

A-Engrossed
House Bill 2001

Ordered by the House May 21
Including House Amendments dated May 21

Sponsored by Representative KOTEK; Representatives ALONSO LEON, BYNUM, FAHEY, SANCHEZ, VALDERRAMA

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires school district that is making reductions in educator staff positions to retain teacher with less seniority if *[teacher has more merit and if retention of teacher is necessary to maintain school district's diversity ratio]* **release of teacher would result in lesser proportion of teachers with cultural or linguistic expertise.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to procedures for the reduction of educator staff; creating new provisions; amending ORS
3 342.845 and 342.934; and declaring an emergency.

4 Whereas in 2019, the Legislative Assembly passed the Student Success Act and committed re-
5 sources for developing and implementing professional development programs and training programs,
6 including programs that increase the cultural and linguistic diversity of educators; and

7 Whereas students, school districts and communities benefit from teachers who have cultural or
8 linguistic expertise and who can relate and respond to the unique needs of students and families
9 with cultural or linguistic diversity; and

10 Whereas current state law requires school districts to prioritize seniority in layoff determi-
11 nations without consideration for cultural or linguistic expertise; now, therefore,

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

13 **SECTION 1.** ORS 342.934 is amended to read:

14 342.934. (1) **As used in this section:**

15 (a) **“Competence” means the ability of a teacher to teach a subject or grade level based**
16 **on consideration of any of the following:**

17 (A) **Teaching experience within the past five years related to the subject or grade level;**

18 (B) **Educational attainments, which may not be based solely on being licensed to teach;**

19 **or**

20 (C) **The teacher’s willingness to undergo additional training or pursue additional educa-**
21 **tion.**

22 (b) **“Cultural or linguistic expertise” means the expertise of one teacher, as measured**
23 **against the expertise of another teacher, based on consideration of any of the following fac-**
24 **tors:**

25 (A) **A teacher’s linguistic ability in relation to an in-district language, as determined by**
26 **a school district using a method of verification or attestation of fluency for all in-district**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 languages;

2 (B) A teacher's completion of a teacher pathway program that is implemented by a
3 teacher pathway partnership at the national, state, regional or local level and that has the
4 primary focus of increasing the number of culturally or linguistically diverse teachers; or

5 (C) A teacher's current work assignment that requires the teacher to work at least 50
6 percent of the teacher's work assignment time:

7 (i) At a school where at least 25 percent of the student population consists of students
8 from a historically underserved background, if the teacher is assigned to one school; or

9 (ii) At programs, schools or school districts where at least 25 percent of the student
10 population consists of students from a historically underserved background, if the teacher
11 is assigned to multiple programs, schools or school districts.

12 (c) "In-district language" means a heritage language or a language other than English
13 that is spoken:

14 (A) By five percent or more of the students enrolled at the school where a teacher is
15 assigned or, if the teacher is not assigned to a school, of the students enrolled in the schools
16 of the school district; or

17 (B) At five percent or more of the homes of the students enrolled at the school where a
18 teacher is assigned or, if the teacher is not assigned to a school, of the homes of the students
19 enrolled in the schools of the school district.

20 (d) "Merit" means the measurement of one teacher's ability and effectiveness against the
21 ability and effectiveness of another teacher.

22 (e) "Qualified teacher with cultural or linguistic expertise" means a teacher who:

23 (A) Has more cultural or linguistic expertise than a teacher with more or equal seniority;
24 and

25 (B) Holds proper licenses or other credentials to fill a remaining position.

26 (f) "School district" includes an education service district.

27 (g) "Student from a historically underserved background" includes a student who:

28 (A) Is an English language learner;

29 (B) Is from a racial or ethnic group that has historically experienced academic dispari-
30 ties, including racial or ethnic groups for which a statewide education plan has been devel-
31 oped under ORS 329.841, 329.843 or 329.845 for students who are black, African-American,
32 American Indian, Alaska Native, Latino or Hispanic;

33 (C) Is economically disadvantaged; or

34 (D) Has a disability.

35 (h) "Teacher" has the meaning given that term in ORS 342.120.

36 [(1)] (2) This section shall provide the procedure for [reduction] making reductions in teacher
37 staff positions resulting from [the] a school district's lack of funds to continue its educational pro-
38 gram at its anticipated level or resulting from the school district's elimination or adjustment of
39 classes due to administrative decision [shall be as provided in this section. However,]. Nothing in
40 this section is intended to interfere with the right of a fair dismissal district to discharge, remove
41 or fail to renew the contract of a probationary teacher pursuant to ORS 342.835.

42 [(2)] (3) [The] Before making any layoff decisions related to teacher staff, a school district
43 shall make every reasonable effort to:

44 (a) Transfer teachers of [courses scheduled for discontinuation] eliminated or adjusted classes
45 to other teaching positions for which [they] the teachers are licensed and qualified.

1 (b) Combine teaching positions in a manner *[which]* **that** allows teachers to remain qualified so
2 long as the combined positions meet the curriculum needs of the **school** district and the competence
3 consideration specified in subsection [(4)] (5) of this section.

4 (c) **Maintain the proportion of teachers with cultural or linguistic expertise compared to**
5 **teachers without cultural or linguistic expertise.**

6 [(3) *In determining teachers to be retained when a school district reduces its staff under this sec-*
7 *tion, the school district shall:]*

8 [(a) *Determine whether teachers to be retained hold proper licenses at the time of layoff to fill the*
9 *remaining positions.*]

10 [(b) *Determine seniority of teachers to be retained, calculated from the first day of actual service*
11 *as teachers with the school district inclusive of approved leaves of absence. Ties shall be broken by*
12 *drawing lots.*]

13 [(c) *Determine competence and merit of teachers, if necessary, under subsection (4) of this section.*]

14 (4)(a) **Except as required by paragraph (b) of this subsection and as allowed by subsection**
15 **(5) of this section, a school district shall prioritize seniority when determining which teach-**
16 **ers will be retained when a school district reduces its teacher staff under this section.**

17 (b) **A school district shall retain a qualified teacher with cultural or linguistic expertise**
18 **who has less seniority if the release of the less senior teacher would result in a lesser pro-**
19 **portion of teachers with cultural or linguistic expertise compared to teachers without cul-**
20 **tural or linguistic expertise. When a qualified teacher with cultural or linguistic expertise**
21 **is retained under this paragraph and the school district is determining which teachers to**
22 **retain who do not have cultural or linguistic expertise, the school district shall prioritize:**

23 (A) **Seniority; or**

24 (B) **To the extent allowed under subsection (5) of this section, competence or merit.**

25 (c)(A) **Except as provided by subparagraph (B) of this paragraph, any ties in calculations**
26 **of seniority shall be broken by drawing lots.**

27 (B) **If the release of a qualified teacher with cultural or linguistic expertise who has equal**
28 **seniority would result in a lesser proportion of teachers with cultural or linguistic expertise**
29 **compared to teachers without cultural or linguistic expertise, the school district shall retain**
30 **the teacher with cultural or linguistic expertise.**

31 (d) **For the purposes of this subsection, seniority shall be calculated from the first day**
32 **of actual service as teachers with the school district, inclusive of approved leaves of absence.**

33 (e) **Nothing in this subsection prohibits a school district from requiring that teachers to**
34 **be retained hold proper licenses or other credentialing at the time of layoff to fill remaining**
35 **positions or prohibits a school district from retaining a teacher as allowed under subsection**
36 **(5) of this section.**

37 [(4)] (5) *[If]* A school district *[desires to]* **may** retain a teacher with less seniority than a teacher
38 being released under this section[,] **if** the **school** district *[shall determine]* **determines** that the
39 teacher being retained has more competence or merit than the teacher with more seniority who is
40 being released.

41 [(5)] (6)(a) **Except as provided by paragraph (b) of this subsection, an administrator shall**
42 **retain status and seniority as a contract teacher and voluntarily may return to teaching in a re-**
43 **duction in staff situation.**

44 (b) *[However,]* An administrator who was never employed as a teacher in the **school** district
45 shall not be eligible to become a nonadministrative teacher in the **school** district if the effect is to

1 displace a nonadministrative contract teacher.

2 [(6)] (7) In consultation with its employees or, for those employees in a recognized or certified
3 collective bargaining unit, with the exclusive bargaining representative of that unit, each school
4 district shall establish a procedure for recalling teachers to employment in the **school** district who
5 have been released because of a prospective or actual reduction in staff. The procedure [*so estab-*
6 *lished*] shall define the criteria for recall and the teacher shall have the right of recall [*thereunder*]
7 for 27 months after the last date of release by the **school** district unless waived as provided in
8 [*such*] **the** procedure by rejection of a specific position. A contract teacher who is recalled shall
9 retain the status obtained before the release. A probationary teacher who is recalled shall have
10 years [*taught*] **of teaching** for the **school** district counted as if the employment had been continuous
11 for purposes of obtaining contract teacher status.

12 [(7)] (8) An appeal from a decision on reduction in staff or recall under this section shall be by
13 arbitration under the rules of the Employment Relations Board or by a procedure mutually agreed
14 upon by the employee representatives and the employer. The results of the procedure shall be final
15 and binding on the parties. Appeals from multiple reductions may be considered in a single arbi-
16 tration. The arbitrator is authorized to reverse the staff reduction decision or the recall decision
17 made by the **school** district only if the **school** district:

- 18 (a) Exceeded its jurisdiction;
19 (b) Failed to follow the procedure applicable to the matter before it;
20 (c) Made a finding or order not supported by substantial evidence in the whole record; or
21 (d) Improperly construed the applicable law.

22 [(8)] (9)(a) [*After August 15, 1997,*] A school district shall not agree in any collective bargaining
23 agreement to waive the right to consider competence in making decisions about the order of re-
24 duction in staff or recall of staff. Nothing in this subsection shall prevent a school district and the
25 exclusive bargaining representative from agreeing to alternative criteria for competence determi-
26 nations under this subsection so long as the criteria ensure that all retained teachers are qualified
27 for the positions they fill.

28 (b) As used in this subsection, “qualified” means the measurement of the teacher’s ability to
29 teach the particular grade level or subject matter in which the teacher is placed after the reduction
30 in force. Qualifications shall be measured by more than seniority and licensure, but may include
31 other criteria that reasonably measure the teacher’s fitness to teach the relevant grade or subject
32 level. Determinations of competence or qualifications under this subsection may take into account
33 requirements for any special needs students.

34 [(9) *As used in this section:*]

35 [(a) *“Competence” means the ability to teach a subject or grade level based on recent teaching ex-*
36 *perience related to that subject or grade level within the last five years, or educational attainments, or*
37 *both, but not based solely on being licensed to teach. The district may consider a teacher’s willingness*
38 *to undergo additional training or pursue additional education in deciding upon questions of compe-*
39 *tence.*]

40 [(b) *“Merit” means the measurement of one teacher’s ability and effectiveness against the ability*
41 *and effectiveness of another teacher.*]

42 **SECTION 2. The amendments to ORS 342.934 by section 1 of this 2021 Act apply to con-**
43 **tracts entered into, renewed or extended on or after the effective date of this 2021 Act.**

44 **SECTION 3.** ORS 342.845 is amended to read:

45 342.845. (1) A contract teacher shall not be subjected to the requirement of annual appointment

1 nor shall the teacher be dismissed or employed on a part-time basis without the consent of the
2 teacher except as provided in ORS 342.805 to 342.937.

3 (2) Notwithstanding subsection (1) of this section, a part-time contract teacher attains contract
4 status at not less than half-time but less than full-time and may be assigned within those limits by
5 the school district. The assignment of a contract part-time teacher is not subject to the procedures
6 specified in ORS 342.805 to 342.930. A contract part-time teacher who accepts a full-time assignment
7 shall be considered a contract teacher for purposes of the assignment.

8 (3) No teacher shall be deprived of employment status solely because the duties of employment
9 have been assumed or acquired by another school district or education service district in a state
10 reorganization of a regional special education program. Where such reorganization occurs, a teacher
11 shall be transferred to the employment of the school district or education service district which
12 assumed or acquired program responsibilities. The teacher shall be allowed to transfer accrued sick
13 leave and experience status to the new district. However, the district to which the programs are
14 transferred is obligated to hire displaced employees only to the extent that such would complement
15 a cost effective staffing plan in the reorganized program.

16 (4)(a) As used in this subsection:

17 (A) "Juvenile detention education program" means the Juvenile Detention Education Program,
18 as defined in ORS 326.695.

19 (B) "School district" means a school district as defined in ORS 332.002, an education service
20 district, a state-operated school or any legally constituted combination of such entities.

21 (b) No teacher shall be deprived of employment status solely because the duties of employment
22 have been assumed or acquired by another school district or education service district pursuant to
23 a transfer of juvenile detention education program responsibilities to another school district or ed-
24 ucation service district. Where such reorganization occurs, a teacher shall be transferred to the
25 employment of the school district or education service district that assumed or acquired program
26 responsibilities. The teacher shall be allowed to transfer accrued sick leave, seniority and status as
27 a contract teacher. However, the district to which the program is transferred is obligated to hire
28 displaced teachers only to the extent that such would complement a cost-effective staffing plan in
29 the reorganized program.

30 (5)(a) An administrator shall serve a probationary period that does not exceed three years, un-
31 less the administrator and the school district mutually agree to a shorter time period. Following a
32 probationary period, an administrator shall be employed by a school district pursuant to a three-year
33 employment contract. An administrator may be dismissed or have a reduction in pay during the term
34 of a contract for any reason set forth for dismissal of a teacher in ORS 342.865, or pursuant to ORS
35 342.934 [(5)] (6). If an administrator is dismissed or has a reduction in pay during the term of the
36 contract, the administrator may appeal to the Fair Dismissal Appeals Board in the same manner as
37 provided for the appeal of a dismissal or a nonextension of a contract teacher. An administrator
38 may not appeal the nonextension of a contract to the Fair Dismissal Appeals Board.

39 (b) The administrator may be assigned and reassigned at will during the term of the contract.

40 (c) The district school board may elect not to extend the administrator's contract for any cause
41 the school board in good faith considers sufficient. Prior to March 15 of the second year of the
42 administrator's contract, the school board shall take one of the following actions:

43 (A) Issue a new three-year contract effective July 1 following the March 15 of the second year
44 of the administrator's contract;

45 (B) Provide, in writing, notice that the contract will not be renewed or extended; or

1 (C) Extend the existing contract for a period of not more than one year.

2 (6) If an administrator receives notice of contract nonextension prior to the expiration of the
3 administrator's contract, the administrator shall have the right to fill any vacant teaching position
4 in the district for which the contract administrator is licensed and competent as defined in ORS
5 342.934, provided the administrator has three years' teaching experience in Oregon that has been
6 successful, in the judgment of the district superintendent.

7 **SECTION 4. This 2021 Act being necessary for the immediate preservation of the public**
8 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
9 **on its passage.**

10