

Memorandum



Human Resources

To: TRSD Board of Directors
CC: Dave Valenzuela, Superintendent
From: Casey Alderson, Director of Human Resources
Date: March 10, 2021
Re: Process for Evaluation and Contract Renewal of Teachers

Oregon's "Accountability for Schools for the 21st Century" law (formerly the "Fair Dismissal" law) creates two groups of teachers: Probationary (those in their first three years of employment with the District) and contract teachers (those who have been employed for the probationary period and have been renewed for a fourth year and all teachers in their fourth year and beyond in the District).

The processes for retention or termination of employment are different for the two groups:

PROBATIONARY TEACHERS

NONRENEWAL: Probationary teachers serve the District on a series of one-year contracts. By March of their first year, they must be either renewed or non-renewed by action of the school board and must be notified in writing by March 15. Under the law, the school board may non-renew for "any cause deemed in good faith sufficient," and the only remedy for the teacher is a hearing before the school board at a later date. Reasons need not be included in the board resolution, but the teacher may later request that the district provide reasons for nonrenewal.

As a result of a court decision, the three years of probationary status are really only 2¾ years, because a third-year probationary teacher, if renewed in March of that third year, becomes a "contract" teacher after finishing 135 days of employment – which is usually about April 1.

Nonrenewal is the process that is most often used when the teacher is not meeting the district's performance standards. When non-renewed, the teacher continues to serve out the remainder of the contract, to the end of the school year. Although the standard for nonrenewal is very low (any cause the board thinks is sufficient), many collective bargaining agreements add protections for probationary teachers, such as a guarantee that the district will evaluate them according to ORS 342.850, which includes a requirement of a "plan of assistance for improvement" if one is necessary to remedy the problem or concern. Our current collective bargaining agreement does not mandate that we provide a plan of assistance for improvement; however in many cases, the District does do that in an effort to do everything we can to help the individual teacher be successful.

DISMISSAL: Probationary teachers may also be dismissed at any time during the probationary year "for any cause deemed in good faith sufficient by the board." Usually, dismissal is used to end employment immediately after incident(s) of misconduct or neglect of duty, or because performance is so unsatisfactory that the district needs an immediate replacement of the teacher. A pre-termination hearing must be held with the superintendent or board before board action. The teacher then has a right to a full hearing before the school board after the dismissal.

Typically, a collective bargaining agreement (CBA)'s "just cause" provision contains an exemption so that it does not apply to probationary teacher dismissal and nonrenewal. However, some CBA's have just cause language that does apply to probationary teacher dismissal or nonrenewal, particularly in the third

year. Under these CBA's, the probationary teacher may grieve the dismissal (or nonrenewal, if covered) and may have an arbitrator decide whether the action taken is reasonable, and whether the charges are proven true. Probationary teachers are treated the same as contract teachers in the just cause clause in the current collective bargaining agreement.

CONTRACT TEACHERS

Teachers beyond their probationary period work under two-year "contracts," and have more job protection under the law. Each year, the school board must consider whether to offer a new two-year contract, which replaces the old. Thus, this spring the school board must determine whether to offer a new (2020-22) contract to replace the existing (2019-21) contract for each of its contract teachers.

NONEXTENSION: Non-extension or nonrenewal is the term used to describe the board's action if it determines not to offer a new two-year contract. Non-extension still leaves the remainder of the existing two-year contract in place, so a teacher non-extended this March would still finish out the existing 2019-21 contract. By law, a teacher who is non-extended must be placed on a plan of assistance. The following March, if the teacher hasn't made enough improvement, the board may non-extend again, which would then result in an end to employment by June 30 of that same year. In that case, the teacher could appeal to the Fair Dismissal Appeals Board (FDAB) and have a hearing to determine if the teacher will be returned to work or not.

DISMISSAL: Contract teachers may be dismissed at any time for one of nine different reasons, including neglect of duty, immorality, insubordination, inadequate performance, and inefficiency. The teacher must have a pre-dismissal hearing before the superintendent or designee, who then writes a letter recommending dismissal to the school board. The board cannot act for 20 calendar days after the letter is written. If the school board acts to dismiss, the teacher may appeal to the Fair Dismissal Appeals Board to try to get the dismissal reversed.

Contract teachers often have additional protections under the CBA (collective bargaining agreement). There may be specific requirements for evaluation and handling of complaints. There may be guarantees of a plan of assistance before termination for inadequate performance. In many cases, contract teacher dismissal or non-extension is excluded from the just cause provision, but in some CBAs just cause applies to either non-extension and/or dismissal. In that case, the teacher can choose to have an arbitrator review the school board's action.

342.513 Renewal or nonrenewal of contracts for following year.

(1) Each district school board shall give written notice of the renewal or nonrenewal of the contract for the following school year by March 15 of each year to all teachers and administrators in its employ who are not contract teachers as defined in ORS 342.815. In case the district school board does not renew the contract, the material reason therefor shall, at the request of the teacher or administrator, be included in the records of the school district, and the board shall furnish a statement of the reason for nonrenewal to the teacher or administrator. If any district school board fails to give such notice by March 15, the contract shall be considered renewed for the following school year at a salary not less than that being received at the time of renewal. The teacher or administrator may bring an action of mandamus to compel the district school board to issue such a contract for the following school year.

(2) This section is not effective unless teachers or administrators notify the board in writing on or before April 15 of acceptance or rejection of the position for the following school year. [Formerly 342.635; 1975 c.770 §47; 1979 c.714 §1; 1997 c.864 §24; 2005 c.22 §236]

342.815 Definitions for ORS 342.805 to 342.937. As used in ORS 342.805 to 342.937 unless the context requires otherwise:

(1) Notwithstanding ORS 342.120, "administrator" includes any teacher the majority of whose employed time is devoted to service as a supervisor, principal, vice principal or director of a department or the equivalent in a fair dismissal district but shall not include the superintendent, deputy superintendent or assistant superintendent of any such district or any substitute or temporary teacher employed by such a district.

(2) "Board" means the board of directors of a fair dismissal school district.

(3) "Contract teacher" means any teacher who has been regularly employed by a school district for a probationary period of three successive school years, and who has been retained for the next succeeding school year. The district school board may enter into agreements that provide for a shorter probationary period of not less than one year for teachers who have satisfied the three-year probationary period in another Oregon school district.

(4) "District superintendent" means the superintendent of schools of a fair dismissal district or, in the absence of the superintendent, the person designated to fulfill the superintendent's functions.

(5) "Fair dismissal district" means any common or union high school district or education service district.

(6) "Probationary teacher" means any teacher employed by a fair dismissal district who is not a contract teacher.

(7) "Program of assistance for improvement" means a written plan for a contract teacher that with reasonable specificity:

(a) Helps teachers adapt and improve to meet changing demands of the Oregon Educational Act for the 21st Century in ORS chapter 329 if applicable.

(b) Identifies specific deficiencies in the contract teacher's conduct or performance.

(c) Sets forth corrective steps the contract teacher may pursue to overcome or correct the deficiencies.

(d) Establishes the assessment techniques by which the district will measure and determine whether the teacher has sufficiently corrected the deficiencies to meet district standards.

(8) "Substitute teacher" means any teacher who is employed to take the place of a probationary or contract teacher who is temporarily absent.

(9) Notwithstanding ORS 342.120, "teacher" means any person who holds a teaching license or registration as provided in ORS 342.125 or 342.144 or who is otherwise authorized to teach in the public schools of this state and who is employed half-time or more as an instructor or administrator.

(10) "Temporary teacher" means a teacher employed to fill a position designated as temporary or experimental or to fill a vacancy which occurs after the opening of school because of unanticipated enrollment or because of the death, disability, retirement, resignation, contract nonextension or dismissal of a contract or probationary teacher. [1965 c.608 §2; 1971 c.570 §12; 1977 c.880 §1; 1977 c.881 §2; 1979 c.668 §1; 1981 c.299 §1; 1993 c.45 §194; 1997 c.864 §4; 1999 c.199 §11; 2001 c.653 §5]

342.895 Contract teachers; procedure for dismissal or contract nonextension; appeal.

(1) Contract teachers shall be employed by a school district pursuant to two-year employment contracts.

(2) Authority to dismiss or not extend a contract teacher is vested in the district school board subject to the provisions of the fair dismissal and contract extension procedures of ORS 342.805 to 342.937 and only after recommendation of the dismissal or nonextension of contract is given to the district school board by the superintendent.

(3)(a) At least 20 days before recommending to a board the dismissal of the contract teacher, the district superintendent shall give written notice to the contract teacher by certified mail or delivered in person of the intention to make a recommendation to dismiss the teacher. The notice shall set forth the statutory grounds upon which the superintendent believes such dismissal is justified, and shall contain a plain and concise statement of the facts relied on to support the statutory grounds for dismissal. If the statutory grounds specified are those specified in ORS 342.865 (1)(a), (c), (d), (g) or (h), then evidence shall be limited to those allegations supported by statements in the personnel file of the teacher on the date of the notice to recommend dismissal, maintained as required in ORS 342.850. Notice shall also be sent to the district school board and to the Fair Dismissal Appeals Board. A copy of ORS 342.805 to 342.937 shall also be sent to the contract teacher.

(b) If, after the 20-day notice required by paragraph (a) of this subsection, the district school board takes action to approve the recommendation for dismissal from the superintendent, the dismissal takes effect on or after the date of the district school board's action, as specified by the board. Notice of the board's action shall be given to the contract teacher as soon as practicable by certified mail, return receipt requested or in the manner provided by law for the service of a summons in a civil action.

(4)(a) Upon recommendation of the district superintendent, the district school board may extend a contract teacher's employment for a new two-year term by providing written notice to the teacher no later than March 15 of the first year of the contract. Any new contract that extends the teacher's employment for a new term shall replace any prior contracts.

(b) If the district school board does not extend a contract teacher's contract by March 15 of the first year of the contract, the district superintendent, or the superintendent's designee, shall place the teacher on a program of assistance for improvement. The district superintendent or the superintendent's designee may, in addition, place any other teacher on a program of assistance for improvement if in the judgment of the district superintendent or designee a program of assistance for improvement is needed.

(c) Provided that the district school board has not extended the teacher's contract for a new two-year term, the district board, upon recommendation of the superintendent, may elect by written notice to the teacher no later than March 15 of the second year of the teacher's contract not to extend the teacher's contract based on any ground specified in ORS 342.865. A contract teacher whose contract is not extended may appeal the nonextension to the Fair Dismissal Appeals Board.

(5) Notwithstanding ORS 243.650 to 243.782 or the provisions of any collective bargaining agreement entered into after August 15, 1997, no grievance or other claim of violation of applicable evaluation procedures, or fundamental unfairness in a program of assistance for improvement, shall be filed while a teacher is on a program of assistance. All statutes of limitation and grievance timelines shall be tolled while the subject claims are held in abeyance under this moratorium provision. Except as provided in this subsection, the moratorium and tolling period ends on the date the program of assistance for improvement is completed, not to exceed one year, after which any claims subject to this provision may be pursued as otherwise provided by law or contract. In the case of a contract teacher who does not receive contract extension by March 15 of the first year of the teacher's contract, the moratorium period shall last until the teacher receives notice of contract extension or nonextension and no later than March 15 of the following school year, or until the teacher receives notice of dismissal.

Continue: ORS 342.895

A contract teacher who is dismissed or receives notice of contract nonextension, and who appeals to the Fair Dismissal Appeals Board, may raise any claims subject to this moratorium provision before the Fair Dismissal Appeals Board, which shall have jurisdiction to decide such claims. If the teacher does raise claims covered by this moratorium provision in an appeal to the Fair Dismissal Appeals Board, such appeal shall be the teacher's sole and exclusive remedy. If a contract teacher does not appeal a contract nonextension or dismissal to the Fair Dismissal Appeals Board but instead pursues contract grievances to arbitration alleging a violation of evaluation procedures or fundamental unfairness in a program of assistance for improvement, the arbitrator shall not have authority to award reinstatement of the contract teacher, but may award other remedies including but not limited to back pay, front pay, compensatory damages and such further relief as the arbitrator deems appropriate. A program of assistance for improvement shall not be technically construed, and no alleged error or unfairness in a program of assistance shall cause the overturning of a dismissal, nonextension of contract, nonrenewal of contract or other disciplinary actions unless the contract teacher suffered a substantial and prejudicial impairment in the teacher's ability to comply with school district standards.

(6) No teacher may be dismissed, laid off or caused to suffer nonextension or nonrenewal of a contract based upon the teacher's salary placement or other compensation. [1965 c.608 §11; 1971 c.570 §7; 1973 c.298 §5; 1977 c.881 §5; 1979 c.668 §3; 1997 c.864 §12]

342.865 Grounds for dismissal or contract nonextension of contract teacher. (1) No contract teacher shall be dismissed or the teacher's contract nonextended except for:

- (a) Inefficiency;
- (b) Immorality;
- (c) Insubordination;
- (d) Neglect of duty, including duties specified by written rule;
- (e) Physical or mental incapacity;
- (f) Conviction of a felony or of a crime according to the provisions of ORS 342.143;
- (g) Inadequate performance;
- (h) Failure to comply with such reasonable requirements as the board may prescribe to show normal improvement and evidence of professional training and growth; or
- (i) Any cause which constitutes grounds for the revocation of such contract teacher's teaching license.

(2) In determining whether the professional performance of a contract teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which shall have been adopted by the board.

(3) Suspension or dismissal on the grounds contained in subsection (1)(e) of this section shall not disqualify the teacher involved for any of the disability benefits provided in ORS chapter 238, or any of the benefits provided in ORS 332.507.

(4) Dismissal under subsection (1)(f) of this section shall remove the individual from any school district policies, collective bargaining provisions regarding dismissal procedures and appeals and the provisions of ORS 342.805 to 342.937. [1965 c.608 §§9,19; 1973 c.298 §4; 1977 c.860 §4; 1981 c.569 §1; 1995 c.446 §10; 1997 c.249 §104; 1997 c.864 §10; 1999 c.130 §8]