

BEFORE THE FAIR DISMISSAL APPEALS BOARD OF THE STATE OF OREGON

| | |
|--|--|
| <p>In the Matter of the Appeal of</p> <p>WILLADO PENAGUIRRE,</p> <p>Appellant,</p> <p>v.</p> <p>WOODBURN SCHOOL DISTRICT,</p> <p>Respondent.</p> | <p>Case No.: FDA 24-01</p> <p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER</p> |
|--|--|

INTRODUCTION

On February 13, 2024, Willado Penaguirre (“Appellant”), a well-regarded elementary school teacher, was dismissed by the Woodburn School District (“District”) after he allegedly committed immoral acts on a student at Lincoln Elementary School (“School”).

On February 9, 2021, the Office of Training, Investigations and Safety (“OTIS”) received information from the Oregon Child Abuse Hotline that a female student (“Student”)¹ disclosed to their therapist that Appellant sexually and physically abused Student over multiple years at School. Based on that report, Woodburn Police Department (“Woodburn PD”) conducted a months-long investigation that included numerous interviews.

OTIS closed its investigation (the first OTIS investigation) on January 20, 2022 as “unable to determine” for both sexual abuse and physical abuse because the evidence was in conflict and unclear.

¹ To protect the student’s identity and maintain anonymity in light of the sexual abuse allegations, as well as honor the student’s preferred pronouns (they/them), the parties and the panel agree that this decision should refer to the student and their pronouns throughout as “Student.”

On December 1, 2022, the Oregon Child Abuse Hotline received a second report of sexual abuse of Student by Appellant. Although this report was about the same abuse that was reported on February 9, 2021, this report included “additional details which warranted investigation.” Based on this further investigation, OTIS concluded the allegations were “founded” for sexual abuse.

The District relied on one statutory ground for dismissal under Oregon’s Fair Dismissal Law: immorality. Appellant appealed his dismissal to the Fair Dismissal Appeals Board (“FDAB”) and a two-day hearing took place on May 21-22, 2024. Appellant was represented by attorney Noah Barrish and the District was represented by attorney Rebekah Jacobson. The hearing was conducted before a panel appointed from FDAB, consisting of Ronald Gallinat, Josh Wetzel, and Laura Latham, with Sr. Assistant Attorney General Bryan Quesenberry of the Oregon Department of Justice acting as legal counsel to the panel.

As explained in more detail below, this panel finds the District has not proven sufficient facts to sustain the dismissal decision. The panel concludes that the facts relied on by the District to terminate Appellant are not true and substantiated.

In light of the lack of true and substantiated facts to support the cited statutory grounds for dismissal, the panel must grant this appeal and reverse the District’s dismissal decision.

FINDINGS OF FACT

1. Appellant started teaching third grade at School in the fall of 2009 and also taught Spanish Language Development (“SLD”). Tr. 572:16-573:20. Later, he was a math skills coach to struggling students and other teachers. Tr. 579:16-581:21. Appellant ceased teaching when the District placed him on administrative leave on April 5, 2021. Ex. D-6, p. 3.

2. Appellant was known for being able to effectively teach his students, especially in math. Tr. 481. He was also known for his professionalism, passion, and commitment to teaching. Tr. 480:17-482:11.

3. Retired teacher and librarian Heidi Pramuk worked at School at the same time as Appellant and knew Appellant well. Tr. 427:1-428:9. Ms. Pramuk testified that Appellant is one of the best teachers she had known, that he was very dedicated, demanded a lot from his students, and got a lot out of them. Tr. 430:6-21. Ms. Pramuk also testified that Appellant looked and acted professional with other teachers and students. Tr. 430:24-431:1.

4. Former principal Jennifer Grove hired Appellant. She testified that of the hundreds of teachers she hired during her 11-year tenure at School, she fondly recalls Appellant's job interview because he was so coachable. She offered him feedback at the end of his interview (before hiring him), which she had never done before, and he was receptive to her feedback. Tr. 480:17-481:7.

5. While he worked under Ms. Grove, Appellant remained coachable, wanted to improve as a teacher and support the school in any way. He became an incredible teacher (according to the Ms. Grove's observations). Ms. Grove testified that teaching was in Appellant's blood; it is what he was called to do. Tr. 481:8-482:20.

Student's Extensive Counseling and Therapy

6. One of Appellant's students was Student. Appellant taught Student SLD in Student's second grade year (in portable classroom 44), taught Student SLD, math, and reading Student's third grade year (in classroom 32), taught Student SLD in Student's fourth grade year (in classroom 32), and taught Student SLD in Student's fifth grade (in classroom 32). Exhibits D-1, D-2, and D-3).

7. After Student's fifth grade year she transferred to another school district and no longer attended elementary school. Tr. 39:22-40:1. Between Student's freshman-sophomore year of high school (summer 2019), Student began receiving therapy because of depression and suicidal ideation. Tr. 55:18-56:1.

8. Student's first therapist was Julie² whom Student visited for six months. Student had no discussions with Julie about abuse. Tr. 56:4-19.

9. Student then began seeing therapist Geralyn "Gerry" McNamara in 2020 just before the Covid pandemic. Tr. 56:20-57:1. Student met with Ms. McNamara for a year, about once a week and sometimes twice a week. Tr. 61:4-10. Student connected well with Ms. McNamara who did "inner child work" with Student whereby Ms. McNamara had Student picture herself as a child and had Student give that child the love and affection the child deserved. Tr. 57:20-58:5. Student told Ms. McNamara about dreams Student had as a child. Tr. 58:6-9. Student initially dreamed³ Student was naked and someone was on top of Student. Tr. 60:3-6. Ms. McNamara asked Student if Student had been molested. Tr. 59:1-8. Initially, Student denied being molested. *Id.* However, Ms. McNamara was concerned Student's dreams were sexually explicit in ways Student would not have known without sexual abuse. Tr. 59:9-15. DHS initiated an abuse investigation on February 9, 2021 through OTIS as described more fully below. Ex. D-2.

10. Student initially was unable to identify Appellant as her alleged abuser. Tr. 61:19-62:18. Gradually, however, through therapy Student developed a sense that Appellant was the abuser. *Id.* Student's first memory of Appellant was of him allegedly touching Student's chest. *Id.* Student shared this memory with Ms. McNamara and with psychiatric nurse practitioner Michelle Hardenbrook. *Id.* Ms. McNamara called the Department of Human Services ("DHS")

² Student provided no surname.

³ At the hearing, Student claimed this was a memory.

abuse hotline, initiating the first report that Student had been abused approximately five years previously. Tr. 62:19-25.

11. Prior to this counseling and therapy, Student claimed to have no memory of the abuse. Tr. 59:1-60:22.

12. Student was hospitalized in March 2021 for psychiatric reasons. Tr. 86:12-24. The abuse investigation was hard on Student. After three hospital admissions, Student was admitted to a residential facility and received therapy from a therapist named Sarah⁴ for the seven weeks Student was at the facility. *Id.* After discharge, Student received therapy from a therapist named Marlena Johnson with whom Student discussed the memories of the alleged abuse many times. Tr. 86:25-88:7.

13. In December 2022, Student made the second report of abuse to DHS because Student felt confident enough at that time to remember the alleged abuse and recount the events to the authorities. Tr. 88:8-13. This second report is more fully detailed below.

First OTIS Report and Investigation

14. On February 9, 2021, DHS received its first report that Student had been abused by Appellant. Based on this report, DHS initiated an investigation through OTIS. Ex. D-2, 1.

15. As part of this investigation, Student was interviewed at the Liberty House (a center used for child trauma interviews) over two different days, once on February 22, 2021, and a continuation on February 25, 2021. Tr. 63:14-25. According to the first OTIS report, the alleged abuse occurred between 2011-2015 – approximately six years before the first OTIS report. Ex. D-2, 2.

⁴ Student provided no surname.

16. During the Liberty House interview, Student claimed to have dreams while awake. Tr. 64:5-18. During the interview, Student expressed that Student was scared and was not telling the truth because Student was having memories that Student did not have previously. *Id.* Student told interviewer that Student was unsure if Student was making things up. *Id.*

17. During this interview, Student experienced an episode of Dissociative Identity Disorder where Student was disconnected from reality, had blurry vision, and felt out of body. Tr. 64:19-65:25; Ex. D-2, 6 (fourth bullet). Because of this episode, the interviewer ended the interview. Tr. 276:8-18. At the hearing, Student testified that during this interview Student experienced “age regression” where Student felt and thought that Student was the age when the abuse allegedly occurred. Tr. 65:23-66:11.

18. Before ending the interview, Student claimed the first abuse happened in Appellant’s second grade classroom when he allegedly touched Student’s chest. Tr. 67:12-15. Student recalled during that interview that someone put fingers inside Student but could not identify who did this. Tr. 67:18-24. Student further recalled during the interview that Appellant struck Student, but then expressed at the interview that Student was not sure. Tr. 67:25-68:5. At the hearing, Student expressed that Student was now sure. *Id.* At times Student told interviewer that Student could not recall what happened and that nothing happened because Student doubted themselves. Tr. 69:9-25, 83:13-21.

19. Student discussed the three prior instances of alleged abuse, but added more detail:

- a. Appellant allegedly touched Student under the shirt, on the chest. Ex. D-2 at 9.
- b. Appellant allegedly touched Student’s genitals and put his fingers in Student’s vagina while they stood. Tr. 73:16-25. This happened during the school day because Student

- never went to Appellant's classroom before school started or after it ended. Tr. 74:15-20.
- c. Appellant allegedly hit Student, sometimes to try to get Student to escape from him. Tr. 74:21-76:6. The number of strikes depended on whether Appellant felt Student was being good or not. Tr. 77:14-78:3. Hitting also occurred during sexual abuse incidents. *Id.* Appellant would hit Student with a closed fist and with an open hand, sometimes hard. Tr. 78:13-79:4. Student indicated the physical abuse sometimes left bruises and red marks. *Id.* However, there was no evidence presented from photographs or others' observations of bruises or marks on Student. Student also testified that the physical abuse probably made a noise, but no witness (such as Raul Gomez, the next-door teacher) testified of hearing noise from physical abuse. *Id.*
 - d. Student testified that Appellant's alleged abuse happened during lunch, either in room 32 or the room 32 storage closet, and happened one to two times per week. Tr. 75:20-24, 77:8-78:12, 88:17-90:24, 98:22-99:2. The abuse occurred mostly while Student was in the third grade, but some abuse occurred when Student was in the fourth and fifth grades. *Id.*
20. During the second interview, Student added additional instances of abuse:
- a. Appellant allegedly raped Student while they were laying down. Tr. 79:9-11. Student indicated in the second interview that Student did not think the assailant was white, but could not remember, and that the assailant could have been Appellant, but Student could not remember then. Tr. 79:12-18.

- b. Appellant allegedly put his penis in Student's mouth when they were in the closet. Tr. 79:19-80:9. During the second interview, Student could not recall when this happened, then said this memory might not have been Student's memory. *Id.*
- c. Appellant allegedly shoved Student against a wall and choked Student in the closet. Tr. 80:10-18. He also slapped Student's face five to six times during this choking incident. Tr. 80:19-81:3 At the hearing, Student indicated Student's awareness that sometimes consenting adults can choke each other during intimacy. Tr. 103:3-22.
- e. Appellant allegedly kissed Student all over Student's body, which occurred in room 32 and a lot of times in the closet. Tr. 82:6-21.

21. Student questioned herself and Student's performance during the first Liberty House interview, but less so during the second interview. Tr.126:20-127:3

22. The first OTIS report concluded, "Based on the conflicting information provided by the alleged victim and the respondent, this case is being closed as **Unable to Determine** for sexual abuse and physical abuse of [Student] by [Appellant]." Ex. D-2, 27 (emphasis in original).

Second OTIS Report and Investigation

23. On December 1, 2022, Student made a second report to DHS of abuse (regarding the same abuse alleged in the first OTIS investigation and report). Ex. D-1, 1. OTIS conducted a second investigation, which included an interview with Detective Sterns at the Woodburn Police Department. According to the second OTIS investigation report (Ex. D-1), Student had provided new, additional, and detailed allegations. Ex. D-1, 2-4. Student claimed that over time Student's memories had become clearer and therapy had unlocked Student's memories of the alleged abuse by Appellant. Tr. 53:21-54:6, 65:16-20, 95:2-96:16, 100:16-101:8.

In the interview with Detective Sterns, Student claimed to have been raped 10 times.

Tr.264:21-25. However, at the 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. Tr.98:15-99:23.

24. Student also alleged that Appellant threatened to rape Student's sisters if Student reported the alleged abuse, sometimes he would sit on the chair in the closet and put Student on top of his lap, he would often spank her, he said he didn't want to abuse Student but it was God's will, Student needed to learn a lesson, God was punishing Student through Appellant, he would hug Student and tell Student he was proud of Student, he called Student a slut, and he said he knew Student would stay for the abuse because Student loved it. Tr.100:8-102:24.

25. This second OTIS investigation concluded, "the allegation of sexual abuse of [Student] by her elementary school teacher [Appellant] is being closed as **Founded.**" Ex. D-1,8 (emphasis in the original).

Inconsistencies with Student's Memory and Conduct

26. The panel observed inconsistencies in Student's allegations. These include the following additional details in Student's memory with the passing of time:

- a. During Student's initially therapy sessions, Student denied being abused. Then after months of therapy Student claimed to recall memories of the alleged abuse.
- b. Initially in therapy, Student was unable to identify the abuser and even thought there might have been two abusers. Later, Student claimed to remember there was one abuser who was Appellant.
- c. During the second OTIS investigation, Student alleged that Appellant had Student disrobe in the classroom closet while he remained clothed. He then placed Student's

clothes atop a high shelf in the closet out of Student's reach. Appellant also held Student against the closet wall by Student's neck, sometimes cutting off Student's breathing. Student omitted these allegations during the first OTIS interview.

- d. During the second OTIS investigation, Student alleged Appellant verbally and emotionally abused Student by calling Student "slut," threatening Student's sisters with rape, shaming Student, and invoking God as the reason for the abuse. Student omitted these allegations during the first OTIS interview.
- e. Student told Detective Matt Stearns during the first OTIS interview that Student was abused only once in the closet. Ex. D-5, 43. During the second OTIS interview, Student increased the number of incidents of abuse in the closet to at least 10. Tr.264:18-25.

27. In the second OTIS interview, Student provided conflicting information about the hands of the abuser – he either had soft brown hands or rough white hands. Tr.272:24-273:3.

28. Student's estimates of the frequency of the alleged abuse increased over time. In the second Liberty House interview, Student alleged one rape in the closet. Ex. D-5, 43. At the hearing, Student alleged to have been raped 20 times in the closet. Tr.98:12-21.

29. Student initially testified at the hearing that the abuse only happened during school hours (Tr.74:15-20), but later testified that the abuse happened when there was no school (i.e. end of the school year) and Student had gone to visit Appellant at his classroom, at which time the abuse lasted 20 to 30 minutes. Tr.90:25-91:24.

30. Student acknowledged at the hearing that at the time of the second Liberty House interview Student's memory was still not very good. Tr.83:3-7. Perhaps recalling what Student

had been told in therapy, Student referenced that it was common for survivors of child sex abuse to not remember a traumatic event. Tr.83:13-21.

31. Student testified that Student's memories were better during the second OTIS investigation because Student had been in counseling, which helped bring out the memories. Tr.95:23-96:12.

32. Ms. Grove and Ms. Pramuk both testified at the hearing that they have observed elementary-aged students who had childhood trauma. Based on their observations, traumatized elementary-aged students often manifest their trauma by sometimes wearing baggy clothes, acting out, becoming reclusive, or otherwise exhibiting unusual behavior indicative of trauma. Tr.444:22-445:14, 487:7-488:14 . Ms. Grove testified that something usually presents itself with students who suffer from childhood trauma. Tr.487:11-488:6. Trauma-related behavior at school does not go under the radar at that age. Tr. 487:11-488:6. Notwithstanding this knowledge and experience, Ms. Grove and Ms. Pramuk recalled seeing nothing unusual with Student's behavior while Student attended School. Tr.445:15-17, 488:15-18. To that point, Appellant remembered Student as outgoing all three years – third grade, fourth grade, and fifth grade – he observed Student at School. Tr.624:11-15, 637:14-22. Det. Stearns noted in his report that Student was bright. Ex. D-5, 6.

33. Det. Stearns also stated in his report from the first Liberty House interview (first DHS abuse report) and testified at the hearing that Student suffered from Dissociative Identity Disorder and had five to six personalities in Student's mind at the time of the interview, but that Student was not on an IEP at School during the events of the alleged abuse. Ex. D-5, 14; Tr.105:11-13, 269:18-270:8.

34. Upon finishing the fifth grade at School, Student transferred to another school but returned with Student's sister to visit the alleged abuser, Appellant. Tr.93:5-14.

Location of the Alleged Abuse

35. Student alleged that much of the alleged abuse occurred in the closet in classroom 32 (where Appellant taught). Student testified that Student would eat lunch alone with Appellant in his classroom a couple times a week during Student's third, fourth, and fifth grade years. Tr. 47:20-48:4, 75:2-24, 90:2-19. Appellant then allegedly pulled Student into the closet where he would abuse Student. Tr.88:17-89:3, 90:13-24, 94:4-7.

36. There was a storage closet in classroom 32. The closet was the old kiln room and contained various old art and pottery supplies. Tr.454:18-455:10. The closet was also a dumping ground for old teacher workbooks and supplies left behind. Tr.456:6-456:17. It was messy and contained lots of junk. Tr.456:18-457:17.

37. Appellant also described the closet as being filled with clutter, a wheely cart containing books and materials, and a large tub containing sports equipment. Tr.614:10-615:8. It was not accessible for two people at once and had no room for an office chair. Tr.617:14-618:2; Ex. A-15. Student, however, testified that there was an office chair in the closet. Tr.100:22-25.

38. Appellant also testified that he could hear the next-door teacher and students through the closet wall shared with the next-door class. The next-door teacher, Raul Gomez, reported no suspicious incidents emanating from Appellant's classroom or closet. Tr.621:20-622:17.

39. There was no closet in the other classrooms where Appellant taught (such as Appellant's portable classroom). Tr.607:13-14, 639:4-14. Thus, the closet in question was only in room 32. *Id.*; Ex. D-4's two photographs.

Opportunity for Appellant to Allegedly Abuse Student

40. Students at the School had one 35-minute lunch recess and a shorter 10-15 minute recess each day. Tr.452:16-453:1. Teachers were either with their students at lunch or on recess duty except when teachers were taking their own duty-free 30-minute lunch. Tr.447:8-448:22.

41. Students were occasionally taken out of the lunch cafeteria to meet with a counselor, to eat as a group of students with a teacher in a classroom, or to attend group tutoring. Tr.446:16-447:7, 449:15-450:9. A student taken out of lunch recess once or twice each week, and taken out by the same teacher, would have been noticed by someone like Ms. Pramuk, especially if the student was someone she knew well (and she knew Student and Student's family well). Tr.451:22-452:15. Ms. Pramuk believed it was not logistically possible for a student to be pulled from lunch recess once or twice a week for 20-30 minutes each time. Tr.453:2-13. Ms. Grove added that students hardly ever got pulled from lunch. Tr. 494:7-25. In fact, she received complaints from parents that students did not get enough time to eat during lunch recess. Tr.495:1-6.

42. Ms. Pramuk testified that Appellant often ate lunch with his third grade teacher colleagues in the staff break room during their duty-free lunch time. Tr.473:15-474:13. Ms. Grove testified that Appellant frequently ate with the other third grade teachers during lunch. If she wanted to speak with him during lunch time, she knew to go to the staff break room where she would find him. Tr.492:9-493:8.

43. Appellant testified that once or twice a month he ate lunch in his classroom with a group of students as a reward, but he never ate with a student one-on-one. Tr.578:11-17, 603:20-24, 637:2-8, 638:20-25, 229:6-17.

44. Because he lived in Portland and worked in Woodburn, Appellant's commute was one hour each way. To avoid traffic, he worked late at School. Tr. 586:8-14. He was also single at the time, so the only opportunity he had to talk with adults was during his lunch hour when he visited with his other third grade teachers in the staff break room. Tr.584:12-586:7.

45. The School was an open campus, so parents showed up at Appellant's classroom any time on any day to volunteer in his classroom without warning or notice. Tr. 598:10-601:25. Student's mother volunteered in Appellant's classroom about once a week. Tr. 628:18-629:16.

46. In light of a previous male teacher being charged and convicted for child molestation, Appellant was warned to protect himself and to never be alone with a student. Tr. 432:16-433:5.

47. During Student's fourth grade year, Appellant remained teaching the third grade, but had Student for SLD. Ex. D-3, 3; Tr.576:11-16, 632:9-633:24. Because of the different lunch schedules between third and fourth graders, Appellant would have been in his classroom teaching his third grade class when fourth graders like Student went to lunch recess, making it impossible for Appellant to have called Student out of lunch to abuse Student in his classroom. Tr.632:12-633:18.

48. When Appellant taught the fifth grade (and Student was a fifth grader), he was back in a portable classroom with no closet. During that year, he had a student teacher with him all day, every day from the beginning of school in August to spring break of the next year. Tr.599:10-600:9, 677:1-14. Being shadowed by his student teacher every day of fifth grade left Appellant no opportunity to be alone with Student in the classroom to abuse Student. *Id.*

49. The School had a student population between 700 to 800 students when Student was there. Tr.498:21-23. These students would walk to and from the cafeteria and playground during lunchtime and recess. Teachers would comingle with the students on their way to the cafeteria

and playground. Tr.448:6-22, 28:1-8, 590:11-591:10. There is a window in the front door of Appellant's classroom (room 32) which provides partial visibility into the classroom. Tr.609:11-611:5. There are also large windows along one entire wall that open out on portable classrooms and a small walkway where students and staff would walk by. Tr.694:21-23. Although Student claimed Appellant would sometimes close the blinds before abusing Student, there was testimony that the blinds in Appellant's classroom were cheap, old, defective, and difficult to close. Tr.453:25-454:17.

School Environment

50. Teachers at the School were expected to build relationships with student families by visiting students at their homes, attending student games and activities, and providing clothes and shoes to needy students (School is a Title I school). Tr.434:4-436:21, 572:19-573:20, 631:4-19.

51. Teachers rewarded students with small gifts, treats, prizes, and trinkets (as incentives). Tr.470:13-471:9. Appellant testified that he bought a six-pack of cheap glass water bottles and gave them to each student on the Battle of the Books team (which included Student). Tr.644:1-15. He also rewarded a number of students with a used book to encourage them to keep reading. Tr.645:20-646:5.

52. For example, Appellant was skilled at refurbishing old, broken laptops, which he then gifted to students and families. Tr.650:11-654:14. He also sold some to other teachers. Tr.485:3-25. He gave one such refurbished laptop to Student. Tr.652:20-653:11.

53. Appellant had a relationship with Student's family. Student's mother invited him over for dinner, which he accepted. Tr.630:17-631:19. Student testified that a teacher named

Schwartzman and Ms. Pramuk had also visited Student's house while Student attended the School. Tr.52:23-53:11.

54. The District had strict policies prohibiting teachers from being alone with a student. Tr.490:22-492:4, 494:12-495:9, 603:20-23. Appellant had been trained on these policies. He had been trained each year on the District's *Child Abuse: Mandatory Reporting* (Full Course) training according to certificates of completion for 2013 to 2019. Appellant was also trained each year on the District's *Sexual Harassment: Student Issues & Response* (Full Course) according to certificates of completion for 2014 to 2020. Appellant was further trained each year on the District's *Sexual Misconduct: Staff-to-Student* (Full Course) according to certificates of completion for 2013 to 2020. Ex. D-7.

55. Before Appellant began working at School, there was a male teacher there who was arrested and later imprisoned for sexually abusing a child. Tr.432:16-433:5. This put the faculty at the School on a heightened awareness for similar misconduct from other teachers, especially male teachers. *Id.*

56. Ms. Grove, who hired Appellant, testified at the hearing. Tr.477:8-22. She was principal at School from 2007 to 2018 (during the time of the alleged abuse). *Id.* She testified that during her 11 years as the School's principal, she was an effective administrator, had great parent support, and was never grieved by a staff decision made during her tenure. Tr.496:2-6.

57. Ms. Grove emplaced systems throughout the School to run and operate the School. For example, when students went to the bathroom during class, they signed in and out on a sheet of paper. Tr.478:4-479:7.

58. Ms. Grove knew Appellant was friends with Student's family, but observed nothing that concerned her about that friendship. Tr.486:19-487:1. Ms. Grove testified that she could not

imagine in her wildest dreams that a student was consistently abused each week in Appellant's classroom for the entire school year. Tr.495:10-12.

59. There was testimony at the hearing from Det. Stearns that Appellant had a screensaver photograph on his tablet of a young girl, and he would show others the picture and refer to the young girl as his girlfriend. Tr.245:12-20. Appellant, Ms. Pramuk, and Ms. Grove testified that the picture was of Appellant's goddaughter and he referred to her as his "princess." Tr.460:8-25, 641:12-642:22.

Appellant's Response to Notification of Allegations

60. Once the allegations in the second OTIS report were "founded," Det. Stearns contacted Appellant to ask him to come in for an interview regarding the allegations. Tr.277:7-280:9. However, Appellant was in Mexico at the time teaching remotely for School (because of Covid) and getting engaged. *Id.* Despite the criminal allegations, Appellant returned to Oregon. *Id.*

61. On April 5, 2021, Appellant called Det. Stearns who again invited Appellant to come into the police station for an interview. Tr.279:24-280:12. Appellant, along with his union representative, voluntarily went to the police station for this interview. *Id.* During the interview, he denied all misconduct alleged by Student. Tr.280:18-23. During his testimony at the hearing, Appellant categorically denied all allegations of abuse, rape, fondling, kissing, hitting, and sexual misconduct. Tr. 5659:1-662:2.

62. Although law enforcement invited Appellant to come in for additional questioning, he declined such interviews on the advice of counsel. Further, he had fully denied all allegations of sexual misconduct that he felt he had no new information or evidence to provide law enforcement. Ex. D-1, 7.

63. As of the time of the hearing, the Woodburn Police Department and the Marion County DA's office have not filed criminal charges against Appellant. Tr.281:20-22.

Appellant's Polygraph Results

64. Appellant declined invitations to be polygraphed by a police polygrapher, but in March 2024, Appellant engaged polygraphist CW Bryant to polygraph Appellant. Tr.133:20-23; Ex. A-11.

65. Mr. Bryant completed his initial polygraph instruction in 1994 at Western Oregon University Polygraph School. He has also attended hundreds of hours in advanced polygraph courses and served for several years as a member of the Polygraph Licensing Advisory Committee for the Oregon Department of Public Safety Standards and Training. He is licensed as a polygraphy examiner in Oregon. Ex. A-10.

66. Mr. Bryant has extensive experience conducting polygraph examinations. During his 28-year career in law enforcement and afterward in private practice, he has conducted between 2,000 to 3,000 polygraph examinations. Tr.202:11-14.

67. Prior to polygraphing Appellant, Mr. Bryant discussed with Appellant, in accordance with proper polygraphy procedure, the issue for examination and together they developed the questions Mr. Bryant would ask Appellant that would resolve the issue. Mr. Bryant also thoroughly reviewed all the polygraph questions with Appellant before beginning the examination, including questions 5, 7, and 9, which asked Appellant (in three different ways) if he had sexual contact with Student. These questions are quoted verbatim in Mr. Bryant's polygraph report. Ex. A-11.

68. According to Mr. Bryant's March 8, 2024 written polygraph report of the exam conducted on Appellant, Mr. Bryant concluded, "It is my opinion that the examinee is being truthful when answering the listed questions." *Id.*

69. At the hearing, Mr. Bryant reaffirmed this conclusion, testifying that he found Appellant was being truthful when Appellant denied the allegations that he had physical sexual contact with Student. *Id.*

Experts' Testimony About Memories

70. The District retained Dr. Meredyth Goldberg Edelson as an expert qualified to testify about child sex abuse and forensic interviewing. Tr.156:18-157:23. Dr. Edelson has a PhD and a master's degree in clinical psychology, and minor degrees in developmental psychology and quantitative psychology. Ex. D-10, 1. Her 22-page CV reflects many awards, honors, numerous publications, presentations, and extensive teaching experience. Ex. D-10.

71. Although Dr. Edelson's expertise is on child sex abuse and forensic interviewing, she testified about how memory is impacted by traumatic events, which can delay disclosure of those events. She testified that trauma can repress memories of the trauma and difficult memories can become clearer over time, especially the more a person talks about the memories. Tr.166:11-167:24, 180:23-181:3.

72. She cited a study from Schaeffer, Leventhal and Asnes of children aged three to 18 years old describing five barriers to children disclosing sexual abuse: threats from the perpetrator, fears, lack of opportunity felt by the child, lack of understanding, and relationship with perpetrator. Ex. D-12. She cited a family therapist study, from Sally V. Hunter, of 22 people aged 25-70 years old stating that most victims do not disclose and of those who do report the false report rate is one to five percent. Ex. D-13.

73. Dr. Edelson testified that mental health providers (such as therapists) should not use leading or suggestive questions in an abuse interview because doing so can influence a victim's recall of the abuse. Tr.186:14-187:22. Against this expert opinion, Det. Stearns testified that Ms. McNamara (Student's therapist) told him that open-ended questions would not work for Student and that direct questions would be more effective. Tr.236:13-23.

74. Appellant also retained an expert, Dr. Daniel Reisberg, to testify about the theory of reclaimed/repressed memory and the creation of false memories over time. Dr. Reisberg has a PhD and a master's degree in psychology. Ex. A-12. He is trained as a cognitive psychology scientific researcher with expertise regarding how people gain knowledge and maintain that knowledge in their memories. Tr.506:2-507:22. Within this memory discipline, he focuses on the study of memory – how people remember distinctive and emotional events. Tr.507:23-508:2. He has written extensively on this topic, including about 10 books and numerous scholarly publications according to his 21-page CV. Ex. A-12. Tr. 508:5-22.

75. Dr. Reisberg is very familiar with the idea of recovered memory. Tr. 510:18-511:5. He 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. Tr.513:1-9. Science does not support the notion of recovered memories of traumatic events. Tr.513:10-515:16, 536:25-537:14. Scientific research holds that if a person goes through a horrible (and provable) experience, the memory of that traumatic experience remains clear and vivid and is not suppressed. Tr.514:18-515:16. People do not forget real traumatic events and then later recover the memory of them. If a traumatic event happened, the memory of it would never have been lost in the first place (and thus there is no need for recovery). Tr.528:3-24. Examples of this kind of

traumatic memory remaining clear in the mind include a child who sees his parents murdered, a hideous sexual assault, or a terrible emergency room experience. Tr.514:2-24.

76. Dr. Reisberg explained that mental health professionals (not memory scientists) oppose the idea that memories of traumatic events remain vivid and are not lost. Rather, mental health professionals favor the idea that memories can be lost or repressed and later recovered. In fact, there was a significant dispute in the 1980s between mental health professionals and the scientific community about repressed and recovered memories called the “Memory Wars.” Tr.518:2-522:18.

77. He explained that mental health treatment might be good for therapy, but it is bad for memory recall. Tr.523:2-22. For example, therapists are often interested in a patient’s dreams and fantasies. Tr.524:18-24. During therapy, therapists take steps to validate what a patient might say (i.e. assuring the patient that she is reasonable in her belief, or that how a patient handled a situation is how anyone would handle the same experience). Tr.525:19-526:2. Such validation expressions guide the patient and encourage embellishment. *Id.* In a forensic interview, dreams and fantasies are not considered. Tr.524:11-525:4. An interviewer never guides or leads the patient that way. Tr. 524:18-526:12.

78. He explained that mental health professionals use a therapy technique called “memory work,” where a therapist talks with a patient over and over to figure out the history of the patient’s memory. Tr.529:9-530:12. Scientific research has shown memory work distorts memories or implants memories of events that never happened. *Id.*

79. He also explained that mental health professionals use another technique called “inner child work,” which seeks to have the patient return to the state when they were a child. Tr.530:13-531:8. The therapist then communicates with the patient as if they were that child.

Tr.531:4-8. Dr. Reisberg testified that scientific research has shown that inner child work is a “nonsense” way to bring old memories into sharper view. Tr.531:9-16.

80. Dr. Reisberg explained that mental health professionals also use dream analysis to treat patients. Tr.533:1-534:17. Scientific research, however, has shown that dreams are very unreliable because they often contain many fantasies mingled with a hint of memory. Tr.533:18-534:7.

81. If a patient is exposed to such therapeutic practices (memory work, inner child work, dream analysis) over a long period of time, not only will the so-called recovered memories be inaccurate, the magnitude of error with such memories increases cumulatively. Tr.536:3-24.

82. Dr. Reisberg also testified that scientific studies and experiments have shown how easy it is to get people to remember events that never happened. Tr. 537:2-540:18. He also explained that memories of traumatic events should not improve over time. Tr.703:14-22. Rather, the opposite is what scientific research shows – memories fade over time. *Id.*

83. Regarding the allegations by Student against Appellant, Dr. Reisberg testified that he is deeply skeptical that Student’s memories are accurate. Tr.548:7-549:11. If the traumatic events happened as Student claims, those events would have been highly memorable. Tr.549:12-15. Student’s loss and then later recovery of the memories of alleged abuse is contrary to scientific research in the field of memories. *Id.* Student’s supposed recovery of memories of traumatic events after months and months of therapy and counseling is a huge “warning flag” for Dr. Reisberg. Tr.542:17-544:1.

84. Finally, Dr. Reisberg testified that the District’s expert (Dr. Edelson) has no formal memory training according to her CV, the college courses Dr. Edelson teaches do not include the

systematic coverage of research in the field of memory, and her CV gives no sense she is well-read in the field of memory research. Dr. Edelson is not a memory expert. Tr.553:1-23.

85. Dr. Reisberg concluded that although the majority of abuse complaints based on memories are correct, there is a minority of abuse complaints that are based on false memories. This is a minority of reports but is greater than the five percent figure referenced by Dr. Edelson. Tr. 552:10-553:23.

TSPC and School District Investigations

86. As the second OTIS investigation was being conducted, the Teacher Standards and Practices Commission (TSPC) conducted its own investigation. The TSPC investigation resulted in a Stipulation of Facts and Final Order of Public Reprimand and Probation on Appellant dated March 1, 2023. Ex. D-9. This stipulation indicated Appellant “may have committed acts of gross neglect of duty and/or gross unfitness” related to the gifts he gave Student, the visits he made to Student’s home, and other visits he had with Student and Student’s family after Student had left School. *Id.* However, this stipulation makes no mention of and is unrelated to the allegations of sexual conduct/immorality. *Id.*

87. On April 5, 2021, the District placed Appellant on paid administrative leave. Tr.662:3-9; Tr.279:9-16. In a letter dated January 19, 2024 from the District’s superintendent Juan Larios to Appellant, Supt. Larios notified Appellant that he intended to recommend to the Woodburn School Board that Appellant be dismissed as a contract teacher. Ex. D-6. Supt. Larios’s letter included a *Statement of Facts Relied upon to Support Statutory Grounds for Dismissal*, which referenced, among other things, the second OTIS investigation and report as well as the TSPC stipulation with Appellant. *Id.* at 4. Although this statement of facts alleged that Appellant paid more attention to female students and that there was workplace “drama” around Appellant being

arrogant or bickering with School employees (Ex. D-6, 4), the District provided no evidence at the hearing supporting such allegations.

88. In response to Supt. Larios's letter, statement of facts, and recommendation, the Woodburn School Board issued an order stating, "The Board upholds the Recommendation to dismiss Willado Penaguirre as a contract teacher [sic] with the Woodburn School District on the grounds of Immorality under ORS 342.865(1)(b)." *Id.* at 22.

CONCLUSIONS OF LAW

1. The District is a "fair dismissal district" under the Accountability for Schools for the 21st Century Law. Appellant is a "contract teacher" entitled to a hearing before this panel.

2. The factual allegations that Appellant raped and committed sex acts on Student in a supply closet in Appellant's classroom, called Student a "slut," physically abused Student (spanking, shoving, choking, slapping), and threatened to rape and kill Student's sisters, are not true and substantiated.

3. The factual allegations that Appellant told Student that Student was special to have sex as a kid and frequently told Student in class that they were "special," are not true and substantiated.

4. The factual allegations that Appellant engaged in specific grooming behaviors toward Student and Student's family, are not true and substantiated.

5. The factual allegations that Appellant paid more attention to female students and that there was workplace "drama" around Appellant being arrogant or bickering with School employees, are not true and substantiated.

6. The factual allegation that Student was credible in Student's disclosures about Appellant, is not true and substantiated.

7. The true and substantiated facts are not adequate to support the charge of immorality as a ground for dismissal.

8. Because this panel concludes that the true and substantiated facts are not adequate to support the one ground for dismissal relied upon by the District, it is unnecessary for this panel to consider whether the dismissal of Appellant was arbitrary, unreasonable, or clearly an excessive remedy within the meaning of ORS 342.905(6).

DISCUSSION

I. Applicable Legal Standard.

In Oregon, the permissible grounds for terminating a contract teacher are as follows:

- (a) Inefficiency;
- (b) Immorality;
- (c) Insubordination;
- (d) Neglect of duty, including duties specified by written rule;
- (e) Physical or mental incapacity;
- (f) Conviction of a felony or of a crime according to the provisions of ORS 342.143;
- (g) Inadequate performance;
- (h) Failure to comply with such reasonable requirements as the board may prescribe to show normal improvement and evidence of professional training and growth; or
- (i) Any cause which constitutes grounds for the revocation of such contract teacher's teaching license.

ORS 342.865. At the conclusion of a hearing appealing a District's dismissal decision, the panel reviews the evidence pursuant to the legal standard set forth in ORS 342.905(6), which provides:

The Fair Dismissal Appeals Board panel shall determine whether the facts relied upon to support the statutory grounds cited for dismissal or nonextension are true and

substantiated. If the panel finds these facts true and substantiated, it shall then consider whether such facts, in light of all the circumstances and additional facts developed at the hearing that are relevant to the statutory standards in ORS 342.865(1), are adequate to justify the statutory grounds cited. In making such determination, the panel shall consider all reasonable written rules, policies and standards of performance adopted by the school district board unless it finds that such rules, policies, and standards have been so inconsistently applied as to amount to arbitrariness. The panel shall not reverse the dismissal or nonextension if it finds the facts relied upon are true and substantiated unless it determines, in light of all the evidence and for reasons stated with specificity in its findings and order, that the dismissal or nonextension was unreasonable, arbitrary, or clearly an excessive remedy.

ORS 342.905(6) (emphases added). The “degree of proof of all factual determinations by the panel shall be based on the preponderance of the evidence standard.” OAR 586-030-0055(5). At the hearing, evidence of “a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs” is admissible. OAR 586-030-0055(1). Thus, ORS 342.905(6) creates a three-step review process this panel must follow:

First, the [FDAB] panel determines whether the facts upon which the school board relied are true and substantiated. Second, the panel determines whether the facts found to be true and substantiated constitute a statutory basis for dismissal. Third, even if the facts constitute a statutory basis for dismissal, the panel may reverse the school board’s dismissal decision if the decision nonetheless was ‘unreasonable, arbitrary[,] or clearly an excessive remedy.’

Bergerson v. Salem-Keizer School District, 341 Or 401, 412 (2006) (footnote omitted). If the panel determines “the facts are not true and substantiated, or even if true and substantiated, are not relevant or adequate to justify the statutory grounds cited by the district, the appellant shall be reinstated with any back pay that is awarded in the order.” OAR 586-030-0070(3).

In this case, the panel reviewed the evidence and determined that the material facts relied upon by the District in its dismissal decision for immorality were not true and substantiated.

II. The alleged facts are not adequate to justify dismissal for immorality.

This panel concludes that the true and substantiated facts are inadequate to support dismissal for immorality within the meaning of ORS 342.865(1)(b). FDAB has defined

immorality, first in *Ross v. Springfield Sch. Dist.*, FD 80-1 (a series of cases that began in 1980 and concluded in 1987) as conduct that is "selfish, or in some cases malicious" and "shows a disregard for the rights or sensitivities of other persons." In successor cases following *Ross* addressing the standard of immorality, FDAB explained that the teacher's "selfishness" must be "excessive" or "significant" to meet the standard. Additionally, FDAB has determined immorality to exist only where the teacher intended to cause actual harm against others, such as causing injury, damage, or interfering with an investigation. See *Kari v. Jefferson Cty Sch. Dist.*, FDA 88-6 (1988), *reversed on other grounds*, 318 Or. 25 (1993) (teacher who knowingly permitted her husband to illegally grow and sell marijuana from her house was not immoral); *Thyfault v. Pendleton Sch. Dist.*, FDA 90-4 (1991) (teacher who intentionally spanked a student and then urged a co-worker to lie for her was immoral); *Webster v. Columbia Educ. Service Dist.*, FDA 96-1 (1998) (teacher who bought morphine on school grounds was immoral: her purchase was a repeated event, "rather than an isolated and inadvertent providing of a temporary medicinal relief on one occasion," and, she lied to investigators about how she had purchased drugs); *Bergerson* (teacher who consumed drugs off-duty but then purposefully drove her car into her husband's truck, which then crashed and damaged his girlfriend's garage, was immoral). The District's evidence does not demonstrate that Appellant acted excessively selfishly or engaged in conduct that caused actual harm to others.

For example, the panel finds, based on Student's significant mental health issues and Dissociative Identity Disorder, as well as Student's extensive counseling and therapy, that, according to Dr. Reisberg's expert testimony, Student's memory and mental state impaired the accuracy of Student's recollections of abuse. Evidence from the first OTIS investigation report shows Student did not have a sufficiently accurate or clear memory of the alleged abuse. Further,

the panel finds that, according to Dr. Reisberg, Student's memory was impaired by the therapy and counseling Student received prior to the second report of abuse. Notwithstanding the conclusion of the second OTIS investigation report, the panel finds that Student's recollection of additional facts, incidents, and details over time since Student's first OTIS interview, as well as comments Student made in Student's interview and at the hearing about Student's questionable memory undermine the reliability of Student's recollections.

The panel finds that based on the foregoing discrepancies related to Student's recollections, the improvement of Student's memory over time (which is inconsistent with scientific research according to Dr. Reisberg), Student's lack of trauma-related behavior according to School observers like Ms. Grove and Ms. Pramuk, Student's mental health disorder, and Student's visits with Appellant after leaving the School, the allegations of abuse lack sufficient credibility for the panel to find that the abuse occurred.

The panel further finds that it is unlikely that the alleged abuse could have occurred in the closet as alleged by Student. The panel finds that there was virtually no opportunity for Appellant to pull Student from lunch recess, bring Student to his classroom (and into his closet) and abuse Student once or twice a week (for up to 20-30 minutes per incident) as alleged by Student. The bustling school halls and walk areas teemed with students and staff. It is likely that at least some of those student and staff would have noticed if a teacher repeatedly pulled the same student from lunch recess once or twice a week. District presented no witnesses who testified that they observed Appellant pulling Student into his classroom. Appellant mostly ate with the other third grade teachers, which provided him adult conversation that he otherwise lacked in his workdays. Finally, the open nature of the school (accessible to parents at any time) and the open nature of the classroom (with window access from two directions) would suggest

that suspicious activity by Appellant lasting three years would have been noticed by someone and reported, yet no witness reported suspicious behavior from Appellant. Student's claims of abuse by Appellant when Student was in the fifth grade are contradicted by the fact that Appellant had a student teacher near him every day from the beginning of school until spring break.

The panel finds no support for the allegation that Appellant groomed Student or otherwise acted differently toward students and families than any other teacher at School. Further, the systems implemented by Ms. Grove and the arrest for molestation and subsequent imprisonment of a male teacher who worked at School created a heightened awareness at School of such potential sexual misconduct. Notwithstanding this environment and culture at the School, no one reported Appellant acting suspiciously or inappropriately toward Student.

The panel finds that Appellant's conduct in returning to Woodburn from Mexico despite the looming criminal allegations and his willingness to immediately meet with and be interviewed by Det. Stearns support his denial of the misconduct allegations. Further, the testimony from Mr. Bryant, his polygraph techniques and report, and the polygraph results exonerating Appellant corroborate and support the other evidence and information cited herein indicating that Appellant did not abuse Student as alleged.

Finally, the panel finds Dr. Reisberg's testimony persuasive on the dispute between the science of memory and therapy's ability to recover memories. It is likely that based on the extensive therapy and types of therapy experienced by Student, that such treatment is the cause of the abuse allegations against Appellant. To the extent the testimony conflicted between Dr. Edelson and Dr. Reisberg, the panel finds Dr. Reisberg's testimony to be more reliable.

CONCLUSION

For all the reasons discussed above, this panel does not believe that Appellant engaged in acts of immorality as alleged by the District. This panel thus cannot conclude that his termination was warranted under the ground asserted by the District.

ORDER

The dismissal of Appellant is set aside. Appellant shall be reinstated to his position with back pay.

DATED this 21st day of June, 2024

/s/ Ron Gallinat

Ron Gallinat, Panel Chair

DATED this 21st day of June, 2024

/s/ Joshua Wetzel

Joshua Wetzel, Panel Member

DATED this 21st day of June, 2024

/s/ Laura Latham

Laura Latham, 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.

CERTIFICATE OF SERVICE

I hereby certify that on _____, I served a true and correct copy of

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER by email:

Noah Barish
Krista Cordova
McKanna Bishop Joffe LLP
1635 NW Johnson St.
Portland, OR 97209
nbarish@mbjlaw.com
kcordova@mbjlaw.com

Rebekah R. Jacobson
Garrett Hemann Robertson P.C.
4895 Skyline Rd. S
Salem, OR 97306
rjacobson@ghrlawyers.com

Lisa Umscheid
Sr. Assistant Attorney General
Labor & Employment Section
General Counsel Division
Oregon Department of Justice
lisa.m.umscheid@doj.oregon.gov