

House Bill 4102

Sponsored by Representative JOHNSON; Representatives BREWER, CAMERON, ESQUIVEL, HANNA, OLSON, PARRISH, Senators HASS, MONROE, OLSEN (Pre-session filed.)

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**.

Establishes requirements for evaluation of teachers and administrators.
Takes effect July 1, 2012.

A BILL FOR AN ACT

1
2 Relating to educator evaluations; creating new provisions; amending ORS 342.850 and 342.905; and
3 prescribing an effective date.

4 Whereas a 2009 national survey of teachers in kindergarten through grade 12 found that 71
5 percent identified the most important goal of schools is to prepare all students for careers in the
6 21st century; and

7 Whereas in 2010 Oregon applied for federal funding through the Race to the Top innovation
8 funding program and was graded the seventh worst applicant among the 40 states that applied; and

9 Whereas in 2011 the National Education Association affirmed for the first time that evidence
10 of student learning must be considered in the evaluations of school teachers around the country; and

11 Whereas the Superintendent of Public Instruction stated that teachers need more and easier
12 access to achievement data to help them improve teaching; and

13 Whereas Oregon anticipates requesting federal waivers to the No Child Left Behind Act; and

14 Whereas Oregon will need to create guidelines for educator evaluations based in part on student
15 performance; now, therefore,

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

17 **SECTION 1.** ORS 342.850 is amended to read:

18 342.850. *[(1) The district superintendent of every school district, including superintendents of edu-*
19 *cation service districts, shall cause to have made at least annually but with multiple observations an*
20 *evaluation of performance for each probationary teacher employed by the district. The purpose of the*
21 *evaluation is to aid the teacher in making continuing professional growth and to determine the*
22 *teacher's performance of the teaching responsibilities. Evaluations shall be based upon at least two*
23 *observations and other relevant information developed by the district.]*

24 **(1) The superintendent of each school district and each education service district shall**
25 **ensure that:**

26 **(a) Each probationary teacher is evaluated as provided by this section at least once each**
27 **year.**

28 **(b) Each contract teacher is evaluated as provided by this section at least once every two**
29 **years.**

30 **(c) Each teacher who is not a probationary teacher or a contract teacher is evaluated**
31 **as provided by this section in intervals determined by the district school board or the board**

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 **of directors of the education service district.**

2 (2)(a) *[The]* **A district school board or the board of directors of an education service district**
 3 shall develop an evaluation process in consultation with school administrators and with teachers.
 4 If the district’s teachers are represented by a local bargaining organization, the board shall consult
 5 with teachers belonging to and appointed by the local bargaining organization in the consultation
 6 required by this paragraph.

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

9 *[(b)]* **(3) The district school board or the board of directors of the education service district**
 10 shall implement *[the]* **an** evaluation process that includes:

11 *[(A)]* **(a)** The establishment of job descriptions and performance standards *[which]* **that** include,
 12 but are not limited to, items included in the job description;

13 *[(B)]* **(b)** A preevaluation interview *[which]* **that** includes, but is not limited to, the establish-
 14 ment of performance goals for the teacher, **as** based on the job description and performance stan-
 15 dards;

16 *[(C)]* **(c)** An evaluation **that is used to determine the teacher’s performance of teaching**
 17 **responsibilities and that is** based on:

18 **(A)** Written criteria *[which]* **that** include the performance goals;

19 **(B) Significant consideration of student learning, which may be determined based on a**
 20 **combination of any of the following:**

21 **(i) Schoolwide student academic growth, as determined by the statewide assessment**
 22 **system;**

23 **(ii) Formative and summative assessments adopted for use by the school or school dis-**
 24 **trict;**

25 **(iii) Classroom-level student learning goals set collaboratively between teachers and**
 26 **evaluators; and**

27 **(iv) Any other data that are based on a plan adopted by the board to improve the pro-**
 28 **vision of educational services in the district; and**

29 **(C) At least two observations of the teacher in the classroom;**

30 *[(D)]* **(d)** A post-evaluation interview in which:

31 *[(i)]* **(A)** The results of the evaluation are discussed with the teacher; and

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

34 *[(E)]* **(e)** The utilization of peer assistance whenever practicable and reasonable to aid teachers
 35 to better meet the needs of students. Peer assistance shall be voluntary and subject to the terms
 36 of any applicable collective bargaining agreement. No witness or document related to the peer as-
 37 sistance or the record of peer assistance shall be admissible in any proceeding before the Fair Dis-
 38 missal Appeals Board, or in a probationary teacher nonrenewal hearing before a school board under
 39 ORS 342.835, without the mutual consent of the district and the teacher provided with peer assist-
 40 ance.

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

43 **(4) The evaluation process implemented as provided by subsection (3) of this section**
 44 **must:**

45 **(a) Differentiate among at least four levels of performance, with clear criteria for each**

1 level, that are the equivalent of:

2 (A) Exceeds performance standards;

3 (B) Meets performance standards;

4 (C) Does not meet performance standards but demonstrates progress toward meeting
5 performance standards; and

6 (D) Does not meet performance standards or demonstrate progress toward meeting per-
7 formance standards;

8 (b) Result in relevant professional development designed to improve the performance of
9 the specific teacher;

10 (c) Provide a means to monitor the implementation of the evaluation process to:

11 (A) Ensure compliance with the requirements of this section;

12 (B) Provide consistency among evaluators; and

13 (C) Improve the evaluation process; and

14 (d) To the extent practicable, complement the requirements of the core teaching stan-
15 dards adopted as provided by ORS 342.856.

16 (5) The superintendent of the district shall:

17 (a) Report to the board at least annually on the implementation of the evaluation pro-
18 cess; and

19 (b) Ensure that written documentation of the evaluation process, including any substan-
20 tive changes to the evaluation process, is submitted to the Department of Education.

21 *[(3) Except in those districts having an average daily membership, as defined in ORS 327.006, of*
22 *fewer than 200 students, the person or persons making the evaluations must hold teaching licenses.]*

23 (6) A person making an evaluation under this section must:

24 (a) Hold a teaching license, unless the district has an average daily membership, as de-
25 fined in ORS 327.006, of fewer than 200 students.

26 (b) Complete a training program approved by the board or be designated on the person's
27 own evaluation report as "exceeds performance standards" or "meets performance stan-
28 dards."

29 (7)(a) The evaluation prepared under this section shall be signed by the school official who
30 supervises the teacher and by the teacher.

31 (b) A copy of the evaluation report shall be delivered to the teacher.

32 [(4)] (c) The evaluation reports shall be maintained in the personnel files of the district.

33 [(5)] (d) The evaluation report shall be placed in the teacher's personnel file only after reason-
34 able notice to the teacher.

35 [(6)] (8) A teacher may make a written statement relating to any evaluation, reprimand, charge,
36 action or any matter placed in the teacher's personnel file and such teacher's statement shall be
37 placed in the personnel file.

38 [(7)] (9) All charges resulting in disciplinary action shall be considered a permanent part of a
39 teacher's personnel file and *[shall]* **may** not be removed for any reason. A teacher shall have the
40 right to attach the teacher's response, or other relevant documents, to any document included under
41 this subsection.

42 [(8)] (10) The personnel file shall be open for inspection by the teacher, the teacher's designees
43 and the district school board **or the board of directors of an education service district** and
44 *[its]* **the board's** designees. *[District school boards]* **A board** shall adopt rules governing access to
45 personnel files, including rules specifying whom school officials may designate to inspect personnel

1 files.

2 [(9)] (11) A program of assistance for improvement or **an** evaluation procedure [*shall*] **may** not
 3 be technically construed, and no alleged error or unfairness in a program of assistance for im-
 4 provement shall cause the overturning of a dismissal, nonextension of contract, nonrenewal of con-
 5 tract or other disciplinary action unless the contract teacher suffered a substantial and prejudicial
 6 impairment in the teacher’s ability to comply with school district **or education service district**
 7 standards.

8 **SECTION 2.** Section 3 of this 2012 Act is added to and made a part of ORS 342.805 to
 9 **342.937.**

10 **SECTION 3.** (1) **The superintendent of each school district and each education service**
 11 **district shall ensure that each administrator is evaluated as provided by this section at least**
 12 **once every two years.**

13 (2) **A district school board or the board of directors of an education service district shall**
 14 **implement a process for evaluation of administrators that is used to determine the**
 15 **administrator’s performance of administrative responsibilities and that:**

16 (a) **Includes significant consideration of student learning, which may be determined based**
 17 **on any of the following:**

18 (A) **Schoolwide or district-wide student academic growth, as determined by the statewide**
 19 **assessment system;**

20 (B) **Formative and summative assessments adopted for use by the school or the school**
 21 **district; or**

22 (C) **Any other data that are based on a plan adopted by the board to improve the pro-**
 23 **vision of educational services in the district.**

24 (b) **Differentiates among at least four levels of performance, with clear criteria for each**
 25 **level, that are the equivalent of:**

26 (A) **Exceeds performance standards;**

27 (B) **Meets performance standards;**

28 (C) **Does not meet performance standards but demonstrates progress toward meeting**
 29 **performance standards; and**

30 (D) **Does not meet performance standards or demonstrate progress toward meeting per-**
 31 **formance standards.**

32 (c) **Provides a means to monitor the implementation of the evaluation process to:**

33 (A) **Ensure compliance with the requirements of this section;**

34 (B) **Provide consistency among evaluators; and**

35 (C) **Improve the evaluation process.**

36 (d) **To the extent practicable, complements the requirements of the core teaching stan-**
 37 **dards adopted as provided by ORS 342.856.**

38 (3) **The superintendent of the district shall:**

39 (a) **Report to the board at least annually on the implementation of the evaluation pro-**
 40 **cess; and**

41 (b) **Ensure that written documentation of the evaluation process, including any substan-**
 42 **tive changes to the evaluation process, is submitted to the Department of Education.**

43 **SECTION 4.** ORS 342.905 is amended to read:

44 342.905. (1) **If the district school board dismisses the teacher or does not extend the contract**
 45 **of the contract teacher, the teacher or the teacher’s representative may appeal that decision to the**

1 Fair Dismissal Appeals Board established under ORS 342.930 by depositing by certified mail ad-
 2 dressed to the Superintendent of Public Instruction and a copy to the superintendent of the school
 3 district:

4 (a) In the case of dismissal, within 10 days, as provided in ORS 174.120, after receipt of notice
 5 of the district school board's decision, notice of appeal with a brief statement giving the reasons for
 6 the appeal.

7 (b) In the case of a contract nonextension, within 15 days, as provided in ORS 174.120, after
 8 receipt of the written notice of nonextension of a contract, notice of appeal with a brief statement
 9 giving the reasons for the appeal.

10 (2)(a) As soon as practicable after the time the notice of appeal is received by the Superinten-
 11 dent of Public Instruction, the superintendent shall appoint a panel of three members from the Fair
 12 Dismissal Appeals Board for the purpose of conducting a hearing. Insofar as practicable, the panel
 13 shall be selected from those members of the board serving in positions where the average daily
 14 membership as determined in ORS 342.930 most nearly coincides with that of the involved district.
 15 The panel shall consist of:

16 (A) One member from the category representing district school board members;

17 (B) One member from the category not affiliated with common or union high school districts;
 18 and

19 (C) One member from the category representing teachers or administrators, as follows:

20 (i) If the appeal is from a contract teacher in a teaching position, the panel shall include the
 21 teacher member of the board.

22 (ii) If the contract teacher is in an administrative position, an administrative member shall sit
 23 in place of the teacher member.

24 (b) The panel may not contain a member who is a resident of the district that is bringing the
 25 dismissal or nonextension.

26 (c) The Department of Education, at the department's expense, shall provide to the panel ap-
 27 propriate professional and other special assistance reasonably required to conduct a hearing. The
 28 panel shall be empowered, on behalf of the contract teacher, the district superintendent and the
 29 district school board, to subpoena and swear witnesses and to require witnesses to give testimony
 30 and produce relevant evidence at or prior to the hearing.

31 (d) The executive secretary of the board may issue subpoenas on behalf of a panel. A person
 32 subpoenaed under this subsection may move to quash or modify the subpoena if it is oppressive or
 33 unreasonable. The motion must be made before the time specified in the subpoena for appearance
 34 or production of materials. The motion may be made to the executive secretary or the panel.

35 (e) In a case pending before a panel that involves a teacher's performance at an Oregon Youth
 36 Authority facility, the panel assigned to the case may submit to the Director of the Oregon Youth
 37 Authority written questions that the panel unanimously agrees are relevant to the case. The direc-
 38 tor shall respond to the panel's questions in writing within 20 days of the director's receipt of the
 39 questions from the panel. If a question by the panel seeks information that is not confidential or
 40 privileged under Oregon or federal law, the director shall provide the information requested by the
 41 panel. If a question by the panel seeks information that is confidential or privileged under Oregon
 42 or federal law, the director, in responding to the question, may not disclose the confidential or
 43 privileged information but shall instead explain that the information being sought is confidential or
 44 privileged. The procedure outlined in this paragraph is not in lieu of any other mechanism that may
 45 be available to the panel or parties for obtaining or presenting evidence.

1 (3) The Attorney General shall assign an assistant, at no cost to either involved party, to advise
 2 the Fair Dismissal Appeals Board, to be present at any hearing held by a panel, and to perform
 3 those tasks at the request of the board that would normally require legal training.

4 (4) Within 10 days after receipt of the notice of an appeal of contract nonextension, the district
 5 shall serve upon the Fair Dismissal Appeals Board and the teacher a written statement of reason
 6 for the contract nonextension, which shall include:

7 (a) A plain and concise statement of the facts relied on to support the statutory grounds for
 8 nonextension of the contract;

9 (b) The statutory grounds upon which the district believes such contract nonextension is justi-
 10 fied; and

11 (c) A list of witnesses and documents upon which the district will rely at hearing.

12 (5)(a) At least 10 days prior to the hearing, the teacher shall provide a list of witnesses and
 13 exhibits to the Fair Dismissal Appeals Board panel and the school district.

14 (b) The Fair Dismissal Appeals Board panel shall hold a contested case hearing under ORS
 15 chapter 183 within 100 days of the receipt by the teacher of notice of dismissal or of the statement
 16 of reasons in the case of contract nonextension. No later than 140 days after the filing of an appeal,
 17 consistent with due process, the Fair Dismissal Appeals Board panel shall prepare and send a writ-
 18 ten decision to the contract teacher, the district superintendent, the district school board and the
 19 Superintendent of Public Instruction. The hearing shall be private unless the teacher requests a
 20 public hearing. At the hearing, the district and the contract teacher shall have the right to be
 21 present and be heard, to be represented by counsel, to present evidence and cross-examine adverse
 22 witnesses and to offer evidence that in the panel's judgment is relevant to the dispute. The panel
 23 may take all reasonable steps to require the parties to conclude the hearing in an expeditious
 24 manner.

25 (6) When the Fair Dismissal Appeals Board panel has completed its hearing, it shall prepare a
 26 written decision and send it to the contract teacher, the district superintendent, the district school
 27 board and the Superintendent of Public Instruction. The Fair Dismissal Appeals Board panel shall
 28 determine whether the facts relied upon to support the statutory grounds cited for dismissal or
 29 nonextension are true and substantiated. If the panel finds these facts true and substantiated, it
 30 shall then consider whether such facts, in light of all the circumstances and additional facts devel-
 31 oped at the hearing that are relevant to the statutory standards in ORS 342.865 (1), are adequate
 32 to justify the statutory grounds cited. In making such determination, the panel shall consider all
 33 reasonable written rules, policies and standards of performance adopted by the school district board
 34 unless it finds that such rules, policies and standards have been so inconsistently applied as to
 35 amount to arbitrariness. The panel shall not reverse the dismissal or nonextension if it finds the
 36 facts relied upon are true and substantiated unless it determines, in light of all the evidence and for
 37 reasons stated with specificity in its findings and order, that the dismissal or nonextension was un-
 38 reasonable, arbitrary or clearly an excessive remedy.

39 (7)(a) Subject to subsection (6) of this section and paragraph (b) of this subsection, if the Fair
 40 Dismissal Appeals Board panel finds that the facts relied on to support the recommendation of the
 41 district superintendent are untrue or unsubstantiated, or if true and substantiated, are not adequate
 42 to justify the statutory grounds cited as reason for the dismissal or nonextension, and so notifies the
 43 contract teacher, the district superintendent, the district school board and the Superintendent of
 44 Public Instruction, the teacher shall be reinstated and the teacher shall receive such back pay as
 45 ordered by the Fair Dismissal Appeals Board panel for the period between the effective date of the

1 dismissal or nonextension and the date of the order reinstating the teacher, or the date when the
 2 district actually reinstates the teacher, whichever is later. However, nothing in this section requires
 3 a school district to pay the teacher until the reinstatement occurs if the district has other legal
 4 grounds for not reinstating the teacher.

5 (b) [So] **As** long as the right of the district board under subsection (9) of this section and under
 6 ORS 183.480 and 183.500 to judicial review of the action of the Fair Dismissal Appeals Board re-
 7 mains unexpired, the district school board may withhold the reinstated teacher from performance
 8 of teaching duties, unless otherwise ordered by the court having jurisdiction of the appeal.

9 (c) Subject to ORS 342.850 [(9)] **(11)**, if the Fair Dismissal Appeals Board panel determines that
 10 the procedures described in ORS 342.850 [(2)(b)(A) to (D)] **(3)(a) to (d)** have not been substantially
 11 complied with, the teacher may be reinstated with back pay as provided in paragraph (a) of this
 12 subsection.

13 (8) Subject to subsection (6) of this section, if the Fair Dismissal Appeals Board panel finds the
 14 facts relied on to support the recommendation of the district superintendent true and substantiated,
 15 and that those facts justify the statutory grounds cited as reason for the dismissal or nonextension
 16 and so notifies the contract teacher, the district superintendent, the district school board and the
 17 Superintendent of Public Instruction in writing, the dismissal or nonextension becomes final on the
 18 date of the notice.

19 (9) An appeal from action of the Fair Dismissal Appeals Board panel shall be taken in the
 20 manner provided in ORS 183.480.

21 (10)(a) If both the district board and the teacher or teacher's representative agree, arbitration
 22 may be used as an alternative to a hearing before a Fair Dismissal Appeals Board panel to deter-
 23 mine if the teacher's dismissal or nonextension of a contract is in compliance with the standards
 24 of ORS 342.805 to 342.910. If the teacher or teacher's representative desires to use the arbitration
 25 procedure, the request for arbitration shall be included in the request for appeal that is filed with
 26 the Superintendent of Public Instruction under this section. Within 10 days of the time the super-
 27 intendent of the district is notified of the teacher's intent to appeal the dismissal or nonextension
 28 of a contract, the superintendent of the district shall notify the teacher or teacher's representative
 29 and the Superintendent of Public Instruction as to whether the district has agreed to use the arbi-
 30 tration procedure. If the district determines not to use the arbitration procedure, the hearing pro-
 31 cedure shall be continued under this section in the same manner as if no request for arbitration had
 32 been made. If the arbitration procedure is used, the teacher has no further rights to a hearing before
 33 a Fair Dismissal Appeals Board panel.

34 (b) The procedures for selection of the arbitrator are those in the applicable collective bar-
 35 gaining agreement. If there is no provision or agreement or if the agreement does not contain a
 36 procedure for selection, the parties shall request a list of five arbitrators from the Employment Re-
 37 lations Board and shall choose an arbitrator by alternative striking of names until one name is left.
 38 The remaining person shall act as the arbitrator. The Employment Relations Board shall compile a
 39 roster of qualified arbitrators from which the lists are to be taken.

40 (c) In determining whether the district board's dismissal or nonextension of the teacher should
 41 be sustained, the arbitrator shall use the same reasons, rules and levels of evidence as are required
 42 for the Fair Dismissal Appeals Board under ORS 342.805 to 342.910.

43 **SECTION 5. Section 3 of this 2012 Act and the amendments to ORS 342.850 by section 1**
 44 **of this 2012 Act apply to evaluations conducted on or after July 1, 2012.**

45 **SECTION 6. This 2012 Act takes effect on July 1, 2012.**

