1	BEFORE THE FAIR DISMISSAL APPEALS BOARD	
2	of the	
3	STATE OF OREGON	
4	In The Matter of the Appeal of	Case No. FDA-12-08
5	JEFFREY L. GILBERT,	
6	Appellant,	FINDINGS OF FACT, CONCLUSIONS OF
7	V.	LAW, DISCUSSION, AND ORDER ON MOTION TO DISMISS FOR LACK OF
8	REYNOLDS SCHOOL DISTRICT,	JURISDICTION
9	Respondent.	
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11	INTRODUCTION	
12	On August 10, 2012, Appellant Jeffrey L. Gilbert appealed his dismissal to the Fair	
13	Dismissal Appeals Board. Respondent Reynolds School District filed a motion to dismiss for	
14	lack of jurisdiction on the basis that Appellant did not have a valid administrative license at the	
15	time of his termination and, therefore, is not entitled to appeal his termination to FDAB. After	
16	review of the respondent's motion, the appellant's response, and the respondent's reply, the	
17	panel asked both parties to submit supplemental briefing regarding whether any legislative	
18	history bears on the questions raised by the Respondent's motion. The panel also ordered the	
19	parties to submit by affidavit admissible evidence to support the factual contentions made by the	
20	parties. On October 22, 2012, the panel heard oral argument from counsel for the parties.	
21	Based on the parties' submissions, written arguments, and the oral argument on	
22	October 22, 2012, and for the reasons that follow, the panel decides that Appellant did not have a	
23	valid administrative license at the time of his termination and, as a consequence, FDAB has no	
24	jurisdiction in this case.	
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 LMU:DM#3746492

1	FINDINGS OF FACT ^{1/}		
2	1.	In July 2008, Gilbert was hired under a one-year contract by the Reynolds School	
3	District to serve as the principal of Reynolds High School. On July 1, 2011, Gilbert entered a		
4	three-year contract with Reynolds School District to continue serving as principal until June 30,		
5	2014.		
6	2.	Reynolds School District never employed Gilbert as a teacher.	
7	3.	Gilbert's administrative license expired on July 30, 2011.	
8	4.	Gilbert received a non-renewable emergency administrative license from the	
9	Teacher Stand	lards and Practices Commission ("TSPC"). Gilbert's non-renewable emergency	
10	administrative license was set to expire on November 30, 2011. Before November 30, 2011,		
11	Reynolds Sch	ool District requested that TSPC extend Gilbert's emergency license for one	
12	additional yea	r to allow Gilbert to secure six credit hours necessary to satisfy his licensure	
13	requirements.	TSPC granted an extension until January 31, 2012.	
14	5.	On January 31, 2012, Gilbert was placed on unpaid leave effective February 1,	
15	2012 because	he no longer held a valid administrative license.	
16	6.	Gilbert remained on unpaid leave until his termination on June 20, 2012.	
17	7.	Reynolds School District Superintendent Joyce Henstrand terminated Gilbert's	
18	employment of	on June 20, 2012.	
19	8.	The Reynolds School Board unanimously upheld the Superintendent's	
20	termination d	ecision at its board meeting on August 2, 2012.	
21	9.	Reynolds School District did not utilize the procedure described in ORS 342.895	
22	to terminate Gilbert's employment.		
23		Conclusions of Law	
24	1.	Appellant was an administrator within the meaning of ORS 342.815(1).	
25	¹ The r	banel makes the findings in paragraphs 1 through 9 based on the Stipulated Facts submitted	
26	by the parties.		
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1	2. The Fair Dismissal Appeals Board lacks jurisdiction in this case because
2	Appellant did not have a valid administrative license at the time of his termination.
3	DISCUSSION
4	FDAB does not have jurisdiction over this appeal because Appellant did not have a valid
5	administrative license at the time of his termination. In Wagenblast v. Crook County School
6	District, 75 Or App 568, 707 P2d 69 (1985), the Oregon Court of Appeals held that an appellant
7	must possess a valid license to appeal a dismissal to FDAB. It is undisputed that Appellant did
8	not have a valid administrative license at the time of his dismissal. Therefore, FDAB lacks
9	jurisdiction over this appeal. Further, for the reasons explained below, the fact that Appellant
0	contends that he held a valid <i>teaching</i> license at the time of his dismissal is irrelevant to the
1	jurisdictional analysis. Accordingly, the panel dismisses this appeal.
2	Our analysis begins with the statutory language. Administrator appeals to FDAB are
3	governed by ORS 342.845(5)(a), which provides:
4	An administrator shall serve a probationary period that does not exceed three years, unless the administrator and the school district mutually agree to a shorter time period. Following a probationary period, an administrator shall be
6	employed by a school district pursuant to a three-year employment contract. An administrator may be dismissed or have a reduction in pay during the term of a contract for any reasons set forth for dismissal of a teacher in ORS 342.865, or
7	pursuant to ORS 342.934(5). If an administrator is dismissed or has a reduction in pay during the term of the contract, the administrator may appeal to the Fair
8 9	Dismissal Appeals Board in the same manner as provided for the appeal of a dismissal or a nonextension of a contract teacher. An administrator may not appeal the nonextension of a contract to the Fair Dismissal Appeals Board.
20	ORS 342.845(5)(a) (emphases supplied). In our view, Respondent's motion requires us to
21	construe the meaning of the phrase "in the same manner as provided for the appeal of a dismissal
22	or a nonextension of a contract teacher" as that phrase is used in ORS 342.845(5)(a).
23	The appeal of a dismissal or a nonextension of a contract teacher is governed by ORS
24	342.905(1). That statute provides, in relevant part:
25 26	If the district school board dismisses the teacher or does not extend the contract of the contract teacher, the teacher or the teacher's representative may appeal that decision to the Fair Dismissal Appeals Board[.]
-	 FINDINGS OF FACT, CONCLUSIONS OF LAW, DISCUSSION, AND ORDER ON MOTION TO DISMISS (Gilbert v. Reynolds School District) J:DM#3746492

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

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

5 ORS 342.815(9) (emphasis added). ORS 342.125 includes administrative licenses. The parties

6 agreed at oral argument that the term "teacher" includes administrators.

7 Because the term "teacher" is statutorily defined to include administrators, the panel

8 concludes that the Oregon Court of Appeals' reasoning in Wagenblast v. Crook County School

9 District, 75 Or App 568, 707 P2d 69 (1985), applies both to teachers and to administrators, and

10 requires dismissal of this appeal. In *Wagenblast*, FDAB dismissed a teacher's appeal for lack of

11 jurisdiction, and the Oregon Court of Appeals affirmed. In Wagenblast, the Teacher Standards

12 and Practices Commission notified the district that the teacher did not hold a valid teaching

13 certificate. In response, the district superintendent informed the teacher that she was terminated.

14 The Oregon Court of Appeals held that FDAB did not have jurisdiction:

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

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

20 The reasoning in *Wagenblast* applies here. An administrator may appeal a termination in

21 "the same manner as provided for the appeal of a dismissal or a nonextension of a contract

22 teacher." ORS 342.845(5)(a). Under Wagenblast, a teacher who appeals a dismissal must have

a valid teaching license. The definition of "teacher," as both parties agree, includes

24 administrators. See ORS 342.815(9). It follows that a "teacher" who is an administrator and

25 who seeks to appeal as an administrator must, to appeal to FDAB, have the valid license

26 necessary to work as an administrator. Here, the parties stipulated that Appellant did not have a

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

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

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

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³ Appellant submitted TSPC license information and characterized the status of Appellant's
 license as "active." Affidavit of Matthew E. Malmsheimer, ¶ 10. Respondent submitted a copy of Appellant's standard teaching license showing effective dates of July 31, 2007 through July 30, 2012.
 Affidavit of Rebekah R. Jacobson, ¶ 3(a). Respondent characterized the same TSPC license information submitted by Appellant differently than Appellant; Respondent described the "renewal of Jeffrey L.

26 Gilbert's teaching license [as] currently pending." Affidavit of Rebekah R. Jacobson, ¶ 3(b).

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² See Stipulated Facts, ¶¶ 3-4.

	1	in administrator appeals. Specifically, Appellant argues that FDAB has jurisdiction over an	
	2	administrator's appeal if the appellant has any license. Although the following reasoning is not	
	3	necessary to the resolution of Respondent's motion, we agree with Respondent that an	
	4	administrator must satisfy a two-part jurisdictional test that is equivalent to the two-part test used	
	5	in contract teacher appeals. Respondent argues that to support FDAB's jurisdiction in an	
	6	administrator appeal, the appealing administrator must both (a) be an administrator, and (b) have	
	7	a valid license to work as an administrator. Respondent correctly points out that Appellant's	
	8	interpretation of the statute would create for administrator appeals a different jurisdictional	
	9	analysis than the analysis used in contract teacher appeals. The panel observes that Appellant's	
	10	argument that a different test should be used for administrators than the test used for contract	
	.11	teachers would, if adopted, create a result contrary to ORS 342.845(5)(a), which states that an	
	12	administrator may appeal in "the same manner" as provided for the appeal of a dismissal or a	
	13	nonextension of a contract teacher.	
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1	ORDER		
2	For the reasons discussed above, Respondent's Motion to Dismiss For Lack of		
3	Jurisdiction is hereby granted.		
4	DATED this day of November, 2012.		
5	Way i W. J		
6	Dennis Ross - Panel Member		
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8	Christy Perry - Panel Member		
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10	Fred Marble – Panel Member		
11	NOTICE: Under ORS 342,905(9), this Order may be appealed in the manner provided for in		
12	ORS 183.480, and any appeal must be filed within 60 days from the date of service of this Order.		
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MOTION TO DISMISS (Gilbert v. Reynolds School District) LMU:DM#3746492

1	CERTIFICATE	OF MAILING
2	I hereby certify that I served a true copy of the foregoing FINDINGS OF FACT,	
3	CONCLUSIONS OF LAW, DISCUSSION, AND ORDER ON MOTION TO DISMISS on the	
4	following parties, on the date set forth below, con	tained in a sealed envelope, deposited in the
5	United States mail at Salem, Oregon with postage	paid, sent via certified mail, return receipt
6	requested, and addressed to the parties at their reg	ular addresses as follows:
7		
8	Attorney at Law Haglund Kelley Jones & Wilder LLP	Rebekah R. Jacobson Attorney at Law Garrett Hemann Robertson PC
9	Portland, OR 97201-5771	Willamette Professional Center 1011 Commercial St. NE
10		PO Box 749 Salem, OR 97308-0749
11	Attorney for Appellant	Attorney for Respondent
12		
13	DATED this 5th day of November, 2012.	
14 15		la 1 Aug a
16		Lisa Umscheid, OSB# 92571
17		Sr. Assistant Attorney General Df Attorneys for Fair Dismissal Appeals Board
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