

House Bill 2001

Sponsored by Representative KOTEK

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 **as introduced**.

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.

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 30 years ago, the Legislative Assembly passed the Minority Teacher Act of 1991 in
5 recognition of the disparity between this state's diverse student population and this state's
6 predominately white teacher workforce; and

7 Whereas the Minority Teacher Act of 1991 expressed the state's commitment to ethnic-racial
8 equity and established the goal that "by the year 2001 the number of minority teachers, including
9 administrators, employed by school districts and education service districts shall be approximately
10 proportionate to the number of minority children enrolled in the public schools of this state;" and

11 Whereas nearly 25 years after the enactment of the Minority Teacher Act of 1991, some
12 progress toward the goal of the Act had been made but this state's teacher workforce still was sig-
13 nificantly less diverse than this state's student population; and

14 Whereas in 2015, the Legislative Assembly reworked the Minority Teacher Act of 1991 by
15 broadening the scope of the Act to recognize the importance of cultural and linguistic diversity in
16 education and to change the name of the Act to the Educators Equity Act; and

17 Whereas the Educators Equity Act restated this state's commitment to equality for the diverse
18 peoples of this state and established the state goal that "the percentage of diverse educators em-
19 ployed by a school district or an education service district reflects the percentage of diverse stu-
20 dents in the public schools of this state or the percentage of diverse students in the district;" and

21 Whereas the Educators Equity Act requires the Department of Education to monitor school
22 district and education service district progress in relation to the recruitment, hiring and retention
23 of diverse educators; and

24 Whereas in 2019, the Legislative Assembly passed the Student Success Act and committed re-
25 sources for developing and implementing professional development programs and training programs,
26 including programs that increase educator diversity and retain diverse educators; and

27 Whereas public schools in this state recently reported adding nonwhite and multilingual teach-
28 ers at almost four times the rate that the schools were hiring monolingual, white teachers in an
29 effort to meet the state goal of an educator workforce that reflects the diversity of students in
30 public schools; and

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 Whereas in the 2018-2019 school year, the Department of Education reported that only 10 per-
2 cent of teachers identified as people of color as compared to a student population of 38 percent
3 students of color, and reported that the statewide student-to-teacher ratio is 19:1 but the statewide
4 ratio of students of color to teachers of color is 68:1; and

5 Whereas the COVID-19 pandemic created a budget crisis that may trigger school district layoffs;
6 and

7 Whereas current state law requires school districts to prioritize seniority in layoff determi-
8 nations without consideration for diversity or representation; and

9 Whereas making reductions in educator staff based on seniority will have a greater negative
10 impact on diverse educators because diverse educators tend to have less seniority; and

11 Whereas diversity alone should not overcome prioritization based on seniority, but should be
12 considered along with merit; and

13 Whereas this state still has much work to do to achieve the state goal of having an educator
14 workforce that is reflective of the diversity of the students of this state, yet reductions in educator
15 staff based on seniority will undo much of the recent significant progress made toward that state
16 goal; now, therefore,

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

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

19 342.934. (1) **As used in this section:**

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

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

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

24 **or**

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

27 (b) **“Diverse” has the meaning given that term in ORS 342.433.**

28 (c) **“Diversity ratio” means the ratio of all diverse teachers employed in the public**
29 **schools of a school district compared to all diverse students enrolled in the public schools**
30 **of the school district.**

31 (d) **“Merit” means the measurement of the ability and effectiveness of one teacher, as**
32 **measured against the ability and effectiveness of another teacher, based on consideration of**
33 **any of the following factors:**

34 (A) **Any languages spoken by the teacher that are not English;**

35 (B) **Years the teacher has taught in schools where at least 25 percent of the student**
36 **population is diverse;**

37 (C) **Training received by the teacher related to antibias, diversity, equity, inclusion, cul-**
38 **turelly responsive practices or restorative justice practices; or**

39 (D) **Participation by the teacher in any programs, plans or practices implemented to ad-**
40 **vance the goal of the Educators Equity Act described in ORS 342.437, including receipt by the**
41 **teacher of a scholarship for culturally and linguistically diverse teacher candidates as pro-**
42 **vided by ORS 348.295 or participation by the teacher in professional development to increase**
43 **educator diversity.**

44 [(1)] (2) **This section shall provide the procedure for [reduction] making reductions in teacher**
45 **staff positions resulting from [the] a school district’s lack of funds to continue its educational pro-**

1 gram at its anticipated level or resulting from the **school** district's elimination or adjustment of
 2 classes due to administrative decision [*shall be as provided in this section. However,*]. Nothing in
 3 this section is intended to interfere with the right of a fair dismissal district to discharge, remove
 4 or fail to renew the contract of a probationary teacher pursuant to ORS 342.835.

5 [(2)] (3) [*The*] **Before making any reductions in teacher staff, a** school district shall make
 6 every reasonable effort to:

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

9 (b) Combine teaching positions in a manner [*which*] **that** allows teachers to remain qualified so
 10 long as the combined positions meet the curriculum needs of the **school** district and the competence
 11 consideration specified in subsection [(4)] (6) of this section.

12 [(3)] (4) In determining [*teachers to*] **which teachers will** be retained when a school district re-
 13 duces its **teacher** staff under this section, the school district shall:

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

16 (b) [*Determine seniority of*] **Subject to subsection (5) of this section and except as allowed**
 17 **under subsection (6) of this section, prioritize** teachers to be retained[,] **based on seniority.**
 18 **For the purpose of this paragraph:**

19 (A) **Seniority shall be** calculated from the first day of actual service as teachers with the
 20 school district, inclusive of approved leaves of absence.

21 (B) **Ties in calculations of seniority** shall be broken by drawing lots.

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

23 (5) **A school district shall retain a teacher with less seniority than a teacher being re-**
 24 **leased under this section if:**

25 (a) **The teacher being retained has more merit than the teacher with more seniority who**
 26 **is being released; and**

27 (b) **The retention allows the school district to advance the goal of the Educators Equity**
 28 **Act described in ORS 342.437 by maintaining the school district's diversity ratio, as calcu-**
 29 **lated over the previous three-year period.**

30 [(4)] (6) [*If*] A school district [*desires to*] **may** retain a teacher with less seniority than a teacher
 31 being released under this section[,] **if** the **school** district [*shall determine*] **determines** that the
 32 teacher being retained has more competence or merit than the teacher with more seniority who is
 33 being released.

34 [(5)] (7)(a) **Except as provided by paragraph (b) of this subsection,** an administrator shall
 35 retain status and seniority as a contract teacher and voluntarily may return to teaching in a re-
 36 duction in staff situation.

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

40 [(6)] (8) In consultation with its employees or, for those employees in a recognized or certified
 41 collective bargaining unit, with the exclusive bargaining representative of that unit, each school
 42 district shall establish a procedure for recalling teachers to employment in the **school** district who
 43 have been released because of a prospective or actual reduction in staff. The procedure [*so estab-*
 44 *lished*] shall define the criteria for recall and the teacher shall have the right of recall [*thereunder*]
 45 for 27 months after the last date of release by the **school** district unless waived as provided in

1 [such] **the** procedure by rejection of a specific position. A contract teacher who is recalled shall
 2 retain the status obtained before the release. A probationary teacher who is recalled shall have
 3 years [*taught*] **of teaching** for the **school** district counted as if the employment had been continuous
 4 for purposes of obtaining contract teacher status.

5 [(7)] **(9)** An appeal from a decision on reduction in staff or recall under this section shall be by
 6 arbitration under the rules of the Employment Relations Board or by a procedure mutually agreed
 7 upon by the employee representatives and the employer. The results of the procedure shall be final
 8 and binding on the parties. Appeals from multiple reductions may be considered in a single arbi-
 9 tration. The arbitrator is authorized to reverse the staff reduction decision or the recall decision
 10 made by the **school** district only if the **school** district:

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

15 [(8)] **(10)(a)** [*After August 15, 1997,*] A school district [*shall*] **may** not agree in any collective
 16 bargaining agreement to waive the right to consider competence in making decisions about the order
 17 of reduction in staff or recall of staff. Nothing in this subsection shall prevent a school district and
 18 the exclusive bargaining representative from agreeing to alternative criteria for competence deter-
 19 minations under this subsection so long as the criteria ensure that all retained teachers are quali-
 20 fied for the positions they fill.

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

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

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

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

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

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

38 342.845. (1) A contract teacher shall not be subjected to the requirement of annual appointment
 39 nor shall the teacher be dismissed or employed on a part-time basis without the consent of the
 40 teacher except as provided in ORS 342.805 to 342.937.

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

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

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

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

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

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

23 (5)(a) An administrator shall serve a probationary period that does not exceed three years, un-
24 less the administrator and the school district mutually agree to a shorter time period. Following a
25 probationary period, an administrator shall be employed by a school district pursuant to a three-year
26 employment contract. An administrator may be dismissed or have a reduction in pay during the term
27 of a contract for any reason set forth for dismissal of a teacher in ORS 342.865, or pursuant to ORS
28 342.934 [(5)] (7). If an administrator is dismissed or has a reduction in pay during the term of the
29 contract, the administrator may appeal to the Fair Dismissal Appeals Board in the same manner as
30 provided for the appeal of a dismissal or a nonextension of a contract teacher. An administrator
31 may not appeal the nonextension of a contract to the Fair Dismissal Appeals Board.

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

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

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

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

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

40 (6) If an administrator receives notice of contract nonextension prior to the expiration of the
41 administrator's contract, the administrator shall have the right to fill any vacant teaching position
42 in the district for which the contract administrator is licensed and competent as defined in ORS
43 342.934, provided the administrator has three years' teaching experience in Oregon that has been
44 successful, in the judgment of the district superintendent.

45 **SECTION 4. This 2021 Act being necessary for the immediate preservation of the public**

1 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
2 **on its passage.**

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