

Enrolled House Bill 2001

Sponsored by Representative KOTEK; Representatives ALONSO LEON, BYNUM, DEXTER,
FAHEY, MEEK, REARDON, RUIZ, SANCHEZ, VALDERRAMA

CHAPTER

AN ACT

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

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

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

Whereas current state law requires school districts to prioritize seniority in layoff determinations without consideration for cultural or linguistic expertise; now, therefore,

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

SECTION 1. ORS 342.934 is amended to read:

342.934. (1) As used in this section:

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

- (A) Teaching experience within the past five years related to the subject or grade level;**
- (B) Educational attainments, which may not be based solely on being licensed to teach;**

or

(C) The teacher’s willingness to undergo additional training or pursue additional education.

(b) “Cultural or linguistic expertise” means the expertise of one teacher, as measured against the expertise of another teacher, based on consideration of any of the following factors:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Is an English language learner;

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

(C) Is economically disadvantaged; or

(D) Has a disability.

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

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

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

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

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

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

[3] In determining teachers to be retained when a school district reduces its staff under this section, the school district shall:]

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

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

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

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

(b) A school district shall retain a qualified teacher with cultural or linguistic expertise who has less seniority if the release of the less senior teacher would result in a lesser proportion of teachers with cultural or linguistic expertise compared to teachers without cultural or linguistic expertise. When a qualified teacher with cultural or linguistic expertise is retained under this paragraph and the school district is determining which teachers to retain who do not have cultural or linguistic expertise, the school district shall prioritize:

(A) Seniority; or

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

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

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

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

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

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

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

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

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

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

(a) Exceeded its jurisdiction;

(b) Failed to follow the procedure applicable to the matter before it;

(c) Made a finding or order not supported by substantial evidence in the whole record; or

(d) Improperly construed the applicable law.

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

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

[(9) As used in this section:]

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

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

SECTION 2. The amendments to ORS 342.934 by section 1 of this 2021 Act apply to contracts entered into, renewed or extended on or after the effective date of this 2021 Act.

SECTION 3. ORS 342.845 is amended to read:

342.845. (1) A contract teacher shall not be subjected to the requirement of annual appointment nor shall the teacher be dismissed or employed on a part-time basis without the consent of the teacher except as provided in ORS 342.805 to 342.937.

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

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

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

(A) “Juvenile detention education program” means the Juvenile Detention Education Program, as defined in ORS 326.695.

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

(b) No teacher shall be deprived of employment status solely because the duties of employment have been assumed or acquired by another school district or education service district pursuant to a transfer of juvenile detention education program responsibilities to another school district or education service district. Where such reorganization occurs, a teacher shall be transferred to the employment of the school district or education service district that assumed or acquired program responsibilities. The teacher shall be allowed to transfer accrued sick leave, seniority and status as a contract teacher. However, the district to which the program is transferred is obligated to hire

displaced teachers only to the extent that such would complement a cost-effective staffing plan in the reorganized program.

(5)(a) 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 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 reason set forth for dismissal of a teacher in ORS 342.865, or pursuant to ORS 342.934 [(5)] (6). If an administrator is dismissed or has a reduction in pay during the term of the contract, the administrator may appeal to the Fair 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.

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

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

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

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

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

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

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

Passed by House May 25, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 17, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State