

House Bill 2862

Sponsored by COMMITTEE ON EDUCATION

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**.

Limits when school districts may administer statewide assessments.

Directs Department of Education to conduct study to determine effectiveness of statewide assessments.

Prohibits school districts from taking certain actions related to educator based on results of statewide assessments by students of educator.

Takes effect July 1, 2014.

A BILL FOR AN ACT

1
2 Relating to statewide assessments of students; creating new provisions; amending ORS 329.486,
3 342.850, 342.856 and 342.905; and prescribing an effective date.

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

5 **SECTION 1.** ORS 329.486 is amended to read:

6 329.486. [*The State Board of Education shall adopt guidelines for the best practices of adminis-*
7 *tering statewide assessments of students. The guidelines must provide that a student who is in any*
8 *grade from kindergarten through grade eight and who has met or exceeded state standards on a test*
9 *is excused from being required to retake the test.*] **The State Board of Education shall adopt re-**
10 **quirements for the administration of statewide assessments. The requirements must provide**
11 **that:**

12 (1) **A student may not be required to take a statewide assessment more than once each**
13 **school year.**

14 (2) **Statewide assessments used to determine proficiency for a grade level may be ad-**
15 **ministered only at the end of the school year.**

16 **SECTION 2.** (1) **The Department of Education shall conduct a study to determine the**
17 **effectiveness of statewide assessments. As part of the study, the department shall determine:**

18 (a) **In which grades statewide assessments should be administered; and**

19 (b) **The costs associated with administering statewide assessments, including the direct**
20 **costs for materials and scoring and the costs of staff time in administering the assessments.**

21 (2) **The department shall submit a report on the study described in subsection (1) of this**
22 **section to the legislative interim committees on education no later than October 1, 2014.**

23 **SECTION 3.** 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.

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

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

6 (A) The establishment of job descriptions *[and]*:

7 **(B) The establishment of performance standards, which must include, but *[are not]* need not**
 8 **be limited to, items included in the job description and which may not be based on students'**
 9 **scores on statewide assessments;**

10 *[(B)]* (C) A preevaluation interview which includes but is not limited to the establishment of
 11 performance goals for the teacher, based on the job description and performance standards;

12 *[(C)]* (D) An evaluation based on written criteria which include the performance goals;

13 *[(D)]* (E) A post-evaluation interview in which:

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

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

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

24 (c) Nothing in this subsection is intended to prohibit a district from consulting with any other
 25 individuals.

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

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

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

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

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

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

44 (9) A program of assistance for improvement or evaluation procedure shall not be technically
 45 construed, and no alleged error or unfairness in a program of assistance for improvement shall cause

1 the overturning of a dismissal, nonextension of contract, nonrenewal of contract or other discipli-
 2 nary action unless the contract teacher suffered a substantial and prejudicial impairment in the
 3 teacher's ability to comply with school district standards.

4 **SECTION 4.** ORS 342.856 is amended to read:

5 342.856. (1) The State Board of Education, in consultation with the Teacher Standards and
 6 Practices Commission, shall adopt core teaching standards to improve student academic growth and
 7 learning by:

8 (a) Assisting school districts in determining the effectiveness of teachers and administrators and
 9 in making human resource decisions; and

10 (b) Improving the professional development and the classroom and administrative practices of
 11 teachers and administrators.

12 (2) The core teaching standards adopted under this section must:

13 (a) Take into consideration multiple measures of teacher effectiveness, based on widely accepted
 14 standards of teaching that encompass a range of appropriate teaching behaviors and that use mul-
 15 tiple evaluation methods;

16 (b) Take into consideration evidence of student academic growth and learning based on multiple
 17 measures of student progress, including performance data of students, schools and school districts;

18 (c) Be research-based;

19 (d) Be separately developed for teachers and administrators; and

20 (e) Be able to be customized for each school district, which may include individualized weighting
 21 and application of standards.

22 (3) The core teaching standards adopted under this section must attempt to:

23 (a) Strengthen the knowledge, skills, disposition and classroom and administrative practices of
 24 teachers and administrators in public schools;

25 (b) Refine the support, assistance and professional growth opportunities offered to a teacher or
 26 an administrator, based on the individual needs of the teacher or administrator and the needs of the
 27 students, the school and the school district of the teacher or administrator;

28 (c) Allow each teacher or administrator to establish a set of classroom or administrative prac-
 29 tices and student learning objectives that are based on the individual circumstances of the teacher
 30 or administrator, including the classroom or other assignments of the teacher or administrator;

31 (d) Establish a formative growth process for each teacher and administrator that supports pro-
 32 fessional learning and collaboration with other teachers and administrators; and

33 (e) Use evaluation methods and professional development, support and other activities that are
 34 based on curricular standards and that are targeted to the needs of each teacher and administrator.

35 **(4) The core teaching standards adopted under this section may not allow a school dis-**
 36 **trict to make a human resource decision based solely on students' scores on statewide as-**
 37 **essments.**

38 **SECTION 5.** ORS 342.856, as amended by section 4, chapter 729, Oregon Laws 2011, is amended
 39 to read:

40 342.856. (1) The State Board of Education, in consultation with the Teacher Standards and
 41 Practices Commission, shall adopt core teaching standards to improve student academic growth and
 42 learning by:

43 (a) Assisting school districts in determining the effectiveness of teachers and administrators and
 44 in making human resource decisions; and

45 (b) Improving the professional development and the classroom and administrative practices of

1 teachers and administrators.

2 (2) The core teaching standards adopted under this section must:

3 (a) Take into consideration multiple measures of teacher effectiveness, based on widely accepted
4 standards of teaching that encompass a range of appropriate teaching behaviors and that use mul-
5 tiple evaluation methods;

6 (b) Take into consideration evidence of student academic growth and learning based on multiple
7 measures of student progress, including performance data of students, schools and school districts;

8 (c) Be research-based;

9 (d) Be separately developed for teachers and administrators; and

10 (e) Be able to be customized for each school district, which may include individualized weighting
11 and application of standards.

12 (3) The core teaching standards adopted under this section must attempt to:

13 (a) Strengthen the knowledge, skills, disposition and classroom and administrative practices of
14 teachers and administrators in public schools;

15 (b) Refine the support, assistance and professional growth opportunities offered to a teacher or
16 an administrator, based on the individual needs of the teacher or administrator and the needs of the
17 students, the school and the school district of the teacher or administrator;

18 (c) Allow each teacher or administrator to establish a set of classroom or administrative prac-
19 tices and student learning objectives that are based on the individual circumstances of the teacher
20 or administrator, including the classroom or other assignments of the teacher or administrator;

21 (d) Establish a formative growth process for each teacher and administrator that supports pro-
22 fessional learning and collaboration with other teachers and administrators; and

23 (e) Use evaluation methods and professional development, support and other activities that are
24 based on curricular standards and that are targeted to the needs of each teacher and administrator.

25 **(4) The core teaching standards adopted under this section may not allow a school dis-**
26 **trict to make a human resource decision based solely on students' scores on statewide as-**
27 **essments.**

28 [(4)] (5) A school district board must include the core teaching standards adopted under this
29 section for all evaluations of teachers and administrators of the school district. The standards shall
30 be customized based on the collaborative efforts of the teachers and administrators of the school
31 district and the exclusive bargaining representative of the employees of the school district.

32 **SECTION 6.** ORS 342.905 is amended to read:

33 342.905. (1) If the district school board dismisses the teacher or does not extend the contract
34 of the contract teacher, the teacher or the teacher's representative may appeal that decision to the
35 Fair Dismissal Appeals Board established under ORS 342.930 by depositing by certified mail ad-
36 dressed to the Superintendent of Public Instruction and a copy to the superintendent of the school
37 district:

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

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

44 (2)(a) As soon as practicable after the time the notice of appeal is received by the Superinten-
45 dent of Public Instruction, the superintendent shall appoint a panel of three members from the Fair

1 Dismissal Appeals Board for the purpose of conducting a hearing. Insofar as practicable, the panel
 2 shall be selected from those members of the board serving in positions where the average daily
 3 membership as determined in ORS 342.930 most nearly coincides with that of the involved district.

4 The panel shall consist of:

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

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

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

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

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

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

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

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

24 (e) In a case pending before a panel that involves a teacher's performance at an Oregon Youth
 25 Authority facility, the panel assigned to the case may submit to the Director of the Oregon Youth
 26 Authority written questions that the panel unanimously agrees are relevant to the case. The direc-
 27 tor shall respond to the panel's questions in writing within 20 days of the director's receipt of the
 28 questions from the panel. If a question by the panel seeks information that is not confidential or
 29 privileged under Oregon or federal law, the director shall provide the information requested by the
 30 panel. If a question by the panel seeks information that is confidential or privileged under Oregon
 31 or federal law, the director, in responding to the question, may not disclose the confidential or
 32 privileged information but shall instead explain that the information being sought is confidential or
 33 privileged. The procedure outlined in this paragraph is not in lieu of any other mechanism that may
 34 be available to the panel or parties for obtaining or presenting evidence.

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

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

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

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

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

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

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

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

28 (7)(a) Subject to subsection (6) of this section and paragraph (b) of this subsection, if the Fair
29 Dismissal Appeals Board panel finds that the facts relied on to support the recommendation of the
30 district superintendent are untrue or unsubstantiated, or if true and substantiated, are not adequate
31 to justify the statutory grounds cited as reason for the dismissal or nonextension, and so notifies the
32 contract teacher, the district superintendent, the district school board and the Superintendent of
33 Public Instruction, the teacher shall be reinstated and the teacher shall receive such back pay as
34 ordered by the Fair Dismissal Appeals Board panel for the period between the effective date of the
35 dismissal or nonextension and the date of the order reinstating the teacher, or the date when the
36 district actually reinstates the teacher, whichever is later. However, nothing in this section requires
37 a school district to pay the teacher until the reinstatement occurs if the district has other legal
38 grounds for not reinstating the teacher.

39 (b) So long as the right of the district board under subsection (9) of this section and under ORS
40 183.480 and 183.500 to judicial review of the action of the Fair Dismissal Appeals Board remains
41 unexpired, the district school board may withhold the reinstated teacher from performance of
42 teaching duties, unless otherwise ordered by the court having jurisdiction of the appeal.

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

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

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

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

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

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

31 **SECTION 7. This 2013 Act takes effect July 1, 2014.**

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