



# Oregon Substitute Teachers Association

*Seamless Education by Professional Educators*

Dear Legislator:

HB 3130

We urge you to consider reaffirming through this legislation that all Oregon substitute teachers who work in the public schools are public employees, regardless of whether their hiring and payroll have been delegated to a third party for a school district's convenience.

A "Substitute Teacher" as defined in ORS 342.815 is "any teacher who is employed to take the place of a probationary or contract teacher who is temporarily absent." The minimum salary and other requirements for these teachers are set in ORS 342.610. Substitute teachers are licensed by Teacher Standards and Practices Commission and work as a team with other teachers and their school principal to carry forth the school's educational program on school property with school equipment on a schedule that is set by the school. They do not come in with a program of their own. Our "Comparison of Duties" chart shows how substitute teachers perform in the absence of regular teachers, often with students they do not know.

Many substitute teachers do not qualify for Public Employee Retirement benefits because they do not work the required 600 hours per year. Those who do are the long-term substitutes and the career substitutes who work nearly every day. The schools depend on these dedicated teachers. The law does not require their salary to include consideration for years of experience or graduate education courses, and they generally do not qualify for health insurance. Their one well-deserved benefit has been PERS, which qualifying substitute teachers have earned since 1971. The attached PERS Administrative Rules detail how substitute teachers qualify as school employees and not as independent contractors.

Some substitute teachers are still employed by their school districts, especially in the larger districts, but within the last five years, more districts have outsourced their substitute teachers. Many school districts have signed contracts with one or more staffing agencies: ESS (Oregon based), and EduStaff (Michigan based). These companies add layers of bureaucracy, making communication more difficult for substitute teachers and their school administrators. Courts have said that such companies (some of which have no understanding of teaching or of Oregon laws) have become the employer. Yet the control of the substitute's work and decisions are still made by the school district, and if payroll is handled by the substitute teacher staff agency, it receives money from the school district to do so. It is hard to understand what advantage the schools gain by these arrangements. This legislation would allow those outsourced long term and career substitute teachers who qualify under PERS rules to get benefits and restore access to those who have been denied application to Public Service Student Loan Forgiveness programs.

We have heard of school employees such as bus drivers or janitors being outsourced, but the educators who are carrying out the primary mission of the public schools should remain as public employees. ORS 341.610 applies to all substitute teachers who are not represented in a bargaining unit. This legislation is retroactive to January 1, 2015 so that eligible substitute teachers can recover benefits they earned by working in the public schools during the interim or earn benefits if they are starting in their teaching careers.

Thank you very much for your consideration.

Oregon Substitute Teachers Association  
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## COMPARISON OF DUTIES

<b>Regular Teacher Long Term Substitute</b>	<b>Daily Substitute Teacher</b>
1. Lesson planning – writes and executes long-range and daily plans	1. Interprets and executes daily plans.
2. Works with known students, individualizes lessons accordingly	2. Usually doesn't know students and must quickly assess class ability, class leaders, and establish rapport.
3. Prepares class materials, supporting materials from library, hands on math, worksheets and handouts.	3. Prepares materials if not done by regular teacher, lays out materials for next day.
4. Corrects and grades all papers and projects.	4. Corrects papers generated that day, but does not record grades.
5. Sets up own class discipline plan and class rules	5. Adjusts to discipline plans and class rules in many different classrooms. Must have extraordinary management skills.
6. Testing—Prepares and grades tests	6. Administers prepared test. Scores test if instructed to do so.
7. Prepares report cards and gives parent conferences	7. Only on long term.
8. Maintains email and phone contact with parent on weekly basis. Prepares work to s. end home	8. Contacts parent if instructed by administrator.
9. Duties—Recess, hall, playground, lunchroom, bus duty	9. Same as for regular teacher
10. Attends faculty, committee and in-service meetings	10. Usually not required to attend meetings except orientation
11. Usually does not write a report at the end of the day.	11. Writes a report for the regular teacher about the work accomplished and the responsiveness of students.
12. Maintains confidentiality involving own school	12. Maintains confidentiality in many schools
13. Settles into routine, plans an occasional “easy day”	13. Always alert –never has a “routine day”
14. Must hold preliminary or professional teaching license with renewal by 75 professional development units. Regular teachers receive. PDU's through district training and workshops paid for and reported to TSPC by the district. Long term substitutes find and pay for their own PDU activities and report them to TSPC.	14. Must hold preliminary, professional, or substitute teaching license. The substitute teaching license renewal does not require PDU's at this time, but many substitutes hold the preliminary and professional licenses, which require 75 PDU's -- a disproportionate responsibility and expense for substitute teachers.

While the regular teacher bears the responsibility of over-all planning, the substitute teacher assumes all classroom teaching and discipline for the day. The career substitute teacher thrives on the ability to work with unfamiliar students at various age levels, in different educational environments, and with a multitude of subjects. All are licensed.

OAR 459-010-0030 – Employees under PERS

RULE	SUBSTITUTE TEACHERS
1) Same as ORS 238.005	Substitute teachers who work 600 hours per calendar year meet these definitions of public employee.
2) Performs services under direction and control of an employer. The employer has the legal right to control the method and result, resulting in an employer-employee relationship.	The school principal directs the methods and instruction of all teachers within a school, including substitute teachers.
3) Relationship can be part time.	True for substitute teachers
4) IRS criteria for "employee"	
a) Instruction	District handbook; school guidelines; lesson plan; we are hired to carry on an educational program set by the school district—not to bring irrelevant lessons of our own.
b) Training	District orientation; safety procedures
c) Integration	Work with colleagues as a team
d) Services rendered personally	Yes
e) Hiring, supervising, paying	Employer should be hiring, and paying as well as supervising.
f) Continuing relationship	Schools request the same teachers to return, maintain lists of qualified teachers.
g) Employers sets work hours	District sets hours of work
h) Full time required	No-but constantly on call
i) Work is done on employer's premises	Yes
j) Order of sequence set	Class schedules
k) Oral or written reports	Substitutes receive lesson plans from teachers and write reports at the end of the day.
l) Payment by hour, week, or month	Day or half day; paid monthly. Minimum set in ORS 342.610.
m) Payment of business, travel	When a teacher travels to different schools during the day.
n) Furnishing tools and materials	Textbooks, projectors, copy machine
o) Significant investment	Orientations and training
p) Realization of profit or loss	No
q) Working for more than one employer at a time	Yes
r) Making service available to public	No
s) Right to Discharge	A principal may ban a teacher from a school
t) Right to terminate	A district may ban a teacher from the list of qualified substitutes.

OAR 459-010-0032 Independent Contractors not eligible for PERS

Rule	Substitute Teachers
1) Individual is an employee if not an independent contractor	
2) Employer controls only the result—not the means and methods	District and school principal control the means and method as well as result
3) Factors:	
a) Written contracts	no
b) Assumes responsibility for defective workmanship	no
c) Supplies tools and equipment	no
d) Payment is made upon completion of job	no
e) May subcontract services	no
f) More than one employer during a year	yes
g) Responsible for obtaining business registrations, professional licenses required by state and local government	Teaching license through Teacher Standards and Practices Commission
h) Services advertised to the public	no
A) Commercial advertising, business cards or trade association	No, except that substitute teachers may leave their card on a teacher's desk in hope of a call-back.
B) Telephone listing	No
C) Files Federal and State tax returns in the name of the business	No
4) A Professional Corporation is an independent contractor providing the criteria are met and the elements of direction and control are <i>not</i> present.	The elements of direction and control <i>are</i> present.