by polygraph results exonerating Appellant, as well as the testimony offered by Appellant's expert witness, who testified that the scientific and research community of psychology scientists are unanimously very skeptical about the claim that traumatic memories can be lost and later recovered.

C. INSUBORDINATION

Jacquelyn Hallquist v. Hillsboro School District, FDA-23-02 (2024), appeal pending.

This case arose from a single incident in which a special education teacher physically moved a student who was highly impacted by autism by holding her legs above the ankles and sliding her several feet across a hallway floor into a room that was the student's "safe spot."

Appellant was a well-regarded special education teacher in the Hillsboro School District. During the 2022-2023 school year, she was a case manager for third and fourth-grade students in a non-categorical classroom. The District has a policy that permits the physical movement or management of students only when a student's behavior poses a reasonable risk of imminent and substantial physical or bodily injury to the student or others, and less restrictive interventions

would not be appropriate. This standard was included in the District's policy regarding use of restraint and seclusion.

The District also used Safety Care training, which Appellant received three times. The Safety Care training emphasized that physical management of students is permitted only when (1) there is imminent risk of serious harm to the agitated person or someone else; (2) there is no other practical way to prevent the harm without physical management; and (3) the risk of not intervening is greater than the risk of intervening.

On the day of the incident, Student E, a third grader, was dysregulated during dismissal time. Student E was largely non-verbal, although she could communicate in words (but not full sentences) when calm. Appellant was very familiar with Student E and had taught her in both kindergarten and in first grade. Student E had a history well-known to the school's staff and principal of running out of the school building, causing worry that she would run before vehicles or into the road. On multiple occasions, Student E had also showed escalated behavior in the school hallways, falling to the floor, throwing herself against the wall, and screaming.

In April 2023, school staff had a protocol for Student E at the end of the school day. At dismissal time, to safely transition Student E from the school day to her ride home, a staff member would walk Student E from Appellant's classroom to the conference room across from the school office. Student E was then required to be calm for 20 minutes in the conference room before being transitioned to her transportation home.

On April 19, 2023, a special education assistant who was fairly new to working with Student E waited in the conference room with Student E, consistent with Student E's end-of-day protocol. At 2:09 p.m., Student E and the assistant walked into the hallway from the conference room. Student E almost immediately dropped to the floor and then attempted to run away from the assistant. One minute later, Appellant joined the assistant and Student in the hallway. At this point, Student E was lying on the hallway floor moving her legs in a kicking motion. Student E then ran down the hallway, away from Appellant and the assistant. Appellant and the assistant were able to stop Student E from running further. One minute after that, a second special education assistant, who was more familiar with Student E, joined them.

Student E made two more attempts to break away into a run. By 2:13 p.m., the group had returned to the entrance to the conference room that was Student E's "safe spot." At this point, one of the assistants, with her hand around Student E's wrist, attempted unsuccessfully to guide Student E into the conference room. Rather than enter the room, Student E dropped to the hallway floor in front of the conference room, with her feet a few feet away from the conference room door.

One assistant moved and put her hands under Student E's head. Appellant knelt on the hallway floor at Student E's feet. Appellant then placed her hand on Student E's calf and slid Student E a foot or so down the hallway floor. Appellant then placed her hand on Student E's other calf and slid Student E a short distance (a foot to several feet) to the threshold of the conference room. Once Student E's feet and lower legs were through the conference room door, Appellant and one of the assistants lifted Student E to a sitting position and moved her through

the doorway into the conference room. After a short time in the conference room, Student E, who by then had become calm, was taken home by a parent.

Student E was not injured during her movement into the conference room by the Appellant and the two assistants. Her parents received a copy of the incident report about the event and did not complain.

The District dismissed Appellant for insubordination and neglect of duty.

The panel concluded that the true and substantiated facts were not adequate to justify the statutory ground of insubordination. Insubordination means "disobedience of a direct order or unwillingness to submit to authority," and must be accompanied by a defiant intent or attitude on the part of the teacher. *Bellairs v. Beaverton Sch. District*, 206 Or App 186, 199, 136 P3d 93 (2006). To establish insubordination, there must be credible evidence that the District imposed a lawful order or directive, that it clearly communicated that order or directive, and that the teacher willfully refused to obey the order. *Sherman v. Multnomah Education Service Dist.*, FDA-95-4, 22-23 (1996). However, a mere "violation of policies in and of itself" does not constitute insubordination. *Bartsch v. Elkton School District*, FDA-13-011 at 26 (2013) (explaining that insubordination requires a defiant intent and clear communication of an order and noting that school policies are not "orders").

The panel reasoned that, in this case, the District did not clearly communicate to Appellant an order or directive that she could not, in the specific circumstances she confronted with Student E, physically move Student E. Instead, the District's policies and Safety Care training required District employees to make nuanced, fact-specific judgments in the moment about the risk of harm and the risk of not intervening.

In addition, the panel also concluded that the Appellant did not act with a defiant intent or attitude, as required to demonstrate insubordination. After the event, the Appellant promptly reported the event and sought help from a specialist in the District about how to work with Student E in similar circumstances to avoid repeating an interaction similar to the April 19 interaction. Appellant also acknowledged to District administrators and the school board that her conduct fell short of the Safety Care principles.

D. NEGLECT OF DUTY

Jacquelyn Hallquist v. Hillsboro School District, FDA-23-02 (2024), appeal pending.

This case arose from a single incident in which a special education teacher physically moved a student who was highly impacted by autism by holding her legs above the ankles and sliding her several feet across a hallway floor into a room that was the student's "safe spot."

Appellant was a well-regarded special education teacher in the Hillsboro School District. During the 2022-2023 school year, she was a case manager for third and fourth-grade students in a non-categorical classroom. The District had a policy that permitted the physical movement or management of students only when a student's behavior posed a reasonable risk of imminent and substantial physical or bodily injury to the student or others, and less restrictive interventions

would not be appropriate. This standard was included in the District's policy regarding use of restraint and seclusion.

The District also used Safety Care training, which Appellant received three times. The Safety Care training emphasized that physical management of students was permitted only when (1) there is imminent risk of serious harm to the agitated person or someone else; (2) there is no other practical way to prevent the harm without physical management; and (3) the risk of not intervening is greater than the risk of intervening.

On the day of the incident, Student E, a third grader, was dysregulated during dismissal time. Student E was largely non-verbal, although she could communicate in words (but not full sentences) when calm. Student E had a history well-known to the school's staff and principal of running out of the school building, causing worry that she would run before vehicles or into the road. On multiple occasions, Student E had also showed escalated behavior in the school hallways, falling to the floor, throwing herself against the wall, and screaming.

In April 2023, at dismissal time, to safely transition Student E from the school day to her ride home, a staff member would walk Student E from Appellant's classroom to the conference room across from the school office. Student E was then required to be calm for 20 minutes in the conference room before being transitioned to her ride home.

On April 19, 2023, a special education assistant waited in the conference room with Student E, consistent with Student E's end-of-day protocol. At 2:09 p.m., Student E and the assistant walked into the hallway from the conference room. Student E almost immediately dropped to the floor and then attempted to run away from the assistant. One minute later, Appellant joined the assistant and Student E in the hallway. At this point, Student E was lying on the hallway floor moving her legs in a kicking motion. Student E then ran down the hallway, away from Appellant and the assistant. Appellant and the assistant were able to stop Student E from running further. One minute after that, a second special education assistant joined them.

Student E made two more attempts to break away into a run. By 2:13 p.m., the group had returned to the entrance to the conference room that was Student E's "safe spot." At this point, one of the assistants, with her hand around Student E's wrist, attempted unsuccessfully to guide Student E into the conference room. Rather than enter the room, Student E dropped to the hallway floor in front of the conference room, with her feet a few feet away from the conference room door.

One assistant moved and put her hands under Student E's head. Appellant knelt on the hallway floor at Student E's feet. Appellant placed her hand on Student E's calf and slid Student E a foot or so down the hallway floor. Appellant then placed her hand on Student E's other calf and slid Student E a short distance (a foot to several feet) to the threshold of the conference room. Once Student E's feet and lower legs were through the conference room door, Appellant and one of the assistants lifted Student E to a sitting position and moved her through the doorway into the conference room. After a short time in the conference room, Student E, who by then had become calm, was taken home by a parent.

Appellant moved Student E by sliding her across the floor because she was afraid that Student E, with her history of running out of the building and several attempts during the interaction to run away, would be at imminent risk of running out of the school building and toward potential harm.

Student E was not injured during Appellant's physical movement of her. Student E's parents received a copy of the incident report about the event and did not complain.

The District dismissed Appellant for insubordination and neglect of duty.

The panel concluded that the true and substantiated facts were adequate to justify the statutory ground of neglect of duty. Neglect of duty means a teacher's failure to engage in conduct designed to bring about a performance of his or her responsibilities, either by engaging in "repeated failures to perform duties of relatively minor importance" or "a single instance of a failure to perform a critical duty." *Meier v. Salem-Keizer School District*, FDA-13-01 at 30 (2013), *aff'd*, 284 Or App 497, 508-509 (2017), *rev den*, 362 Or 175 (2017).

The panel reasoned that, when she held Student E's calves and slid her across the hallway floor for several feet, Appellant could not reasonably be concerned at that specific moment that Student E was at imminent risk of running out of the school building and toward potential harm. At the moment that Appellant physically moved Student E, Appellant was not alone; she was accompanied by two special education assistants. And, when Appellant restrained Student E, the crowds of students in the hallways leaving school for the day had left. If Student E had attempted to run, it would have been much easier for Appellant and the assistants to surround her and prevent her from leaving than it would have been just minutes earlier, when the hallways were crowded with students. Most significantly, at the time when Appellant slid Student E across the floor, Student E was lying on the floor generally still.

The panel concluded that, given the situation at the moment that Appellant slid Student E across the floor, as an experienced teacher Appellant should have known that she should have let Student E calm down on the hallway floor. Appellant and the two assistants could have surrounded her to ensure her safety. There were, in other words, practical alternatives to physical restraint. The District's policy, communicated through Safety Care training, permitted physical management of students only when, in addition to other factors, there is no other practical way to prevent the harm without physical management.

The panel also reasoned that letting Student E calm down in the hallway would have been consistent with Student E's Response Plan. By not taking actions identified in the Response Plan—such as creating space between Student E and other students, avoiding vocal directions or talking, and offering coloring using half sheets of paper—Appellant neglected a critical duty, considering the other facts.

The panel also considered the degree of Appellant's intentionality or "fault," in keeping with past FDAB decisions. Noting that this was a close case, the panel reasoned that Appellant had the presence of mind to look down the hallway toward teachers she believed were inappropriately staring at Student E, which means she had the awareness to make a thoughtful decision in that moment. Given that, the panel reasoned that she could have and should have

paused and considered whether physical management of Student E was appropriate, and her failure to do so constituted the level of "fault" in the context of the FDAB's neglect of duty caselaw.

One panelist wrote a dissent, noting that he agreed with the majority's conclusion that the true and substantiated facts supported dismissal on the ground of neglect of duty. However, he dissented from the majority's reinstatement order because he could not conclude, given all the facts in the case, that no reasonable school board would have dismissed Appellant.

E. PHYSICAL OR MENTAL INCAPACITY (no cases cited)

F. CONVICTION OF FELONY OR CRIME INVOLVING MORAL TURPITUDE (no cases cited)

G. INADEQUATE PERFORMANCE (no cases cited)

H. FAILURE TO COMPLY WITH SUCH REASONABLE REQUIREMENTS AS THE SCHOOL BOARD MAY PRESCRIBE TO SHOW NORMAL IMPROVEMENT AND EVIDENCE OF PROFESSIONAL TRAINING AND GROWTH (no cases cited)

I. ANY CAUSE WHICH CONSITUTES GROUNDS FOR REVOCATION OF THE TEACHER'S TEACHING CERTIFICATE (no cases cited)

J. PROCEDURAL MATTERS

(a) FDAB Jurisdiction – Status of Teachers & Administrators (no cases cited)
(b) FDAB Jurisdiction – Timeliness of Appeal (no cases cited)

(c) FDAB Jurisdiction – Pay Reductions (no cases cited)

(d) FDAB Jurisdiction – Layoffs, Resignations & Retirement (no cases cited)

(e) Evidentiary Matters

Jacquelyn Hallquist v. Hillsboro School District, FDA-23-02 (2024), appeal pending.

The panel sustained the District's objection to admission of an email from the Department of Human Services Office of Training, Investigations and Safety because Appellant did not disclose the exhibit at least 10 days before the hearing and no good cause was shown.

ORS 342.905(5)(a) provides that "[a]t least 10 days prior to the hearing, the teacher shall provide a list of witnesses and exhibits to the Fair Dismissal Appeals Board Panel and the school district." OAR 586-030-0050(4) requires the parties to exchange exhibits for their respective case-in-chief 10 calendar days before the hearing. OAR 586-030-0050(6) provides that exhibits not pre-marked and distributed prior to the hearing will be excluded unless good cause is shown.

Appellant argued that the exhibit was necessary to supplement the District's investigatory materials and to respond to what Appellant called the District's "inflammatory" testimony about Appellant's interaction with a student highly impacted by autism. The panel found that neither reason constituted good cause and excluded the exhibit.

(f) Miscellaneous Issues (no cases cited)

K. REMEDIES

(a) Reinstatement

1. ***Jacquelyn Hallquist v. Hillsboro School District,*** FDA-23-02 (2024), appeal pending.

This case arose from a single incident in which a special education teacher physically moved a student who was highly impacted by autism by holding her legs above the ankles and sliding her several feet across a hallway floor into a room that was the student's "safe spot." The panel reached a split 2-1 decision on whether Appellant should be reinstated.

Appellant was a well-regarded special education teacher in the Hillsboro School District. During the 2022-2023 school year, she was a case manager for third and fourth-grade students in a non-categorical classroom. The District had a policy that permitted the physical movement or management of students only when a student's behavior posed a reasonable risk of imminent and substantial physical or bodily injury to the student or others, and less restrictive interventions would not be appropriate. This standard was included in the District's policy regarding use of restraint and seclusion.

The District also used Safety Care training, which Appellant received three times. The Safety Care training emphasized that physical management of students was permitted only when (1) there is imminent risk of serious harm to the agitated person or someone else; (2) there is no other practical way to prevent the harm without physical management; and (3) the risk of not intervening is greater than the risk of intervening.

On the day of the incident, Student E, a third grader, was dysregulated during dismissal time. Student E was largely non-verbal, although she could communicate in words (but not full sentences) when calm. Student E had a history well-known to the school's staff and principal of running out of the school building, causing worry that she would run before vehicles or into the road. On multiple occasions, Student E had also showed escalated behavior in the school hallways, falling to the floor, throwing herself against the wall, and screaming.

In April 2023, at dismissal time, to safely transition Student E from the school day to her ride home, a staff member would walk Student E from Appellant's classroom to the conference room across from the school office. Student E was then required to be calm for 20 minutes in the conference room before being transitioned to her ride home.

On April 19, 2023, a special education assistant waited in the conference room with Student E, consistent with Student E's end-of-day protocol. At 2:09 p.m., Student E and the

assistant walked into the hallway from the conference room. Student E almost immediately dropped to the floor and then attempted to run away from the assistant. One minute later, Appellant joined the assistant and Student E in the hallway. At this point, Student E was lying on the hallway floor moving her legs in a kicking motion. Student E then ran down the hallway, away from Appellant and the assistant. Appellant and the assistant were able to stop Student E from running further. One minute after that, a second special education assistant joined them.

Student E made two more attempts to break away into a run. By 2:13 p.m., the group had returned to the entrance to the conference room that was Student E's "safe spot." At this point, one of the assistants, with her hand around Student E's wrist, attempted unsuccessfully to guide Student E into the conference room. Rather than enter the room, Student E dropped to the hallway floor in front of the conference room, with her feet a few feet away from the conference room door.

One assistant moved and put her hands under Student E's head. Appellant knelt on the hallway floor at Student E's feet. Appellant placed her hand on Student E's calf and slid Student E a foot or so down the hallway floor. Appellant then placed her hand on Student E's other calf and slid Student E a short distance (a foot to several feet) to the threshold of the conference room. Once Student E's feet and lower legs were through the conference room door, Appellant and one of the assistants lifted Student E to a sitting position and moved her through the doorway into the conference room. After a short time in the conference room, Student E, who by then had become calm, was taken home by a parent.

Appellant moved Student E by sliding her across the floor because she was afraid that Student E, with her history of running out of the building and several attempts during the interaction to run away, would be at imminent risk of running out of the school building and toward potential harm.

Student E was not injured during Appellant's physical movement of her. Student E's parents received a copy of the incident report about the event and did not complain.

The District dismissed Appellant for insubordination and neglect of duty.

The panel concluded that the true and substantiated facts were not adequate to support the statutory ground of insubordination but were adequate to justify the statutory ground of neglect of duty.

In a split decision, the majority concluded that dismissal was unreasonable and clearly an excessive remedy. The majority reasoned that the District's investigation, in which the accounts of only two witnesses were obtained, was insufficiently thorough, where at least six to eight witnesses saw parts of Appellant's and the assistants' interaction with Student E. The majority also concluded that the two witness "interviews" relied on by the District were actually written statements prepared by the witnesses, not interviews in which the accuracy and reliability of the witnesses' statements could be assessed. In addition, the majority concluded that the District unreasonably took into account District employees' decision to "decertify" Appellant's Safety Care certification, when the key District employee who made the decertification decision was

unaware of important facts about Student E, including that the conference room was her "safe spot" and that she had a history of running out of the school.

The majority also relied on the fact that Appellant did not act with anger or intent to harm Student E, and on the fact that Appellant acknowledged her error and showed remorse. Finally, the majority relied on the fact that, in other situations, the District had only disciplined but not dismissed educators who had moved students by grabbing them by the hand or under the arms.

The dissenting panelist agreed with the majority that the facts justified dismissal based on neglect of duty and agreed that there were flaws in the District's investigation. The dissenting panelist, however, could not conclude that no reasonable school board would have found the relevant facts sufficient for dismissal. Therefore, the dissenting panelist would not have reinstated Appellant.

2. ***Willado Penaguirre v. Woodburn School District***, FDA-24-01 (2024)

This case arose from an allegation that Appellant sexually and physically abused a student between 2011 and 2015 at the elementary school where Appellant taught. The student (Student) alleged that the abuse occurred in the closet in Appellant's classroom during the several times a week when Student would eat lunch alone with Appellant in his classroom.

Appellant taught Student various subjects during Student's second through fifth-grade years. Years later, between Student's freshman and sophomore years of high school in 2019, Student began receiving therapy because of depression and suicidal ideation. Student told a therapist in 2020 about a dream in which Student was naked and someone was on top of her. The therapist reported the alleged abuse. The Department of Human Services (DHS) Office of Training, Investigations and Safety (OTIS) investigated and closed its investigation as "unable to determine" because the evidence was in conflict and unclear.

The next year, Student was hospitalized for psychiatric reasons. After three hospital admissions, Student was admitted to a residential facility. There, Student discussed her memories of the alleged abuse many times.

In 2022, Student reported the alleged abuse to DHS. During the interview during this second OTIS investigation, Student claimed that her memories had become clearer over time and therapy had unlocked memories of abuse by Appellant. In the interview during the OTIS investigation, Student claimed to have been raped 10 times. (At hearing, Student claimed Appellant raped Student around 20 times, and the total number of incidents of abuse was between 50 to 100 times, mostly in the third and fourth grades.) In this second investigation, OTIS concluded that the allegation of sexual abuse was "founded."

While the second OTIS investigation was underway, the Teacher Standards and Practices Commission (TSPC) conducted an investigation. This investigation resulted in a Stipulation of Facts and Final Order of Public Reprimand and Probation indicating that Appellant "may have committed acts of gross neglect of duty and/or gross unfitness" related to gifts he gave Student, visits he made to Student's home, and other visits he had with Student and Student's family after

Student had left Appellant's school. However, the stipulation was silent about and unrelated to the abuse allegations.

Once OTIS determined the allegations were "founded," a detective from Woodburn Police Department asked Appellant to come in for an interview. At the time, during the COVID pandemic, Appellant was in Mexico working remotely, but he voluntarily returned to Oregon and sat for an interview. Appellant denied all allegations of abuse. At the time of hearing before the FDAB panel, the Woodburn Police Department and the Marion County District Attorney had not filed criminal charges against Appellant.

Appellant declined to be polygraphed by a police polygrapher, but engaged his own polygrapher, who concluded that Appellant was being truthful when he denied Student's allegations.

The District terminated Appellant on the statutory ground of immorality.

At hearing, the District presented an expert witness who testified about child sex abuse and forensic interviewing. Appellant presented an expert witness who testified about the theory of repressed memory and the creation of false memories over time.

The panel concluded that the true and substantiated facts were inadequate to support dismissal on the basis of immorality. FDAB has defined immorality as selfish or malicious conduct that shows a disregard for the rights or sensitivities of other persons. The teacher's selfishness must be excessive or significant to meet the standard. Conduct is immoral only if the teacher intended to cause actual harm against others, such as causing injury or damage or interfering with an investigation. *See, e.g., Kari v. Jefferson Cty Sch. Dist*., FDA 88-6 (1988), *rev'd on other grounds*, 318 Or 25 (1993).

The panel concluded that Student's significant mental health issues and Dissociative Identify Disorder, as well as Student's extensive therapy, impaired the accuracy of Student's recollections of abuse. In addition, Student's recollection of additional facts, incidents, and details over time undermined the reliability of Student's recollections. Student's visits with Appellant after leaving elementary school and lack of trauma-related behavior also undermined the credibility of the allegations.

The panel also concluded that it was unlikely that the alleged abuse could have occurred in the closed, as alleged. Appellant's habit of eating lunch with third-grade teachers, as well as the open nature of the school and classroom, made the allegations unlikely. Further, the panel was also persuaded by polygraph results exonerating Appellant, as well as the testimony offered by Appellant's expert witness, who testified that the scientific and research community of psychology scientists are unanimously very skeptical about the claim that traumatic memories can be lost and later recovered.

The panel reinstated Appellant with back pay.

(b) Back Pay

Jacquelyn Hallquist v. Hillsboro School District, FDA-23-02 (2024), appeal pending.

This case arose from a single incident in which a special education teacher physically moved a student who was highly impacted by autism by holding her legs above the ankles and sliding her several feet across a hallway floor into a room that was the student's "safe spot."

The District dismissed Appellant effective October 24, 2023 for insubordination and neglect of duty. The panel concluded that the true and substantiated facts were adequate to justify the statutory ground of neglect of duty (but not insubordination).

The panel was divided about whether Appellant should be reinstated. The majority reinstated Appellant and ordered six months' backpay. Nine months elapsed between Appellant's termination date and the FDAB panel's opinion and order.

The dissenting panelist agreed with the majority that the facts justified dismissal based on neglect of duty. The dissenting panelist, however, could not conclude that no reasonable school board would have found the relevant facts sufficient for dismissal. Therefore, the dissenting panelist would not have reinstated Appellant.