

BEFORE THE FAIR DISMISSAL APPEALS BOARD
OF THE
STATE OF OREGON

In The Matter of the Appeal of,
PAMELA K. TRIPLETT,
Appellant,

v.

LEBANON COMMUNITY SCHOOL
DISTRICT,
District.

Case No.: FDA-24-03
DISMISSAL ORDER

INTRODUCTION

In an email dated August 2, 2024, Appellant Pamela Triplett filed an appeal with the Fair Dismissal Appeals Board. In an email dated September 23, 2024, the Executive Secretary notified the parties that a prehearing conference would be scheduled on the subject of whether the Fair Dismissal Appeals Board has jurisdiction to hear this appeal. The Executive Secretary directed Lebanon Community School District (District) to submit a short memorandum stating its position no later than October 7, 2024 and gave Appellant 10 days to submit a response.

On October 7, 2024, the District filed a legal memorandum and supporting declaration. Appellant did not file a response.

Pursuant to OAR 586-030-0037(9), this Panel held a prehearing conference on October 21, 2024 to provide the parties with an opportunity to present their positions on jurisdiction. The District appeared through its counsel, Elizabeth Polay, Attorney-at-Law, Garrett Hemann Robertson P.C. Appellant appeared *pro se*.

For the reasons described below, based on the appeal, the District's submissions, and the parties' arguments at the prehearing conference, the Panel concludes that the Fair Dismissal Appeals Board has no jurisdiction in this case. The Panel therefore dismisses the appeal.

1 **FINDINGS OF FACT**

2 1. On September 22, 2022, the District hired Appellant as a “temp roving teacher,”
3 with a start date of September 22, 2022 and an end date of June 15, 2023.¹

4 2. On October 17, 2022, Appellant signed a document entitled, “2022-23 Temporary
5 Probationary Teacher’s Contract,” which identified her “probationary status” as “temporary,”
6 and listed an employment start date of September 22, 2022 and an employment end date of June
7 15, 2023.² The contract does not contain a term shortening the time to become a contract teacher,
8 as permitted by ORS 342.815(3).

9 3. In her appeal, Appellant describes the purpose of her position as “fill[ing] in for
10 absent teacher assistants or teachers.”³ At the prehearing conference, Appellant agreed that she
11 was hired as a temporary roving substitute teacher.

12 4. Appellant asserts in her appeal that she was dissatisfied with the duties of the
13 position, which she describes as “teacher assisting, playground, and lunch duty 95% of the time,
14 not matching the job description, nor my expectations.”⁴

15 5. In a letter dated March 13, 2023, Superintendent Jennifer Meckley sent Appellant
16 a letter that read, in part:

17
18 “As a temporary employee, your contract will expire at the end of the 2022-2023
19 school year. This letter serves as an official notice and reminder that your contract
20 will not be automatically renewed for the 2023-24 school year. Please, feel free to
apply for any future job openings for our District. Lebanon School District
appreciates your contribution to the success of our students.”⁵

21 6. On March 14, 2023, Appellant signed the acknowledgement portion of the
22 District’s March 13, 2023 letter, acknowledging the following statement: “I hereby acknowledge
23
24

25 ¹ Declaration of Elizabeth L. Polay in Support of Responsive Memorandum (Polay Declaration), Exhibit 1, p. 1.

26 ² Polay Declaration, Exhibit 1, p. 2.

³ Appeal at p. 1.

⁴ Appeal at p. 1.

⁵ Polay Declaration, Exhibit 1, p. 3.

1 receipt of the District’s Notification to Teachers and understand my contract as a Temporary
2 teacher will expire at the end of the 2022-2023 school year.”⁶

3 7. In spring 2023, complaints arose that led to Appellant choosing to resign.⁷
4 Appellant asserted at the prehearing conference that her union representative made a comment
5 that resulted in Appellant feeling that she had no choice but to resign.

6 8. The District’s electronic employee profile indicates that Appellant resigned with
7 an employment end date of April 10, 2023.⁸

8 9. Appellant submitted her appeal by email dated August 2, 2024.

9 CONCLUSIONS OF LAW

10 1. Appellant was not a contract teacher within the meaning of ORS 342.815(3).

11 2. The Fair Dismissal Appeals Board lacks jurisdiction in this case because
12 Appellant was not a contract teacher.

13 3. The Fair Dismissal Appeals Board lacks jurisdiction in this case because
14 Appellant resigned her employment. The District’s decision to accept Appellant’s resignation did
15 not constitute a “dismissal” or “non-extension” under ORS 342.805 *et seq.*

16 4. The Fair Dismissal Appeals Board lacks jurisdiction in this case because the
17 appeal is untimely.

18 DISCUSSION

19 **1. The Fair Dismissal Appeals Board lacks jurisdiction in this case because 20 Appellant was not a contract teacher.**

21 The “legislature has divided the world of public school district teachers into two mutually
22 exclusive sets: contract and probationary teachers.” *Smith v. Salem-Keizer Sch. Dist.*, 188 Or
23 App 237, 243, 71 P3d 139, 143, *rev denied*, 336 Or 60 (2003). To be a “contract teacher, one
24 must (1) be regularly employed by a school district for a probationary period of three successive
25 school years and (2) be retained by the school district for the next succeeding school year.” *Id.*;

26 ⁶ *Id.*

⁷ Appeal at p. 1.

⁸ Polay Declaration, Exhibit 2.

1 ORS 342.815(3). Contract teachers have the right to appeal a dismissal or contract non-extension
2 to the Fair Dismissal Appeals Board pursuant to ORS 342.905, which provides:

3
4 If the district school board dismisses the teacher or does not extend the contract of
5 *the contract teacher*, the teacher or the teacher’s representative may appeal that
6 decision to the Fair Dismissal Appeals Board established under ORS 342.930[.]

6 ORS 342.905(1) (emphasis added).

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

15 The statutes define two other categories of teachers who are not contract teachers. A
16 “substitute teacher” is “any teacher who is employed to *take the place of a probationary or*
17 *contract teacher* who is temporarily absent.” ORS 342.815(8) (emphasis added). A “temporary
18 teacher” is “a teacher employed to fill a position designated as temporary or experimental or to
19 fill a vacancy which occurs after the opening of school because of unanticipated enrollment or
20 because of the death, disability, retirement, resignation, contract nonextension or dismissal of a
21 contract or probationary teacher.” ORS 342.815(10).

22 There are no facts to support a conclusion that Appellant was a contract teacher. It is
23 undisputed that the District hired Appellant as a temporary roving substitute teacher. A teacher
24 who is a temporary teacher or a substitute teacher does not have appeal rights to the Fair
25 Dismissal Appeals Board. *See Salem-Keizer Sch. Dist.*, 188 Or App at 246, 71 P3d at 144 (a
26 contract teacher “is entitled to a contested case hearing and is under FDAB’s jurisdiction”);

1 *Finholt v. Salem-Keizer School District*, FDA-07-08 and FDA-07-10 at 4 (2008) (FDAB
2 “jurisdiction is limited to dismissals and non-extensions of contract teachers with regard to their
3 teaching positions”).

4 Because Appellant was not a contract teacher, the Fair Dismissal Appeals Board does not
5 have jurisdiction over her appeal.⁹

6 **2. The Fair Dismissal Appeals Board lacks jurisdiction in this case because**
7 **Appellant resigned her employment.**

8 The Fair Dismissal Appeals Board lacks jurisdiction when a teacher resigns. *Pierce v.*
9 *Douglas School District No. 4*, 297 Or 363, 365, 686 P2d 332 (1984); *Lynch v. Klamath County*
10 *School District*, FDA-12-12 at 6 (2013) (if a teacher resigns, “it is well-established that FDAB
11 lacks jurisdiction to hear the appeal”); *Hardy v. Baker School District 5J*, FDA-12-05 at 3 (2012)
12 (resignation of employment “precludes jurisdiction”); *Gilman v. Medford School District 549C*,
13 FDA-10-03 at 4 (2010) (FDAB does “not have jurisdiction over resignations”); *Zellner v. Forest*
14 *Grove School District*, FDA-05-01 at 5 (2006) (FDAB “does not have jurisdiction to hear an
15 appeal if the teacher or administrator resigned from their position or otherwise informs the
16 school district of their intention not to return to their current position”).

17 Here, it is undisputed that the District did not issue a written notice of non-extension or
18 communicate a written decision to dismiss Appellant. Rather, as both the appeal and the
19 District’s personnel records reflect, Appellant resigned her employment.

20 Appellant’s appeal asserts that she resigned “rather than being ‘dismissed.’” At the
21 prehearing conference, Appellant contended that she was “forced” into resigning as a result of a
22 remark made by her union representative. Even assuming both that Appellant was a contract
23 teacher and that she is asserting a constructive discharge, there is no jurisdiction in this case. The
24 Fair Dismissal Appeals Board does not have jurisdiction over purported “constructive”

25 _____

26 ⁹ A district may enter into a contract with a contract teacher that provides for a shorter probationary period of not less than one year “for teachers who have satisfied the three-year probationary period in another school district.” ORS 342.815(3). Here, however, it is undisputed that Appellant’s contract was a temporary teacher’s contract; it was not a contract that shortened the three-year probationary period for a contract teacher.

1 discharges—that is, resignations that are effectively involuntary because they are tendered in lieu
2 of dismissal—where there is no dismissal notice or letter for the Panel to review. *See, e.g., Baker*
3 *School District 5J*, FDA-12-05 at 5 (relying on ORS 342.905 and concluding that a dismissal
4 sufficient to support FDAB’s jurisdiction must result from some action by the school board that
5 includes “statutory grounds cited”).

6 **3. The Fair Dismissal Appeals Board lacks jurisdiction in this case because the**
7 **appeal was untimely.**

8 ORS 342.905 provides, in relevant part:

9 (1) If the district school board dismisses the teacher or does not extend the
10 contract of the contract teacher, the teacher or the teacher’s representative may
11 appeal that decision to the Fair Dismissal Appeals Board established under ORS
12 342.930 by depositing by certified mail addressed to the Superintendent of Public
13 Instruction and a copy to the superintendent of the school district:

14 (a) In the case of dismissal, within 10 days, as provided in ORS 174.120, after
15 receipt of notice of the district school board’s decision, notice of appeal with a
16 brief statement giving the reasons for the appeal.

17 ORS 342.905(1)(a). Here, Appellant resigned with an effective employment end date of April
18 10, 2023. However, she did not submit her appeal until August 2, 2024—more than one year
19 later. Therefore, the appeal is untimely and the Fair Dismissal Appeals Board lacks jurisdiction.

20 **ORDER**

21 For the reasons discussed above, the appeal is dismissed.

22 DATED this 23rd day of October, 2024

/s/ Sami Al-Abdrabbuh
Sami Al-Abdrabbuh, Panel Chair

23 DATED this 23rd day of October, 2024

/s/ John Hartsock
John Hartsock, Panel Member

24 DATED this 23rd day of October, 2024

/s/ Robert Sconce
Robert Sconce, Panel Member

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2024, I served a true and correct copy of the **DISMISSAL ORDER** by the method indicated below:

Elizabeth L. Polay Attorney at Law Garrett Hemann Robertson P.C. P.O. Box 749 Salem, OR 97306 Email: epolay@ghrlawyers.com	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	HAND DELIVERY U.S. MAIL OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY
Pamela K. Triplett 73 E Cedar Street Lebanon, OR 97355 Email: foreverhis@centurylink.net	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	HAND DELIVERY U.S. MAIL OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY

/s/ Lisa M. Umscheid
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