

House Bill 2808

Sponsored by Representatives WHISNANT, THATCHER

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**.

- Modifies method by which length of service of probationary teachers is calculated.
- Prohibits reconsideration of dismissal or nonrenewal of probationary teacher during arbitration proceeding or other dispute resolution process. Provides exceptions.
- Modifies arbitrator authority regarding reinstatement of public employees.
- Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to terms of employment for public employees; creating new provisions; amending ORS
3 243.706, 342.835, 342.840 and 342.850; and declaring an emergency.

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

5 **SECTION 1.** ORS 342.840 is amended to read:

6 342.840. (1) For purposes of determining length of service for a probationary teacher, a teacher
7 [*employed for 135 consecutive days in any school year*] **who has performed work for at least 135**
8 **days in a school year in the same school district** shall receive credit for a full year of employ-
9 ment.

10 (2) **A probationary teacher may not become a contract teacher until the first day of the**
11 **fourth year of employment by the school district.**

12 (3) **A probationary teacher must perform work during all work days for** at least 30 con-
13 secutive days of employment in the same **school** district in a successive year [*shall be sufficient*] to
14 keep the service intact, and the teacher [*shall*] **may** not lose credit for previous probationary years
15 served.

16 **SECTION 2. The amendments to ORS 342.840 by section 1 of this 2009 Act first apply to**
17 **teachers performing work in the 2009-2010 school year.**

18 **SECTION 3.** ORS 342.835 is amended to read:

19 342.835. (1) The district board of any fair dismissal district may discharge or remove any
20 probationary teacher in the employ of the district at any time during a probationary period for any
21 cause considered in good faith sufficient by the board. The probationary teacher shall be given a
22 written copy of the reasons for the dismissal, and upon request shall be provided a hearing thereon
23 by the board, at which time the probationary teacher shall have the opportunity to be heard either
24 in person or by a representative of the teacher's choice.

25 (2) For any cause it may deem in good faith sufficient, the district board may refuse to renew
26 the contract of any probationary teacher. However, the teacher shall be entitled to notice of the
27 intended action by March 15, and upon request shall be provided a hearing before the district board.
28 Upon request of the probationary teacher, the board shall provide the probationary teacher a writ-
29 ten copy of the reasons for the nonrenewal, which shall provide the basis for the hearing.

30 (3) If an appeal is taken from any hearing, the appeal shall be to the circuit court for the county

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 in which the headquarters of the school district is located and shall be limited to the following:

- 2 (a) The procedures at the hearing;
- 3 (b) Whether the written copy of reasons for dismissal required by this section was supplied; and
- 4 (c) In the case of nonrenewal, whether notice of nonrenewal was timely given.

5 **(4)(a) Notwithstanding ORS 243.650 to 243.782 or any provision of a collective bargaining**
 6 **agreement:**

7 **(A) An arbitration proceeding or other dispute resolution process following a hearing may**
 8 **not reconsider the decision of a school district to dismiss a probationary teacher or to not**
 9 **renew the contract of a probationary teacher.**

10 **(B) A school district may not be required to reinstate a probationary teacher as the re-**
 11 **sult of an arbitration proceeding or other dispute resolution process.**

12 **(b) This subsection does not apply to:**

13 **(A) Claims of unfair labor practices described in ORS 243.672; and**

14 **(B) Reinstatement as a result of noncompliance with the procedures described in sub-**
 15 **section (3) of this section.**

16 **SECTION 4. The amendments to ORS 342.835 by section 3 of this 2009 Act apply to:**

17 **(1) Arbitration proceedings or other dispute resolution processes that are commenced on**
 18 **or after the effective date of this 2009 Act and that are not affected by conflicting provisions**
 19 **of a collective bargaining agreement; and**

20 **(2) Arbitration proceedings or other dispute resolution processes that are commenced on**
 21 **or after the effective date of this 2009 Act and that are affected by conflicting provisions of**
 22 **a collective bargaining agreement entered into on or after the effective date of this 2009 Act.**

23 **SECTION 5. ORS 342.850 is amended to read:**

24 342.850. (1) The district superintendent of every school district, including superintendents of
 25 education service districts, shall cause to have made at least annually but with multiple observa-
 26 tions an evaluation of performance for each probationary teacher employed by the district. The
 27 purpose of the evaluation is to aid the teacher in making continuing professional growth and to
 28 determine the teacher's performance of the teaching responsibilities. Evaluations shall be based
 29 upon at least two observations and other relevant information developed by the district.

30 (2)(a) The district school board shall develop an evaluation process in consultation with school
 31 administrators and with teachers. If the district's teachers are represented by a local bargaining
 32 organization, the board shall consult with teachers belonging to and appointed by the local bar-
 33 gaining organization in the consultation required by this paragraph.

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

35 (A) The establishment of job descriptions and performance standards which include but are not
 36 limited to items included in the job description;

37 (B) A preevaluation interview which includes but is not limited to the establishment of per-
 38 formance goals for the teacher, based on the job description and performance standards;

39 (C) An evaluation based on written criteria which include the performance goals;

40 (D) A post-evaluation interview in which:

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

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

44 (E) The utilization of peer assistance whenever practicable and reasonable to aid teachers to
 45 better meet the needs of students. Peer assistance shall be voluntary and subject to the terms of any

1 applicable collective bargaining agreement. No witness or document related to the peer assistance
 2 or the record of peer assistance shall be admissible in any proceeding before the Fair Dismissal
 3 Appeals Board, or in a probationary teacher nonrenewal hearing before a school board under ORS
 4 342.835, without the mutual consent of the district and the teacher provided with peer assistance.

5 **(c) A collective bargaining agreement may not require a district to develop for**
 6 **probationary teachers a written program of assistance for improvement or any similar plan.**

7 [(c)] **(d)** Nothing in this subsection is intended to prohibit a district from consulting with any
 8 other individuals.

9 (3) Except in those districts having an average daily membership, as defined in ORS 327.006, of
 10 fewer than 200 students, the person or persons making the evaluations must hold teaching licenses.
 11 The evaluation shall be signed by the school official who supervises the teacher and by the teacher.
 12 A copy of the evaluation shall be delivered to the teacher.

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

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

16 (6) A teacher may make a written statement relating to any evaluation, reprimand, charge,
 17 action or any matter placed in the teacher's personnel file and such teacher's statement shall be
 18 placed in the personnel file.

19 (7) All charges resulting in disciplinary action shall be considered a permanent part of a
 20 teacher's personnel file and shall not be removed for any reason. A teacher shall have the right to
 21 attach the teacher's response, or other relevant documents, to any document included under this
 22 subsection.

23 (8) The personnel file shall be open for inspection by the teacher, the teacher's designees and
 24 the district school board and its designees. District school boards shall adopt rules governing access
 25 to personnel files, including rules specifying whom school officials may designate to inspect person-
 26 nel files.

27 (9) A program of assistance for improvement or evaluation procedure shall not be technically
 28 construed, and no alleged error or unfairness in a program of assistance for improvement shall cause
 29 the overturning of a dismissal, nonextension of contract, nonrenewal of contract or other discipli-
 30 nary action unless the contract teacher suffered a substantial and prejudicial impairment in the
 31 teacher's ability to comply with school district standards.

32 **SECTION 6. The amendments to ORS 342.850 by section 5 of this 2009 Act first apply to**
 33 **collective bargaining agreements entered into on or after the effective date of this 2009 Act.**

34 **SECTION 7.** ORS 243.706 is amended to read:

35 243.706. (1) A public employer may enter into a written agreement with the exclusive represen-
 36 tative of an appropriate bargaining unit setting forth a grievance procedure culminating in binding
 37 arbitration or any other dispute resolution process agreed to by the parties. [As a condition of
 38 enforceability, any] **An** arbitration award [that orders] **may not order** the reinstatement of a public
 39 employee or otherwise [relieves] **relieve** the public employee of responsibility for misconduct [shall
 40 comply with public policy requirements as clearly defined in statutes or] **if the conduct of the em-**
 41 **ployee does not comply with employer policy requirements and the employer policy require-**
 42 **ments are in compliance with state and federal statutes, administrative rules and** judicial
 43 decisions [including] **that are related to**, but not limited to, policies respecting sexual harassment
 44 or sexual misconduct, **inappropriate physical contact with students**, unjustified and egregious use
 45 of physical or deadly force [and] **or** serious criminal misconduct, related to work. In addition, with

1 respect to claims that a grievant should be reinstated or otherwise relieved of responsibility for
2 misconduct based upon the public employer's alleged previous differential treatment of employees for
3 the same or similar conduct, the arbitration award must conform to the following principles:

4 (a) Some misconduct is so egregious that no employee can reasonably rely on past treatment for
5 similar offenses as a justification or defense to discharge or other discipline.

6 (b) Public managers have a right to change disciplinary policies at any time, notwithstanding
7 prior practices, if such managers give reasonable advance notice to affected employees and the
8 change does not otherwise violate a collective bargaining agreement.

9 (2) In addition to subsection (1) of this section, a public employer may enter into a written
10 agreement with the exclusive representative of its employees providing that a labor dispute over
11 conditions and terms of a contract may be resolved through binding arbitration.

12 (3) In an arbitration proceeding under this section, the arbitrators, or a majority of the
13 arbitrators, may:

14 (a) Issue subpoenas on their own motion or at the request of a party to the proceeding to:

15 (A) Compel the attendance of a witness properly served by either party; and

16 (B) Require from either party the production of books, papers and documents the arbitrators find
17 are relevant to the proceeding;

18 (b) Administer oaths or affirmations to witnesses; and

19 (c) Adjourn a hearing from day to day, or for a longer time, and from place to place.

20 (4) The arbitrators shall promptly provide a copy of a subpoena issued under this section to each
21 party to the arbitration proceeding.

22 (5) The arbitrators issuing a subpoena under this section may rule on objections to the issuance
23 of the subpoena.

24 (6) If a person fails to comply with a subpoena issued under this section or if a witness refuses
25 to testify on a matter on which the witness may be lawfully questioned, the party who requested the
26 subpoena or seeks the testimony may apply to the arbitrators for an order authorizing the party to
27 apply to the circuit court of any county to enforce the subpoena or compel the testimony. On the
28 application of the attorney of record for the party or on the application of the arbitrators, or a
29 majority of the arbitrators, the court may require the person or witness to show cause why the
30 person or witness should not be punished for contempt of court to the same extent and purpose as
31 if the proceedings were pending before the court.

32 (7) Witnesses appearing pursuant to subpoena, other than parties or officers or employees of the
33 public employer, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2).

34 **SECTION 8. The amendments to ORS 243.706 by section 7 of this 2009 Act first apply to**
35 **arbitration awards issued on or after the effective date of this 2009 Act.**

36 **SECTION 9. This 2009 Act being necessary for the immediate preservation of the public**
37 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
38 **on its passage.**

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