

Dear Chair Holvey, Vice Chairs, and Members of the Committee on Business and Labor

The Government Affairs Team from Oregon Substitute Teachers Association (OSTA) is providing follow-up information that was not clearly answered in the hearing on HB 3130, held on 3/22.

We are very grateful for your hard work, dedication, as well as the opportunity to provide you with our testimony, and research. Below are the answers to the questions raised by the Oregon School Board Association with our research about the current practices that are in place.

Information will be answered below in a Question and Answer Format.

Question: Given 51 School Districts/ESDs have outsourced their substitute teachers to staff agencies, are these substitute teachers, indeed, not considered employees of the school district they are working in?

Answer: Yes, they are considered independent contractors of the school districts they are working in. This is primarily a PERS definition as the staffing agencies are not PERS-covered employers. Hence, HB 3130 to correct the relationship status and the Supreme Court ruling in June of 2019 EWEB v PERB which attempted to clarify the language “in service to a public employer” and the party that cuts the paycheck is the employer.

<https://law.justia.com/cases/oregon/supreme-court/2019/s065686.html>

Question: Did substitute teachers get PERS benefits prior to HB 3130 and or 2015?

Answer: Yes, before outsourcing, ALL substitute teachers who work the required hours under PERS requirements got benefits. Hence, HB 3130 restores those benefits, lost to outsourcing, back to when outsourcing started in Oregon, in 2015.

Question: What is the importance of ORS 342.610 to substitute teachers insourced or outsourced?

Answer: This statute has been called the “employment contract” for all Oregon substitute teachers because it outlines the definition of their pay rate and how that rate is calculated. HB 3130 adds wording and a section to ensure those substitute teachers are ALWAYS an employee of the school district regardless of who hired them or who includes them in their payroll.

Question: If I am a substitute in multiple insourced districts, does PERS have a way to capture and bill the PERS rates to several school districts at the same time for a single substitute teacher?

Answer: Yes, this is happening now because each district does its own payroll and reports the hours and wages to PERS. It is clear based on each district’s PERS rates what needs to be paid even if the substitute works 20 hours in one district, 40 in another, and 5 in another. Given ORS 238.005 (22), PERS has always allowed for multiple employers, but PERS has no way of knowing when a substitute teacher will reach the 600 hours given that multiple schools could be involved. The employee sets up an account with PERS the first time they work 600 hours. PERS verifies the hours worked and notifies each employer to continue reporting hours and sending contributions for that employee. Each employer becomes liable for only a portion of the employee’s retirement.

Related Question: How do outsourced substitute teachers who work in multiple districts?

Answer: Since the staffing agency does the payroll, these wages and hours are not and have not been reported to PERS. PERS is only aware of hours and wages reported by PERS-covered employers

Related Question: How would this work for hours and wages reported to PERS from districts who have outsourced?

Answers: Two ways:

1. The outsourced substitute teachers would report to PERS their hours and wages that are missing from their PERS record or create a record with PERS by sending this information to them. This is considered the preferred method since the substitute is the single source of truth for all of their employment records and, historically, they have done this, given the previous limit of 1,040 hours a retired substitute teacher could work.
2. The Staffing Agencies would report wages and hours to PERS, and then those substitutes who have gotten the collective 600 hours would be subject to billing by PERS to school districts.

This is really a question of process. If PERS has a process to collect money from insourced school districts, why can't they follow this same process to collect it from the staffing agency that has a contract with the school district? If under HB 3130 all substitute teachers work for a public entity, then it seems what is most efficient in terms of who has the data is to have them transmitting it to PERS. Process development would be needed to reduce administrative overhead for PERS and the school district. The key is, the substitute teacher is the single source of truth of their work history and the various combinations of insourcing, outsourcing, and hours worked.

Question: Can a school district save money by outsourcing their substitute teachers to a staffing agency?

Answer: on the face of it, Yes, but what has not been disclosed by opponents of HB 3130 is the fee they pay to the staffing agency and the counts of a substitute teacher whom they would have to pay PERS on. The facts are clear, most substitute teachers, regardless of insourcing or outsourcing, do not work the 600 hours per calendar year, whether that is in one school district or several. To save money, a school district would have to have the vast majority of their substitute pool get their 600 hours. The staffing fee paid by the school district is paid for all substitutes regardless of hours worked whereas PERS is only allocated when the required hours are worked.

The staffing agency fee is 24-26% of a substitute teacher's daily rate, if I am paid 100 bucks per day, Parkrose School District for example would pay 126.00 to ESS for me. This 26.00 for example would cover the base employer matches of social security, medicare and unemployment, and worker's compensation. Additionally, there is a cash flow issue with outsourced school districts, as some will pre-pay based on their historic tread of substitute teacher use and then will be invoiced against this prepaid balance monthly by the staffing agency. If the school runs out of their pre-paid balance they will pay another sum until the next pre-pay period starts. If the outsourced school district does not use all of its pre-pay fund, these funds are rolled over to the next pre-paid period.

Question: Did outsourced school districts in their financial planning and analysis consider at some point a substitute teacher would ask why the school district is not the employer?

Answer: It does not appear that this idea was ever considered given the rapid increase in outsourcing from 2017 to present. There is a perception in the substitute profession that saying anything will result in a lack of work, standing up, and saying something. Further, most substitutes are not given due process via the school district. Due process is not given in outsourced districts. see the uploaded document on the public testimony showing the EDUStaff handbook. It is clearly stated that an outsourced substitute teacher will be faced with termination by reaching out to school district leadership to resolve a problem.

Related Question: Did any outsourced substitute teachers go to PERS regarding this issue of no contributions/credit for outsourced school districts?

Answer: Yes, before *EWEB v PERB*, PERS simply stated that the staffing agency is not a PERS-covered employer and sent the parties to litigation. PERS was given a package of analysis by OSTA's attorney. PERS never responded to OSTA on this matter. see also the uploaded document on the history of PERS and substitute teachers.

Question: Is there really a shortage of substitute teachers?

Answer: Prior to the PERS revisions, approximately 33% of substitute teachers were retired teachers who were limited to 1,040 hours of work. Outsourcing became a strategy to avoid this cap by providing retired teachers unlimited work opportunities. With this limitation removed, retired teachers could work as many hours as they want. Additionally, licensing requirements were changed for license renewal which created an extra workload for experienced retired teachers to keep their licenses. Because of the large number of retired teachers with lapsed licenses, this requirement has since been changed to zero professional development hours for substitute licensing so that it is easier for the retired educator to keep that teacher license.

COVID has clearly impacted substitute teachers given that most have not worked in 1 year and have depended on unemployment or have gotten other work and do not plan to return to substitute teaching. Another factor is based on the value of one skill, as substitutes quickly learned which districts paid benefits and training and which ones did not. Much posted testimony points this out. This is why HB 3130 is an equity bill as small and rural districts are most often outsourced, they will be able to draw the pools they need to be given now that benefit opportunities are equalized. When Parkrose School District was asked this question of how they factored in the impact of substitutes not working for them given their outsourcing and no benefits the reply "it was a risk we were willing to take" source Lewis at Parkrose School District.

Question: Do outsourced school districts pay for the annual school district training on Bullying, FERPA, bloodborne pathogens, etc....that substitutes complete before the start of the new school year?

Answer: No, In fact, this is the subject of a BOLI wage claim retroactive to 2018. Additionally, this is also true for insourced districts and has been a wide-spread practice. BOLI has ruled in favor of the complainant on this topic as substitute teachers are told they will be removed from access to jobs if they do not complete their required annual training. Many substitutes are not eligible no offered for district-paid training until this year with this BOLI ruling and the need to have in-person and online education simultaneously.