

D R A F T

SUMMARY

Limits when school districts may administer statewide assessments.

Directs Department of Education to conduct study to determine effectiveness of statewide assessments.

Prohibits school districts from taking certain actions related to educator based on results of statewide assessments by students of educator.

Takes effect July 1, 2014.

A BILL FOR AN ACT

1
2 Relating to statewide assessments of students; creating new provisions;
3 amending ORS 329.486, 342.850, 342.856 and 342.905; and prescribing an
4 effective date.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 329.486 is amended to read:

7 329.486. [*The State Board of Education shall adopt guidelines for the best*
8 *practices of administering statewide assessments of students. The guidelines*
9 *must provide that a student who is in any grade from kindergarten through*
10 *grade eight and who has met or exceeded state standards on a test is excused*
11 *from being required to retake the test.*] **The State Board of Education shall**
12 **adopt requirements for the administration of statewide assessments.**

13 **The requirements must provide that:**

14 (1) **A student may not be required to take a statewide assessment**
15 **more than once each school year.**

16 (2) **Statewide assessments used to determine proficiency for a grade**
17 **level may be administered only at the end of the school year.**

18 **SECTION 2.** (1) **The Department of Education shall conduct a study**

1 to determine the effectiveness of statewide assessments. As part of the
2 study, the department shall determine:

3 (a) In which grades statewide assessments should be administered;
4 and

5 (b) The costs associated with administering statewide assessments,
6 including the direct costs for materials and scoring and the costs of
7 staff time in administering the assessments.

8 (2) The department shall submit a report on the study described in
9 subsection (1) of this section to the legislative interim committees on
10 education no later than October 1, 2014.

11 **SECTION 3.** ORS 342.850 is amended to read:

12 342.850. (1) The district superintendent of every school district, including
13 superintendents of education service districts, shall cause to have made at
14 least annually but with multiple observations an evaluation of performance
15 for each probationary teacher employed by the district. The purpose of the
16 evaluation is to aid the teacher in making continuing professional growth
17 and to determine the teacher's performance of the teaching
18 responsibilities. Evaluations shall be based upon at least two observations
19 and other relevant information developed by the district.

20 (2)(a) The district school board shall develop an evaluation process in
21 consultation with school administrators and with teachers. If the district's
22 teachers are represented by a local bargaining organization, the board shall
23 consult with teachers belonging to and appointed by the local bargaining
24 organization in the consultation required by this paragraph.

25 (b) The district school board shall implement the evaluation process that
26 includes:

27 (A) The establishment of job descriptions [*and*]:

28 (B) **The establishment of performance standards, which must include,**
29 **but [*are not*] need not be limited to, items included in the job description**
30 **and which may not be based on students' scores on statewide assess-**
31 **ments;**

1 [(B)] (C) A preevaluation interview which includes but is not limited to
2 the establishment of performance goals for the teacher, based on the job de-
3 scription and performance standards;

4 [(C)] (D) An evaluation based on written criteria which include the per-
5 formance goals;

6 [(D)] (E) A post-evaluation interview in which:

7 (i) The results of the evaluation are discussed with the teacher; and

8 (ii) A written program of assistance for improvement is established, if one
9 is needed to remedy any deficiency specified in ORS 342.865 (1)(a), (d), (g)
10 or (h); and

11 [(E)] (F) The utilization of peer assistance whenever practicable and
12 reasonable to aid teachers to better meet the needs of students. Peer assist-
13 ance shall be voluntary and subject to the terms of any applicable collective
14 bargaining agreement. No witness or document related to the peer assistance
15 or the record of peer assistance shall be admissible in any proceeding before
16 the Fair Dismissal Appeals Board, or in a probationary teacher nonrenewal
17 hearing before a school board under ORS 342.835, without the mutual consent
18 of the district and the teacher provided with peer assistance.

19 (c) Nothing in this subsection is intended to prohibit a district from
20 consulting with any other individuals.

21 (3) Except in those districts having an average daily membership, as de-
22 fined in ORS 327.006, of fewer than 200 students, the person or persons
23 making the evaluations must hold teaching licenses. The evaluation shall be
24 signed by the school official who supervises the teacher and by the teacher.
25 A copy of the evaluation shall be delivered to the teacher.

26 (4) The evaluation reports shall be maintained in the personnel files of
27 the district.

28 (5) The evaluation report shall be placed in the teacher's personnel file
29 only after reasonable notice to the teacher.

30 (6) A teacher may make a written statement relating to any evaluation,
31 reprimand, charge, action or any matter placed in the teacher's personnel file

1 and such teacher's statement shall be placed in the personnel file.

2 (7) All charges resulting in disciplinary action shall be considered a per-
3 manent part of a teacher's personnel file and shall not be removed for any
4 reason. A teacher shall have the right to attach the teacher's response, or
5 other relevant documents, to any document included under this subsection.

6 (8) The personnel file shall be open for inspection by the teacher, the
7 teacher's designees and the district school board and its designees. District
8 school boards shall adopt rules governing access to personnel files, including
9 rules specifying whom school officials may designate to inspect personnel
10 files.

11 (9) A program of assistance for improvement or evaluation procedure shall
12 not be technically construed, and no alleged error or unfairness in a program
13 of assistance for improvement shall cause the overturning of a dismissal,
14 nonextension of contract, nonrenewal of contract or other disciplinary action
15 unless the contract teacher suffered a substantial and prejudicial impairment
16 in the teacher's ability to comply with school district standards.

17 **SECTION 4.** ORS 342.856 is amended to read:

18 342.856. (1) The State Board of Education, in consultation with the
19 Teacher Standards and Practices Commission, shall adopt core teaching
20 standards to improve student academic growth and learning by:

21 (a) Assisting school districts in determining the effectiveness of teachers
22 and administrators and in making human resource decisions; and

23 (b) Improving the professional development and the classroom and ad-
24 ministrative practices of teachers and administrators.

25 (2) The core teaching standards adopted under this section must:

26 (a) Take into consideration multiple measures of teacher effectiveness,
27 based on widely accepted standards of teaching that encompass a range of
28 appropriate teaching behaviors and that use multiple evaluation methods;

29 (b) Take into consideration evidence of student academic growth and
30 learning based on multiple measures of student progress, including perform-
31 ance data of students, schools and school districts;

- 1 (c) Be research-based;
2 (d) Be separately developed for teachers and administrators; and
3 (e) Be able to be customized for each school district, which may include
4 individualized weighting and application of standards.

5 (3) The core teaching standards adopted under this section must attempt
6 to:

7 (a) Strengthen the knowledge, skills, disposition and classroom and ad-
8 ministrative practices of teachers and administrators in public schools;

9 (b) Refine the support, assistance and professional growth opportunities
10 offered to a teacher or an administrator, based on the individual needs of the
11 teacher or administrator and the needs of the students, the school and the
12 school district of the teacher or administrator;

13 (c) Allow each teacher or administrator to establish a set of classroom
14 or administrative practices and student learning objectives that are based
15 on the individual circumstances of the teacher or administrator, including
16 the classroom or other assignments of the teacher or administrator;

17 (d) Establish a formative growth process for each teacher and adminis-
18 trator that supports professional learning and collaboration with other
19 teachers and administrators; and

20 (e) Use evaluation methods and professional development, support and
21 other activities that are based on curricular standards and that are targeted
22 to the needs of each teacher and administrator.

23 **(4) The core teaching standards adopted under this section may not**
24 **allow a school district to make a human resource decision based solely**
25 **on students' scores on statewide assessments.**

26 **SECTION 5.** ORS 342.856, as amended by section 4, chapter 729, Oregon
27 Laws 2011, is amended to read:

28 342.856. (1) The State Board of Education, in consultation with the
29 Teacher Standards and Practices Commission, shall adopt core teaching
30 standards to improve student academic growth and learning by:

31 (a) Assisting school districts in determining the effectiveness of teachers

1 and administrators and in making human resource decisions; and

2 (b) Improving the professional development and the classroom and ad-
3 ministrative practices of teachers and administrators.

4 (2) The core teaching standards adopted under this section must:

5 (a) Take into consideration multiple measures of teacher effectiveness,
6 based on widely accepted standards of teaching that encompass a range of
7 appropriate teaching behaviors and that use multiple evaluation methods;

8 (b) Take into consideration evidence of student academic growth and
9 learning based on multiple measures of student progress, including perform-
10 ance data of students, schools and school districts;

11 (c) Be research-based;

12 (d) Be separately developed for teachers and administrators; and

13 (e) Be able to be customized for each school district, which may include
14 individualized weighting and application of standards.

15 (3) The core teaching standards adopted under this section must attempt
16 to:

17 (a) Strengthen the knowledge, skills, disposition and classroom and ad-
18 ministrative practices of teachers and administrators in public schools;

19 (b) Refine the support, assistance and professional growth opportunities
20 offered to a teacher or an administrator, based on the individual needs of the
21 teacher or administrator and the needs of the students, the school and the
22 school district of the teacher or administrator;

23 (c) Allow each teacher or administrator to establish a set of classroom
24 or administrative practices and student learning objectives that are based
25 on the individual circumstances of the teacher or administrator, including
26 the classroom or other assignments of the teacher or administrator;

27 (d) Establish a formative growth process for each teacher and adminis-
28 trator that supports professional learning and collaboration with other
29 teachers and administrators; and

30 (e) Use evaluation methods and professional development, support and
31 other activities that are based on curricular standards and that are targeted

1 to the needs of each teacher and administrator.

2 **(4) The core teaching standards adopted under this section may not**
3 **allow a school district to make a human resource decision based solely**
4 **on students' scores on statewide assessments.**

5 [(4)] **(5)** A school district board must include the core teaching standards
6 adopted under this section for all evaluations of teachers and administrators
7 of the school district. The standards shall be customized based on the
8 collaborative efforts of the teachers and administrators of the school district
9 and the exclusive bargaining representative of the employees of the school
10 district.

11 **SECTION 6.** ORS 342.905 is amended to read:

12 342.905. (1) If the district school board dismisses the teacher or does not
13 extend the contract of the contract teacher, the teacher or the teacher's
14 representative may appeal that decision to the Fair Dismissal Appeals Board
15 established under ORS 342.930 by depositing by certified mail addressed to
16 the Superintendent of Public Instruction and a copy to the superintendent
17 of the school district:

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

21 (b) In the case of a contract nonextension, within 15 days, as provided in
22 ORS 174.120, after receipt of the written notice of nonextension of a contract,
23 notice of appeal with a brief statement giving the reasons for the appeal.

24 (2)(a) As soon as practicable after the time the notice of appeal is received
25 by the Superintendent of Public Instruction, the superintendent shall appoint
26 a panel of three members from the Fair Dismissal Appeals Board for the
27 purpose of conducting a hearing. Insofar as practicable, the panel shall be
28 selected from those members of the board serving in positions where the
29 average daily membership as determined in ORS 342.930 most nearly coin-
30 cides with that of the involved district. The panel shall consist of:

31 (A) One member from the category representing district school board

1 members;

2 (B) One member from the category not affiliated with common or union
3 high school districts; and

4 (C) One member from the category representing teachers or administra-
5 tors, as follows:

6 (i) If the appeal is from a contract teacher in a teaching position, the
7 panel shall include the teacher member of the board.

8 (ii) If the contract teacher is in an administrative position, an adminis-
9 trative member shall sit in place of the teacher member.

10 (b) The panel may not contain a member who is a resident of the district
11 that is bringing the dismissal or nonextension.

12 (c) The Department of Education, at the department's expense, shall pro-
13 vide to the panel appropriate professional and other special assistance rea-
14 sonably required to conduct a hearing. The panel shall be empowered, on
15 behalf of the contract teacher, the district superintendent and the district
16 school board, to subpoena and swear witnesses and to require witnesses to
17 give testimony and produce relevant evidence at or prior to the hearing.

18 (d) The executive secretary of the board may issue subpoenas on behalf
19 of a panel. A person subpoenaed under this subsection may move to quash
20 or modify the subpoena if it is oppressive or unreasonable. The motion must
21 be made before the time specified in the subpoena for appearance or pro-
22 duction of materials. The motion may be made to the executive secretary or
23 the panel.

24 (e) In a case pending before a panel that involves a teacher's performance
25 at an Oregon Youth Authority facility, the panel assigned to the case may
26 submit to the Director of the Oregon Youth Authority written questions that
27 the panel unanimously agrees are relevant to the case. The director shall
28 respond to the panel's questions in writing within 20 days of the director's
29 receipt of the questions from the panel. If a question by the panel seeks in-
30 formation that is not confidential or privileged under Oregon or federal law,
31 the director shall provide the information requested by the panel. If a ques-

1 tion by the panel seeks information that is confidential or privileged under
2 Oregon or federal law, the director, in responding to the question, may not
3 disclose the confidential or privileged information but shall instead explain
4 that the information being sought is confidential or privileged. The proce-
5 dure outlined in this paragraph is not in lieu of any other mechanism that
6 may be available to the panel or parties for obtaining or presenting evidence.

7 (3) The Attorney General shall assign an assistant, at no cost to either
8 involved party, to advise the Fair Dismissal Appeals Board, to be present at
9 any hearing held by a panel, and to perform those tasks at the request of the
10 board that would normally require legal training.

11 (4) Within 10 days after receipt of the notice of an appeal of contract
12 nonextension, the district shall serve upon the Fair Dismissal Appeals Board
13 and the teacher a written statement of reason for the contract nonextension,
14 which shall include:

15 (a) A plain and concise statement of the facts relied on to support the
16 statutory grounds for nonextension of the contract;

17 (b) The statutory grounds upon which the district believes such contract
18 nonextension is justified; and

19 (c) A list of witnesses and documents upon which the district will rely
20 at hearing.

21 (5)(a) At least 10 days prior to the hearing, the teacher shall provide a
22 list of witnesses and exhibits to the Fair Dismissal Appeals Board panel and
23 the school district.

24 (b) The Fair Dismissal Appeals Board panel shall hold a contested case
25 hearing under ORS chapter 183 within 100 days of the receipt by the teacher
26 of notice of dismissal or of the statement of reasons in the case of contract
27 nonextension. No later than 140 days after the filing of an appeal, consistent
28 with due process, the Fair Dismissal Appeals Board panel shall prepare and
29 send a written decision to the contract teacher, the district superintendent,
30 the district school board and the Superintendent of Public Instruction. The
31 hearing shall be private unless the teacher requests a public hearing. At the

1 hearing, the district and the contract teacher shall have the right to be
2 present and be heard, to be represented by counsel, to present evidence and
3 cross-examine adverse witnesses and to offer evidence that in the panel's
4 judgment is relevant to the dispute. The panel may take all reasonable steps
5 to require the parties to conclude the hearing in an expeditious manner.

6 (6) When the Fair Dismissal Appeals Board panel has completed its
7 hearing, it shall prepare a written decision and send it to the contract
8 teacher, the district superintendent, the district school board and the Su-
9 perintendent of Public Instruction. The Fair Dismissal Appeals Board panel
10 shall determine whether the facts relied upon to support the statutory
11 grounds cited for dismissal or nonextension are true and substantiated. If the
12 panel finds these facts true and substantiated, it shall then consider whether
13 such facts, in light of all the circumstances and additional facts developed
14 at the hearing that are relevant to the statutory standards in ORS 342.865
15 (1), are adequate to justify the statutory grounds cited. In making such de-
16 termination, the panel shall consider all reasonable written rules, policies
17 and standards of performance adopted by the school district board unless it
18 finds that such rules, policies and standards have been so inconsistently ap-
19 plied as to amount to arbitrariness. The panel shall not reverse the dismissal
20 or nonextension if it finds the facts relied upon are true and substantiated
21 unless it determines, in light of all the evidence and for reasons stated with
22 specificity in its findings and order, that the dismissal or nonextension was
23 unreasonable, arbitrary or clearly an excessive remedy.

24 (7)(a) Subject to subsection (6) of this section and paragraph (b) of this
25 subsection, if the Fair Dismissal Appeals Board panel finds that the facts
26 relied on to support the recommendation of the district superintendent are
27 untrue or unsubstantiated, or if true and substantiated, are not adequate to
28 justify the statutory grounds cited as reason for the dismissal or nonexten-
29 sion, and so notifies the contract teacher, the district superintendent, the
30 district school board and the Superintendent of Public Instruction, the
31 teacher shall be reinstated and the teacher shall receive such back pay as

1 ordered by the Fair Dismissal Appeals Board panel for the period between
2 the effective date of the dismissal or nonextension and the date of the order
3 reinstating the teacher, or the date when the district actually reinstates the
4 teacher, whichever is later. However, nothing in this section requires a
5 school district to pay the teacher until the reinstatement occurs if the dis-
6 trict has other legal grounds for not reinstating the teacher.

7 (b) So long as the right of the district board under subsection (9) of this
8 section and under ORS 183.480 and 183.500 to judicial review of the action
9 of the Fair Dismissal Appeals Board remains unexpired, the district school
10 board may withhold the reinstated teacher from performance of teaching
11 duties, unless otherwise ordered by the court having jurisdiction of the ap-
12 peal.

13 (c) Subject to ORS 342.850 (9), if the Fair Dismissal Appeals Board panel
14 determines that the procedures described in ORS 342.850 (2)(b)(A) to [(D)] (E)
15 have not been substantially complied with, the teacher may be reinstated
16 with back pay as provided in paragraph (a) of this subsection.

17 (8) Subject to subsection (6) of this section, if the Fair Dismissal Appeals
18 Board panel finds the facts relied on to support the recommendation of the
19 district superintendent true and substantiated, and that those facts justify
20 the statutory grounds cited as reason for the dismissal or nonextension and
21 so notifies the contract teacher, the district superintendent, the district
22 school board and the Superintendent of Public Instruction in writing, the
23 dismissal or nonextension becomes final on the date of the notice.

24 (9) An appeal from action of the Fair Dismissal Appeals Board panel shall
25 be taken in the manner provided in ORS 183.480.

26 (10)(a) If both the district board and the teacher or teacher's represen-
27 tative agree, arbitration may be used as an alternative to a hearing before
28 a Fair Dismissal Appeals Board panel to determine if the teacher's dismissal
29 or nonextension of a contract is in compliance with the standards of ORS
30 342.805 to 342.910. If the teacher or teacher's representative desires to use
31 the arbitration procedure, the request for arbitration shall be included in the

1 request for appeal that is filed with the Superintendent of Public Instruction
2 under this section. Within 10 days of the time the superintendent of the
3 district is notified of the teacher's intent to appeal the dismissal or nonex-
4 tension of a contract, the superintendent of the district shall notify the
5 teacher or teacher's representative and the Superintendent of Public In-
6 struction as to whether the district has agreed to use the arbitration proce-
7 dure. If the district determines not to use the arbitration procedure, the
8 hearing procedure shall be continued under this section in the same manner
9 as if no request for arbitration had been made. If the arbitration procedure
10 is used, the teacher has no further rights to a hearing before a Fair Dis-
11 missal Appeals Board panel.

12 (b) The procedures for selection of the arbitrator are those in the appli-
13 cable collective bargaining agreement. If there is no provision or agreement
14 or if the agreement does not contain a procedure for selection, the parties
15 shall request a list of five arbitrators from the Employment Relations Board
16 and shall choose an arbitrator by alternative striking of names until one
17 name is left. The remaining person shall act as the arbitrator. The Employ-
18 ment Relations Board shall compile a roster of qualified arbitrators from
19 which the lists are to be taken.

20 (c) In determining whether the district board's dismissal or nonextension
21 of the teacher should be sustained, the arbitrator shall use the same reasons,
22 rules and levels of evidence as are required for the Fair Dismissal Appeals
23 Board under ORS 342.805 to 342.910.

24 **SECTION 7. This 2013 Act takes effect July 1, 2014.**

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