

# Oregon's Senate Bill 290: A Primer

In 2011 the legislature passed SB 290 strengthening expectations for educator evaluations and professional growth.

This primer is a guide for Oregon's educational leaders to support the successful implementation of SB 290.

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## I. INTRODUCTION

The Oregon Legislature passed SB 290 in the 2011 general session, setting in motion some changes in how teachers and administrators are to be evaluated in Oregon. This legislation reflects the hopes of its supporters that an evaluation system aligned with state adopted performance standards, recognizing an educator's impact on students' learning and growth, would increase the quality of teaching and learning in all Oregon classrooms and schools.

The legislation also addresses educators' concerns and fears that standardized test results could become the single measurement, or a determinative measurement of the quality of educators' performance. The legislation makes clear that multiple measures will determine the results of performance evaluations for teachers and administrators.

In many ways, SB 290 only began the process of changing how educators are assessed and what standards will be used to evaluate them. In order to obtain support from teacher groups for legislation to require each school district to establish "achievement compacts," Governor Kitzhaber in the 2012 legislative session agreed to postpone further, more definitive legislation around evaluation that was also proposed in the short session. At the same time the Governor indicated his support for "refinement of the Senate Bill 290 process to improve Oregon teacher and administrator quality through more effective evaluation systems." [Kitzhaber letter to Brenda Frank, Chair, State Board of Ed., Mar. 6, 2012)]. See Appendix B.

Further work was required in order to satisfy the U.S. Department of Education and earn a waiver from the requirements of the Elementary and Secondary Education Act (ESEA) (commonly referred to as "No Child Left Behind") – a waiver granted in July, 2012. Part of the approved application was "A Statewide System for Teacher and Leader Effectiveness," including a "draft framework to support districts in developing and implementing teacher and leader evaluations." The waiver also included a pilot project during 2012-13 to test and refine that framework and a commitment to "an educator evaluation system to drive improvement of student outcomes."

Thus, through federal requirements, state legislation, and state regulation, Oregon is adopting a statewide framework for educator effectiveness that includes standards and assessment of teacher and administrator effectiveness, and a new focus on "student learning and growth."

## II. HISTORY OF OREGON LAW GOVERNING EVALUATION OF LICENSED EDUCATORS.

Until 1979, the State of Oregon did not require or direct the evaluation of any school employees, including those who were "certificated"<sup>1</sup> by the Teacher Standards and Practices Commission (TSPC), established just a few years earlier. Some K-12 school districts had bargained provisions relating to evaluation with the labor union representing their teachers, especially after the Public Employee Collective Bargaining Act (PECBA) went into effect in 1973.

Certificated teachers and administrators who had passed a three-year probationary period and who enjoyed "permanent" status did enjoy the protection of the Oregon Fair Dismissal

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<sup>1</sup> Educators were granted "certificates" by the TSPC until a change in terminology in the 1990's gave TSPC the power to grant "licenses." As a result of S.B. 880 in 1997, licensed educators past their probationary period became known as "contract" teachers and administrators. their probationary period became known as "contract" teachers and administrators.



Law, ORS 342.805 et. seq., which had begun to take shape beginning in the late 1960's.

Although the Fair Dismissal Law allowed dismissal for "inadequate performance," during the 1970's school district's dismissals were frequently overturned because of a lack of defined standards of performance and standardized procedures for evaluation.

At least partially in response to these FDAB decisions, the 1979 legislature for the first time set requirements for each school district to adopt criteria for performance, a system of annual evaluations for probationary and permanent educators alike, a requirement for "multiple" observations prior to an evaluation, and provisions for implementing a "program of improvement if one is needed remedy [an identified deficiency]." ORS 342.850. Each district's evaluation standards and procedures were to be developed "in consultation with" administrators and with teachers, including some appointed by the local teacher association.

In 1997, the legislature amended the Fair Dismissal Law (which became the "Accountability for Schools for the 21st Century Law"). SB 880. The revisions to ORS 342.850 were not significant, however. A provision was added to support "[the utilization of peer assistance whenever practicable and reasonable." ORS 342.850(2)(b)(E). In addition, a definition of a "program of assistance for improvement" was added to ORS 342.815(7).

For a more complete history of developments in teacher evaluation in Oregon during the years 1970-2010, see Appendix C.

SB 290, passed by the Oregon legislature in 2011, was the first significant revision of the statutes governing the evaluation of teachers and administrators since the adoption of ORS 342.850 in 1979.

### III. HOW SENATE BILL 290 AND ODE REGULATIONS WILL CHANGE EVALUATION PRACTICES, IF AT ALL

SB 290 did not eliminate the existing law regarding teacher and administrator evaluations in Oregon (ORS 342.850) but, rather, supplemented it. Therefore, the current requirements for school districts come from both sections of the statute:

#### How will standards be developed?

ORS 342.850(2)(a) provides:

*The district school board shall develop an evaluation process in consultation with school administrators and with teachers. If the district's teachers are represented by a local bargaining organization, the board shall consult with teachers belonging to and appointed by the local bargaining organization in the consultation required by this paragraph.*

\* \* \*

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

SB 290, which is now part of the State Accountability for Schools for the 21st Century Act, provides for a two-step process, first at the State Board of Education level, and then at the local level:



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

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

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

*\* \* \**

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

A comparison of the two pieces of statute indicates these similarities and differences:

- The major difference between the two pieces of legislation, 30+ years apart, is the greater role of the State education authority, which will now take the lead in developing "core teaching standards."
- However, the provision in SB 290 requiring the local districts to "customize" those State standards based on collaborative efforts of teachers and administrators gives local district school boards the option of modifying or supplementing the core standards developed by the State.
- The degree to which local districts can "customize" the evaluation process was significantly limited, however, by the State Board's endorsement of the "Oregon Framework for Teacher and Administrator Evaluation and Support Systems" [the "Framework"] on June 28, 2012. The Framework set out five "required elements" of all evaluation and support systems, including the use of the Model Core Teaching Standards, a four-level performance rating scale, the use of multiple measures for evaluation, with "student learning and growth" as a "significant factor," at least two annual "rigorous student learning goals," and regular assessment of progress, including two annual meetings between the teacher and evaluator.
- SB 290, as amended, requires that the local school district "customizing" of the standards be completed by July 1, 2013, and the new local standards apply to all evaluations of teachers and administrators occurring on or after July 1, 2013.

#### **Who gets to make the final decision on what the standards will include?**

- \* The 1979 legislation (ORS 342.850) requires local district school boards "to develop an evaluation process" and "implement the evaluation process that includes . . . The establishment of job descriptions and performance standards . . ." However, there is no State input into what those standards will include.
- SB 290, on the other hand, requires the local school board to "include" the State-adopted core teaching standards for evaluations of teachers and administrators, "customizing" the standards "based on" the collaborative efforts of administrators and teachers.
- Collaboration may be argued to require more than "consultation," as provided in the



current ORS 342.850, but, so far, 342.850 has not been altered. However, SB 290 does not require "mutual agreement."

- The "collaboration" requirement would appear to prohibit school boards from making decisions about standards without efforts to work with teachers and administrators to reach some sort of common ground. However, unless the requirement of "collaboration" is bargained into the collective bargaining agreement, enforcement of this expectation would be theoretically available only through the ODE complaint process or "standard school" assessment.
- The Legislative Counsel's office defined the meaning of "collaborative efforts" in ORS 342.856 (SB 290) in response to a request for clarification by Rep. Mark Johnson: "We believe that the use of 'collaboration' instead of 'consultation' [as required under the 1979 statute that appears as ORS 342.850] means that teachers, administrators and the exclusive bargaining representative will participate in a more interactive process than is required for a consultation. Although a collaborative process may be interactive, the school district will be allowed to make the final decisions regarding how standards are customized." Legislative Counsel letter opinion of Apr. 27, 2012, pp. 3-4.
- In summary, under both ORS 342.850(2) and SB 290, local school boards make the ultimate decision about what will be the standards to be applied in the evaluation process, but school boards will have to comply with the procedural and substantive requirements of SB 290.

#### IV. WHAT REQUIREMENTS ARE IMPOSED BY SB 290 AND STATE REGULATIONS CONCERNING THE CONTENT OF THE STANDARDS OF PERFORMANCE?

OAR 581-022-1724 repeats the legislated requirement in SB 290 that school districts "shall use the core teaching standards to evaluate teacher effectiveness outlined in OAR 581-022-1723. Performances, essential knowledge and critical dispositions for each standard are contained within the Interstate Teacher Assessment and Support Consortium (InTASC) core teaching standards."

OAR 581-022-1723 goes beyond the InTASC standards, at least in subsection (2)(b), which provides that the core teaching standards and administrative standards must: "(b) Take into consideration evidence of student academic growth and learning based on multiple measures of student progress, including performance data of students, schools, and school districts."

Work on the State standards for evaluation began in October, 2011, when "the Educator Effectiveness Workgroup was established to create a state framework that establishes the parameters for local educator evaluation and support systems that comply with Senate Bill 290 and Oregon Administrative Rules 581-022-1723, 1724, and 1725, and meets the federal waiver [from NCLB] criteria."

On June 28-29, 2012, the State Board of Education adopted revised standards (ORS 581-022-1723) that added detail regarding "multiple measures" for evaluation, "which may include, but are not limited to (A) Student performance; (B) Student assessments; (C) Classroom-based assessments including observations, lesson plans and assignments; (D) Portfolios of evidence; (E) Supervisor reports; and (F) Self-reflections and assessments."



The June, 2012 revisions to OAR 581-022-1723 also added sections (4) and (5), providing that:

"(4) Local evaluation and support systems established by school districts for teachers and administrators must be:

(a) Designed with four performance level ratings of effectiveness, as defined in the Oregon Framework for Teacher and Administrator Evaluation and Support Systems;

(b) Based on significant consideration of student learning which may include but is not limited to:

(A) School-wide academic growth, as determined by the statewide assessment system implemented by the Department of Education under ORS 329.485;

(B) Formative and summative assessments; and

(C) For teachers, classroom-level student learning goals set collaboratively between teachers and evaluators;

(5) Local evaluation and support systems established by school districts must evaluate teachers and administrators on a regular cycle."

Members of the Workgroup included representatives of all the major stakeholders – ODE, TSPC, Oregon Education Association (OEA), Confederation of Oregon School Administrators (COSA), Oregon School Boards Association (OSBA), Chalkboard Project, Stand for Children, K-12 teachers and administrators, human resource officers, public and independent university teacher preparation programs,

The final wording of the OAR gives flexibility to local districts as to how the evaluation system shall measure "student learning" and which "multiple measures" of teacher and administrator effectiveness will be used. Further, neither the OAR nor the Framework specifies a percentage or other numerical definition of what "significant consideration" of student learning and growth means – unlike a draft Framework provision naming 20%. This controversial provision of the Framework will be piloted in schools as part of the ESEA waiver approval. The ESEA waiver requires at least 50 schools participate in the pilot using one of several methods of incorporating student learning and growth measures into teacher and leader evaluation, with a minimum of ten schools using a matrix and at least another ten using a percentage weighting system where learning and growth is incorporated at between 10-50 percent.

**Must the new standards be different than the standards previously adopted by a school district?**

Depending on the District's current set of standards of performance for teachers, a district may be able to maintain all of its current standards of performance. However, most districts will need to add standard(s) that "take into consideration evidence of student academic growth and learning," or modify current standards of performance to meet this requirement. OAR 581-022-1723(2)(b).

When a district adopted standards of performance for licensed administrators in the past, those standards were unlikely to include an expected performance level or descriptor regarding student achievement. Therefore, most districts will need to modify or supplement existing standards for administrators. Some Oregon districts have never developed performance standards for administrators, simply using the job description as the basis for



## Oregon's Senate Bill 290: A Primer

evaluation. These districts will need to adopt administrator<sup>2</sup> performance standards that align with OAR 581-022-1725 requirements.

### If a school district has existing performance standards, adopted at some time since 1979, what changes will be needed to align with SB 290?

- Many districts using the standards of performance authored by Charlotte Danielson will need minimal change to align those standards with the InTASC standards incorporated into the regulations. Danielson has produced a three-page "cross-walk" document matching up each InTASC Standard with the related Danielson Framework Component(s).
- The adopted OAR 581-022-1723(4)(a) requires that local evaluation and support systems will be designed with four performance level ratings of effectiveness, as defined in the Framework. The Framework states that districts must use four levels but "may name the levels as desired (for example ineffective, emerging, effective and highly effective)." This allows a continuation with the levels definitions in the Danielson and other research-based four-level performance rating systems.

However, regardless of the terms used, the Framework requires that they must be aligned to levels based on these descriptions:

Performance Levels	Definition of Performance as Applied to Standards of Professional Practice
Level 1	Does not meet standards; performs below the expectations for good performance under this standard; requires direct intervention and support to improve practice
Level 2	Making sufficient progress toward meeting this standard; meets expectations for good performance most of the time and shows continuous improvement; expected improvement through focused professional learning and growth plan
Level 3	Consistently meets expectations for good performance under this standard; demonstrates effective practices and impact on student learning; continues to improve professional practice through ongoing professional learning
Level 4	Consistently exceeds expectations for good performance under this standard; demonstrates highly effective practices and impact on student learning; continued expansion of expertise through professional learning and leadership opportunities

- While SB 290 calls for "standardization of standards," across the state and especially across each district, subsection (3) of Section 2 declares the need for individualization:

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

\* \* \*

*(c) Allow each teacher or administrator to establish a set of classroom or administrative practices and student learning objectives that are based on the individual circumstances of the teacher or administrator, including the classroom or other*

<sup>2</sup> Because S.B. 290 became part of ORS 342.805-.937, it does not govern the evaluation of superintendents and assistant or deputy superintendents, who are specifically exempted from that law by ORS 342.815(1).





*assignments of the teacher or administrator;*

To achieve such individualization while meeting the required standards of performance, goal-setting provides the means to tailor the standards to the specific teacher and assignment.

- Almost all districts will need to revise their evaluation process to include one type of measurement that has not been explicitly part of standards of performance -- to "take into consideration evidence of student academic growth and learning based on multiple measures of student progress, including performance data of students, schools, and school districts." However, rather than developing a one-size-fits-all "standard" on "student growth and learning" (i.e., "all teachers will produce at least one year of growth for 80% of their students"), the Framework envisions a goal-setting process focused on improved "student growth and learning."

School districts earning federal grants or participating in the Chalkboard "CLASS" project or "TIF" federal grants to pilot modifications in evaluation, professional development, career pathways, and compensation for teachers and administrators may provide some useful models.

### **What changes in the evaluation process will be needed to incorporate the requirement of "multiple measures" for evaluation, particularly in evaluating for "student learning and growth"?**

The Framework and OAR require "multiple measures" to be used to evaluate teachers and administrators, so each district's evaluation process "must include a variety of evidence-based measures" to provide multiple data sources. "Due to the complex nature of teaching and administrator practice, a single measure does not provide sufficient evidence to evaluate performance," the Framework explains.

"Evaluators will look at evidence from all three categories of evidence to holistically rate performance," the Framework declares [p. 20]:

EVIDENCE OF PROFESSIONAL PRACTICE, including classroom observation by the evaluator, both formal and informal, and examination of "artifacts of teaching" such as lesson plans, student assignments, student work, and curriculum design.

EVIDENCE OF PROFESSIONAL RESPONSIBILITIES means "evidence of teachers' progress toward their own professional goals and contribution to schoolwide goals," as measured by teacher reflections and self-reports, teamwork, parent/student surveys, meetings, record keeping, portfolios, building level leadership, as well as "peer collaboration," which is "encouraged as an effective practice" that "may be used in the formative process, but under current Oregon law is not an appropriate measure in summative evaluation."

EVIDENCE OF STUDENT LEARNING AND GROWTH: To gather "evidence of teachers' contribution to student learning and growth, teachers will establish at least two student learning goals and identify strategies and measures that will be used to determine goal attainment."

- Teachers who are responsible for student learning in tested subjects and grades will use (1) state assessments as one measure and will also select one or more additional measures from "(2) common national, international, regional, district-developed measures" such as ACT, PLAN, EXPLORE, AP, IB, DIBELS, C-PAS or common assessments approved by the district or state as valid, reliable and able to be scored comparably



across schools or classrooms" OR (3) Classroom based or school-wide measures such as student performances, portfolios, products, projects, work samples, tests.

- Teachers in non-state-tested subjects and grades will use measures that are valid representations of student learning standards from at least two of the three categories listed in the previous paragraph, "based on what is most appropriate for the curriculum and students they teach."

#### **What other changes in the evaluation process will be needed?**

Since 1979, the state's evaluation law, ORS 342.850, has required a "goal-setting" process involving the teacher (or administrator) and the evaluator. The Framework sets more specific requirements for goal-setting, particularly in the area of "student learning and growth." The goal-setting process spelled out in the Framework [p. 24], adopted from the Kentucky model, appears to be required, not just a model or example. It includes:

- Teachers review baseline data and create goals that measure the learning of all students and span a school year or complete course of study.
- Teachers collaborate with the evaluator to establish student learning goals but also may collaborate to establish goals for their grade levels, departments, or curricular teams.
- "Teachers will establish at least two student learning goals and identify strategies and measures that will be used to determine attainment [see section above]. They will also specify what evidence will be provided to document progress on each goal."
- Teachers and evaluators write the goals using the SMART goal process (Specific and Strategic; Measurable; Action-oriented; Rigorous, Realistic and Results-focused; Timed and Tracked).
- Teachers meet with the evaluator to discuss progress for each goal midyear and at the end of the year.
- Teachers, along with their evaluators, reflect on the results and determine implications for future professional growth planning.

Given the specificity of the Framework, there appear to be relatively few decisions that can or need to be made through the collaborative process about how goal-setting regarding student learning and growth will be carried out. The requirement of creating "goals that measure the learning of all students" will be challenging, since goals have typically focused on defined areas where teacher growth or improvement is needed.

## **V. HOW SB 290 WILL AFFECT COLLECTIVE BARGAINING AND HOW CAN COLLECTIVE BARGAINING POTENTIALLY CHANGE EVALUATION PROCESSES AND STANDARDS OF PERFORMANCE?**

### **Must a school district bargain over standards of performance for teachers?**

The Public Employee Collective Bargaining Act (PECBA) since 1995 has specifically listed "standards of performance or criteria for evaluation of teachers" as among the subjects that are NOT mandatory for bargaining. ORS 243.650(7)(e)<sup>3</sup>

The letter opinion by the Legislative Counsel's office, issued April 27, 2012, states that "[based on ORS 243.650(7)e) and the case law that preceded the enactment of ORS 243.650(7)(e),

<sup>3</sup> In its only case involving the mandatoriness of proposals about teacher evaluation since 1995, ERB found that statements of "expectations for future performance" are permissive, but discipline for failure to meet performance standards is mandatory. *Wy'East Education Assn. v. Oregon Trail School District*, 22 PECBR 108 (2007).



we conclude that the standards of performance or criteria for evaluation of teachers, and the use of evaluations, are not mandatory subjects of collective bargaining.”

Because nothing in SB 290 addresses any change in the PECBA or the obligation to bargain over this topic, a local school board is not compelled to bargain over the standards. However, it is likely that proposals regarding standards for performance will still be made by teacher associations.

- Some districts have existing contract language that prohibits the use of student test scores or other achievement data in teacher evaluation. Depending on the specific nature of these provisions, this existing language may be prohibited, and therefore unenforceable beginning in 2013-14. In any case, such current language remains permissive, and a school board can refuse to bargain over it in any subsequent round of negotiations.
- Some associations may attempt to secure veto power over standards and procedures by requiring “mutual agreement” to change current and future standards and procedures, or by attempting to bargain language concerning the “collaboration process” that would define how the final product will be accepted or ratified by each party.
- Teacher associations may attempt to make the measurement of whether a teacher met the standards grievable, which would allow binding arbitration to decide the content of evaluations, including conclusions about whether the teacher met standards or goals regarding student academic performance.

#### **Must a school district bargain over the evaluation *procedures*?**

Evaluation procedures are addressed more comprehensively in ORS 342.850 than they are in SB 290, which adds the requirement that there be “multiple measures of teacher effectiveness” and that the process use “multiple evaluation methods.” Section 2(2)(a).

For the most part, the procedures used in teacher bargaining are “permissive” – the employer does not have to agree to bargain over most procedures. A series of ERB case decisions in the late 1970’s and early 1980’s defined the kinds of proposals – basically those governing “procedural fairness” (such as the right to discuss an evaluation with the evaluator before it was placed in the personnel file), that would be “mandatory” (the employer being required to bargain over the subject, although not compelled to agree) and those topics that would be “permissive” (not mandatory for bargaining but could be bargained if the employer agrees).

- The letter opinion by the Legislative Counsel’s office, issued April 27, 2012, states that “[o]ther elements related to teacher evaluations, such as procedural fairness, may be mandatory subjects of bargaining because they are not specifically exempt under ORS 243.650(7)(e) and would be subject to the bargaining test.”
- However, without legislative change, ERB may not change permissiveness of evaluation procedures, as determined prior to 1995. See ORS 243.650(7)(b). Because of the volume of pre-1995 case law on this topic, most questions about the mandatoriness of procedures for evaluation have been addressed permanently.
- Proposals regarding the evaluation procedure found to be permissive during the 1970’s and early 1980’s include those defining “the mechanics” of teacher evaluation, including the form and format to be used, the content of the evaluation report, the number of evaluations and timing, sequencing and length of observations, recommendations for improvement of deficiencies, and the selection of evaluators. *Springfield Ed. Assn. v.*



Springfield School Dist., 3 PECBR 1950, 1958 (1978), aff'd 42 Or App 93, aff'd as modified, 290 Or 217 (1980), order on remand, 3 PECBR 1970(a) (1981).

- Proposals regarding the teacher evaluation process found by ERB to be permissive during the 1980's include (1) the establishment of job descriptions and performance standards; (2) A pre-evaluation interview, including the establishment of performance goals; (3) Annual evaluations for probationary teachers and biennial evaluations for permanent teachers; (4) Use of the state evaluation form; (5) Evaluators who sign the form must hold a teaching certificate; and (6) Rules of access to personnel files. EOBC v. Centennial School Dist., 6 PECBR 5556 (1982), 298 Or 146 (1984), on remand 8 PECBR 6776 (1985).
- The only specific evaluation procedures found mandatory by ERB are the "minimum fairness procedures" in evaluation, requiring (1) Written criteria for evaluation, which include performance goals; (2) Criteria for evaluation must be clearly defined; (3) Opportunity to request another evaluation if the supervisor recommends dismissal or nonrenewal; (4) Right to have evaluations reduced to writing; and (5) Notice to the teacher of documents to be inserted in file and right to attach objections to the reports. Springfield Ed. Assn. v. Springfield School Dist., 3 PECBR at 1957-58 (1978); EOBC v. Centennial School Dist. 6 PECBR 5556.
- HOWEVER, proposals requiring the teacher evaluation process to be conducted "in accordance with the requirements of ORS 342.850" were determined to be mandatory where the intent was to establish an enforcement mechanism not available through the state courts. EOBC v. Centennial School District, see also Lincoln County Ed. Assn. v. Lincoln County School District, 19 PECBR 475, 520 (2001) (Court of Appeals dismissed and vacated, 2002).

Despite the permissiveness of most proposals on evaluation procedures, many school district boards have agreed to extensive language governing how evaluation is done – in some cases pages and pages. After July 1, 2013, such provisions in ongoing collective bargaining agreements (CBAs) will still be enforceable and grievable unless they directly conflict with some provision of SB 290 – or of any additional teacher evaluation law adopted by the 2013 legislature.

As in the past, when the CBA is being renegotiated for a successor agreement, the school board can refuse to bargain over permissive proposals on evaluation – even those included in the expiring CBA.

## VI. HOW WILL SB 290 CHANGE WHICH TEACHERS ARE RETAINED?

A key expectation, in order to win a waiver of NCLB requirements, is that educators must be evaluated on a regular basis and such evaluations should "inform personnel decisions." Indeed, SB 290 declares in Section 2(a) that the adoption of core teaching standards is to improve student academic growth and learning, in part, by

*Assisting school districts in determining the effectiveness of teachers and administrators and in making human resource decisions;*

However, SB 290 made no changes in the statutes governing nonrenewal and dismissal of probationary and contract teachers and administrators:

- By statute, ORS 342.835, local school boards have continued ability to dismiss or nonrenew probationary teachers and administrators at any time "for any cause deemed in



good faith sufficient" by the local board.

- HOWEVER, additional protections negotiated into CBAs for probationary teachers undercut this school board discretion. Those provisions include complaint procedures, required "programs of assistance for improvement" or other evaluation procedures, and even in a few districts a requirement of "just cause" before dismissal or nonrenewal.
- For post-probationary (contract) teachers, at a minimum a local school board will not be able to dismiss or nonextend a teacher's contract except for one of the reasons listed in ORS 342.865(1) -- most likely due to "inadequate performance" and/or "inefficiency." These terms have been defined by decades of FDAB case decisions, reviewed and revised by the Oregon Court of Appeals and Supreme Court.
- "Inadequate performance" has been defined as failure to perform job duties in conformance with the local district's standards of performance, where the teacher has been given notice of deficiencies and opportunity to correct the deficiencies and where the failure is a repeated or otherwise substantial failure to perform the duties or the failure to perform results in some substantial detriment to the district. *Hoover v. Hermiston School District*, FDA 87-1 (1988); *Ballman v. Warrenton-Hammond School District*, FDA 89-4 (1990); *Packard v. Corvallis School District*, FDA 97-4 (1998); *Ferguson v. Dayton School District*, FDA 04-06 (2004), AWOP (2006).
- Evidence of lack of satisfactory or expected student achievement could be part of an employing district's evidence of failure to meet district standards of performance, but not standing alone, in the absence of other evidence of standards unmet. The district would need to establish adequate assistance and opportunity for the teacher to correct the deficiencies.

While there are contract teachers who resign each year at the point of dismissal, the number of contract teachers –and probationary teachers – who are dismissed or nonrenewed each year is a very small percentage of teachers employed in Oregon public schools. SB 290 is unlikely to change this pattern, barring some significant change in the dismissal law and case law.

## VII. WHAT'S AHEAD?

Additional legislation on teacher and administrator evaluation was proposed in the 2012 legislative session, but was not acted upon, due largely to more pressing objectives for the Governor and the shortness of the session. HB 4102 included conditions leading to the need for a proposed revision of ORS 342.850 and 342.905, including the anticipated NCLB waiver request and the "need to create guidelines for educator evaluations based in part on student performance."

In March, in an effort to support the movement toward "more effective evaluation systems," despite the challenge of passing legislated requirements, the Governor wrote to the State Board of Education Chair requesting additions to strengthen the OARs. All of the Governor's prescriptions for change in the evaluation system have been incorporated into the OAR and the Oregon Framework for Teacher and Administrator Evaluation and Support Systems (<http://www.ode.state.or.us/home/>) approved by the State Board in June, 2012. See Appendix B.



### Oregon's Senate Bill 290: A Primer

Finally, what is certain is that the federal Department of Education, the state legislature, the Governor, the teachers' associations, and the public will be watching what happens as Oregon school districts all implement SB 290 in 2013-14. To achieve the state's 40-40-20 goal, we will need a continuous emphasis on assuring there is an effective teacher in every Oregon classroom and an effective leader for all Oregon schools.



**APPENDIX A: APPENDIX: CORE TEACHING STANDARDS AND EDUCATIONAL LEADERSHIP/ADMINISTRATOR STANDARDS FINAL RULES ADOPTED BY THE STATE BOARD OF EDUCATION DECEMBER 2011 (REVISED AUGUST 2012).**

**Final Rule**

**581-022-1720**

**Personnel Policies**

- (1) The school district shall adopt and implement personnel policies which address:
  - (a) Affirmative action;
  - (b) Staff development;
  - (c) Equal employment opportunity;
  - (d) Evaluation procedures; and
  - (e) Employee communication system.
  - (f) The requirement for releasing to Teacher Standards and Practices Commission, another district or any person upon request the disciplinary records of an employee or former school employee if the employee was convicted of one or more of the list of crimes addressed in ORS 342.143.
- (2) Personnel policies shall be accessible to any school employee and notice of their availability to the general public shall be published:
  - (a) A current copy shall be accessible in each school office and library; and
  - (b) Any organization which represents employees of the district shall be furnished a copy and revisions as they are made.
- (3) Bonded Employees: All employees responsible for funds, fees or cash collections shall be bonded in compliance with Oregon Revised Statutes and Oregon Administrative Rules.
- (4) Employees for whom a teaching certificate is not required: The school district shall give to each such employee an individual written notice of reasonable assurance of continued employment as required by ORS 332.554.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 25-2008, f. & cert. ef. 9-26-08

**581-022-1723**

**Teacher and Administrator Evaluation and Support**

- (1) A school district board shall include the core teaching standards and administrator standards adopted by the State Board for all evaluations of teachers and administrators of the school district occurring on or after July 1, 2013. The standards shall be customized based on the collaborative efforts of the teachers and administrators of the school district and the exclusive bargaining representative of the employees of the school district.
- (2) The core teaching standards and administrator standards must:



(a) Take into consideration multiple measures of teacher and administrator effectiveness that encompass a range of appropriate teaching and administrative behaviors that use multiple evaluation methods that use multiple measures to evaluate teacher and administrator performance which may include, but are not limited to:

(A) Student performance;

(B) Student assessments;

(C) Classroom-based assessments including observations, lesson plans and assignments;

(D) Portfolios of evidence;

(E) Supervisor reports; and

(F) Self-reflections and assessments.

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

(c) Be research-based;

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

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

(3) Evaluations using the core teaching and administrator standards must attempt to:

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

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

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

(d) Establish a formative growth process for each teacher and administrator that supports professional learning and collaboration with other teachers and administrators; and

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

(4) Local evaluation and support systems established by school districts for teachers and administrators must be:

(a) Designed with four performance level ratings of effectiveness as defined in the Oregon





Framework for Teacher and Administrator Evaluation and Support Systems;

(b) Based on significant consideration of student learning which may include but is not limited to:

(A) School-wide academic growth, as determined by the statewide assessment system implemented by the Department of Education under ORS 329.485;

(B) Formative and summative assessments; and

(C) For teachers, classroom-level student learning goals set collaboratively between teachers and evaluators.

(5) Local evaluation and support systems established by school districts must evaluate teachers and administrators on a regular cycle.

(6) District superintendents shall regularly report to their governing boards on implementation of their local evaluation and support systems and educator effectiveness.

Stat. Auth: ORS 342.805 to 342.937

Stats. Implemented: Section 2, chapter 729, Oregon Laws 2011 (Enrolled Senate Bill 290)

Stat. Auth: ORS 342.805 to 342.937

Stats. Implemented: Section 2, chapter 729, Oregon Laws 2011 (Enrolled Senate Bill 290)

### **581-022-1724**

#### **Core Teaching Standards**

School districts shall use the core teaching standards to evaluate teacher effectiveness outlined in OAR 581-022-1723. Performances, essential knowledge and critical dispositions for each standard are contained within the Interstate Teacher Assessment and Support Consortium (InTASC) core teaching standards published at: [http://www.ccsso.org/Documents/2011/InTASC\\_Stds\\_MS\\_Word\\_version\\_4\\_24\\_11.doc](http://www.ccsso.org/Documents/2011/InTASC_Stds_MS_Word_version_4_24_11.doc).

The core teaching standards are the same standards adopted by the Teacher Standards and Practices Commission (TSPC) for initial and advanced teacher preparation. The standards include:

(1) The Learner and Learning

(a) Learner Development: The teacher understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences. [InTASC Standard #1]

(b) Learning Differences: The teacher uses understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards. [InTASC Standard #2]

(c) Learning Environments: The teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and self motivation. [InTASC Standard #3]



## (2) Content

- (a) Content Knowledge: The teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) he or she teaches and creates learning experiences that make these aspects of the discipline accessible and meaningful for learners to assure mastery of the content. [InTASC Standard # 4]
- (b) Application of Content: The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues. [InTASC Standard #5]

## (3) Instructional Practice

- (a) Assessment: The teacher understands and uses multiple methods of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision making. [InTASC Standard #6]
- (b) Planning for Instruction: The teacher plans instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context. [InTASC Standard #7]
- (c) Instructional Strategies: The teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways.[InTASC Standard # 8]

## (4) Professional Responsibility

- (a) Professional Learning and Ethical Practice: The teacher engages in ongoing professional learning and uses evidence to continually evaluate his/her practice, particularly the effects of his/her choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner. [InTASC Standard #9]
- (b) Leadership and Collaboration: The teacher seeks appropriate leadership roles and opportunities to take responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals, and community members to ensure learner growth, and to advance the profession. [InTASC Standard #10]

Stat. Auth: ORS 342.805 to 342.937

Stats. Implemented: Section 2, chapter 729, Oregon Laws 2011 (Enrolled Senate Bill 290)

**581-022-1725****Educational Leadership - Administrator Standards**

School districts shall use the educational leadership-administrator standards to evaluate administrator effectiveness outlined in OAR 581-022-1723. These standards align with the Educational Leadership Constituents Council (ELCC) 2009 standards for Educational Leadership published at: <http://www.npbea.org/ncate.php>. The knowledge and skill abilities required for each program standard are found within the full document of the 2009 standards. These standards are aligned with the Interstate School Leaders Licensure



Consortium (ISLLC) published at: [http://www.ccsso.org/Documents/2008/Educational\\_Leadership\\_Policy\\_Standards\\_2008.pdf](http://www.ccsso.org/Documents/2008/Educational_Leadership_Policy_Standards_2008.pdf). The educational leadership-administrator standards are the same standards adopted by the Teacher Standards and Practices Commission (TSPC) for administrator licensure. The standards include:

(1) Visionary Leadership: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by stakeholders. [ISLLC Standard 1]

(2) Instructional Improvement: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by sustaining a positive school culture and instructional program conducive to student learning and staff professional growth. [ISLLC Standard 2]

(3) Effective Management: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by ensuring management of the organization, operation, and resources for a safe, efficient, and effective learning environment. [ISLLC Standard 3]

(4) Inclusive Practice: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by collaborating with faculty and community members, responding to diverse community interests and needs, and mobilizing community resources in order to demonstrate and promote ethical standards of democracy, equity, diversity, and excellence, and to promote communication among diverse groups. [ISLLC Standard 4]

(5) Ethical Leadership: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by acting with integrity, fairness, and in an ethical manner. [ISLLC Standard 5]

(6) Socio-Political Context: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context. [ISLLC Standard 6]

Stat. Auth: ORS 342.805 to 342.937

Stats. Implemented: Section 2, chapter 729, Oregon Laws 2011 (Enrolled Senate Bill 290)



## APPENDIX B: LETTER FROM THE GOVERNOR TO THE OREGON STATE BOARD OF EDUCATION



JOHN A. KITZHABER, MD  
Governor

March 6, 2012

Brenda Frank, Chair  
Oregon State Board of Education  
255 Capitol Street NE  
Salem, OR 97310-0203

Dear Chair Frank:

I am committed to the refinement of the Senate Bill 290 process to improve Oregon teacher and administrator quality through more effective evaluation systems. As you know, SB 290 was the work product of a successful bipartisan, multi-stakeholder effort in the 2011 legislative session. Although it was passed before we knew of the opportunity to pursue a waiver of the federal No Child Left Behind (NCLB) Act, I now view SB 290, and any implementing rules adopted by the State Board of Education, as a critical component of securing our NCLB waiver request.

As such, I will request the State Board of Education to implement rules no later than May 15, 2012 to further clarify the state's intentions and provide more guidance to school districts as they design their teacher and administrator evaluation systems. I will ask the State Board, through rulemaking, to assure that:

- Oregon's evaluation and support systems are to be designed through collaboration at the local level and that superintendents will regularly report to their governing boards on implementation and effectiveness.
- Oregon's local evaluation and support systems will evaluate teachers and administrators on a regular cycle.
- Oregon's local evaluation and support systems will use multiple measures to evaluate performance based on state board adopted core teaching and administrator performance standards. These measures may include, but are not limited to:
  - Student performance
  - Student assessments
  - Classroom-based assessments including observations, lesson plans and assignments
  - Portfolios of evidence
  - Supervisor reports
  - Self-reflections and assessments

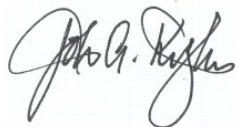


Brenda Frank, Chair  
Oregon State Board of Education  
March 6, 2012  
Page 2

- Oregon's local evaluation and support systems will be based on significant consideration of student learning, which may include but is not limited to:
  - School-wide student academic growth, as determined by an approved statewide assessment system;
  - Formative and summative assessment; and
  - Classroom-level student learning goals set collaboratively between teachers and evaluators.
- Oregon's local evaluation and support systems will be designed with four performance level ratings of effectiveness, with clear criteria for each level. For example:
  - Level 1 – Unsatisfactory, which means does not meet or demonstrate progress toward meeting performance standards.
  - Level 2 – Basic, which means inconsistently meeting performance standards but making progress toward meeting standards.
  - Level 3 – Satisfactory, which means meets performance standards.
  - Level 4 – Distinguished, which means exceeds performance standards.

As Chair of the Oregon Education Investment Board, I assure you that the work product of the SB 290 process will certainly inform our efforts to improve administrator and teacher success in Oregon. I look forward to working with you and the legislature toward the ultimate goal of improving student achievement the months ahead.

Sincerely,



John A. Kitzhaber, M.D.  
Governor



## APPENDIX C: A HISTORY OF REQUIREMENTS FOR EVALUATION OF LICENSED STAFF IN OREGON

Until 1979, the State of Oregon did not require or direct the evaluation of any school employees, including those who were “certificated” by the Teacher Standards and Practices Commission (TSPC), established just a few years earlier. Some K-12 school districts had bargained provisions relating to evaluation with the labor union representing their teachers, especially after the Public Employee Collective Bargaining Act (PECBA) went into effect in 1973.

Certificated teachers and administrators who had passed a three-year probationary period and who enjoyed “permanent” status did enjoy the protection of the Oregon Fair Dismissal Law, ORS 342.805 et. seq., which had begun to take shape since the late 1960’s.

### Teacher “inadequate performance” cases before FDAB in the 1970’s

Throughout the 1970’s, definition of what were acceptable evaluation procedures and criteria came about through case decisions of the Fair Dismissal Appeals Board (FDAB), either upholding or reversing local school boards as to whether a particular teacher should be removed for “inadequate performance,” or “Inefficiency,” or “Failure to comply with such reasonable requirements as the board may prescribe to show normal improvement and evidence of training and growth.” Those three of the nine grounds approved in ORS 342.865(1) for dismissal of a permanent teacher or administrator were the basis for decisions about educator *performance*, as opposed to educator *conduct*.<sup>1</sup> The following case decisions all held for the teacher:

- The FDAB affirmed the dismissal of elementary teacher Mildred Rogers on the basis of insubordination because she had refused to provide lesson plans and set goals to instruct students at different ability levels, because she continued to ridicule and insult the slower students, and refused to follow directives for improvement over a 2-1/2 year period of time. *In the Matter of the Dismissal of Mildred Rogers* (FDAB, 1974). But this case focused more on Rogers’ refusal to follow directions about how to teach than her inability or ineptitude in instructing and managing students.

<sup>1</sup> Most the dismissals appealed to FDAB during the 1970’s were based on alleged teacher insubordination, largely related to the use of physical force against students (*Barnes v. FDAB* (1975), 25 Or App 177 (1976); *Whitaker v. FDAB* (1975), 25 OR App 569 (1976), *Jack Hausotter* (1976) (not appealed), *North Clackamas School District v. FDAB*, 30 OR App 855 (1977)); or immorality (*Frank Ross v. Springfield School District* (1980), aff’d 56 Or App 197 (1982), rev’d and remanded, 294 Or 357 (1982), order on remand (1983), aff’d 71 Or App 111 (1984), rev’d and remanded, 300 Or 507 (1986), order on second remand (1987), revised order on second remand (1988); *Ancil Nance v. Portland Public Schools* (1973), or neglect of duty based on absence from work (*In the Matter of the Dismissal of Beulah Scofield* (1974)).

But some dismissals were based on “inadequate performance,” and school districts lost most of them appealed to the FDAB.<sup>2</sup> In 1972, the Beaverton School District’s dismissal of teacher Peter Paul was overturned by FDAB, largely because the District’s determination that he had provided “inadequate performance” was based on no set of standards of performance. *Paul v. Washington County School District No. 48*, FDA 72-1 (1972), *aff’d School District No. 48 v. FDAB*, 14 Or App 635 (1973).

### **The first statutory requirement for evaluation procedures and standards of performance:**

The Peter Paul case led to legislation in the 1979 session, which for the first time set requirements for each school district to adopt criteria for performance, a system of annual evaluations for probationary and permanent educators alike, a requirement for “multiple” observations prior to an evaluation, and provision for implementing a “program of improvement if one is needed remedy the problem.” ORS 342.850. Each district’s evaluation standards and procedures were to be developed “in consultation” with administrators and teachers, including some appointed by the local teacher association.

### **Teacher evaluation and dismissals, 1980-1990**

- 2 • FDAB upheld the dismissal of William Jueneman in 1972 for inattention to the instructional needs of children, lack of organization, lack of rapport with students, lack of plans for student involvement, and inability to maintain order. The FDAB panel noted in this case that there was a series of evaluations referring to these problems from 1965 to 1972, that many conferences had been held to assist the teacher, and that although there were no written performance standards in the district, there are generally recognized professional standards that could be used to evaluate the teacher. The Court of Appeals upheld the circuit court’s dismissal of a petition for review. *Juenemann v. Richards*, FDA 72-2 (1972), 14 Or App 231 (1973).
- FDAB ordered reinstatement of teacher Noel Keith Taylor (1974), whose evaluations for five previous years had recommended contract renewal and salary advancement. The district admitted that the last evaluation was made for the purpose of supporting the Superintendent’s recommendation of dismissal to the local school board.
- FDAB also ordered reinstatement of Donald F. Chubb (1977) after the district dismissed him for inadequate performance due to poor classroom discipline. He had taught for 16 years, was frequently sent problem children from other classes, and always had larger classes than other teachers. Many children requested his class due to his knowledge and enthusiasm for science. Although he was observed in the fall of 1973 and was told he would not be rehired for 1974-75 if discipline did not improve, he was not dismissal until 1976.
- FDAB ordered the reinstatement of Richard E. Jones (1977) although the district presented six pages of numerous incidents to support charges of inadequate performance as well as neglect of duty. Evaluations were done by the principal in 10-15-minute drop-in visits made after it was decided to dismiss the teacher, and the FDAB panel decided the violations alleged were not significant or the evidence was not persuasive.
- FDAB ordered the reinstatement of Beulah Smith (1979) after 25 years of teaching. Evaluations sometimes pointed out deficiencies but the teacher was always retained and given a salary increase. During the last year she was notified of three deficiencies, warned that she would be placed on probation if performance did not improve, but was given no help. The dismissal was based on three incidents where excessive force with students was alleged but not proven clear-cut violations of school policy. **The FDAB panel also noted that her class ranked above the national average on standardized tests.**
- FDAB also countermanded the demotion of an administrator to a teaching position for inadequate performance, including failure to provide leadership, to establish positive staff relationships, and to work effectively with parents. At hearing, the panel found that most teachers and parents who appeared as witnesses were enthusiastic about the principal’s work and the trouble had come mainly from 2-3 teachers and one community member. *Martin v. Reynolds School District*, FDA 76-5 (1976), remanded 30 Or App 39 (1977).



As most school districts began to implement the new law, consulting with teachers and administrators to establish evaluation procedures and standards, the action shifted from the FDAB hearings to the collective bargaining table. OEA local associations successfully bargained into collective bargaining agreements requirements for evaluation procedures, even though most of this language was deemed “permissive” and thus school boards were not required to bargain over it. Most often, the association proposed language that generally incorporated the statutory requirements for evaluation into the collective bargaining agreement in total (“The district shall comply with ORS 342.850 in the evaluation of teachers.”), which was eventually found a mandatory subject for bargaining by the Oregon Court of Appeals. *EOBC v. Centennial School Dist.*, 6 PECBR 5556 (1982), 298 Or 146 (1984), on remand 8 PECBR 6776 (1985).

Teacher associations used the new CBA language to contest the nonrenewal or dismissal of probationary as well as permanent teachers. In the early to mid-1980's, arbitrators hearing grievances based upon such language found districts in violation and, as a remedy, ordered the reinstatement of the teachers. Although the Court of Appeals ruled that no arbitrator could award permanent status to a probationary teacher dismissed or nonrenewed at the end of her third year of probation, arbitrators' authority to reinstate, into a fourth probationary year, if necessary, was upheld. *NCEA v. North Clackamas School District*, 5 PECBR 4107 (1980), aff'd 54 Or App 211 (1981).

The result of this grievance / arbitration activity was the widely held perception that even probationary teachers couldn't be dismissed or nonrenewed for poor performance. The number of instances of removal or nonrenewal of even probationary teachers dropped to a small percentage of those employed in the state (although others were “counseled out” or given financial inducement to leave).

### **Teacher inadequate performance cases, 1980-1990**

Ironically, at the same time as contractual protections were increasing for Oregon teachers, the FDAB sustained all of the appealed cases of permanent teachers dismissed for “inadequate performance” during the period of 1980-90. Included were the dismissal of 27-year teacher James Hoover by the Hermiston School District (1988) and the dismissal of 33-year teacher Larry Ballman by the Warrenton-Hammond School District.<sup>3</sup> In these cases the school district identified deficiencies based upon adopted performance standards, created a “Plan of Assistance” for improvement to identify expectations and assistance to be provided, established deadlines for improvement, and documented the continued unsatisfactory performance.

Although school districts successfully defended the ultimate dismissals of permanent teachers and principals, the perception was that a lengthy and exhaustive plan of assistance process was necessary to ensure that FDAB would uphold the dismissal. And, where teacher associations had bargained evaluation procedures into the contract, the perspective of school districts was that an arbitrator would overturn nonrenewals and dismissals unless a similarly exhaustive POA was implemented for probationary teachers.

### **Teacher evaluation during the 1990's**

<sup>3</sup> See also *Barbara Brown v. Astoria School District* (1982), *Vorm v. David Douglas School District No. 40* (1979), aff'd 45 Or App 225 (1980), *Janet Holcomb v. Jefferson County School District* (1982), *Covey v. Umatilla School District* (1984), AWOP 76 Or App 402(1985), rev'd denied, 300 Or 545(1986); *Donna Fislser v. Hermiston School District* (1985).





The perception that teacher associations had the upper hand in defeating dismissal and nonrenewal actions continued into the 1990's, and led to an effort in 1997 to reform the entire system governing teacher retention in Oregon.

Two years before, in 1995, Senators Neil Bryant and Gene Derfler succeeded in SB 750 in revising many key provisions of the PECBA. The scope of bargaining was more particularly defined, to identify as permissive any bargaining about standards of performance for teachers. ORS 243.650(7)(e). However, this new statutory language merely repeated a determination of the Employment Relations Board (ERB) in prior case law. ERB had long held that the mechanics and procedures of evaluation were also permissive for bargaining, with the exception of a few "minimum fairness" requirements, such as the teacher's right to know the basis for the evaluation, to receive it in writing, to discuss it with the evaluator, and to attach a rebuttal statement in the personnel file.

Despite these limitations on the right of teachers' association to bargain over evaluation procedures and standards, many teacher CBAs by the 1990's contained such permissive language. Teacher evaluation procedures were major issues in at least two teacher strikes, in Eugene in the late 1980's and in Sandy in 1997, despite the fact that the proposed evaluation procedures could not legally be the basis for a strike declaration. See *Eugene Ed. Assn. v. Eugene School District*, 9 PECBR 9455 (1987); *ECBC v. Sandy School Districts*, 17 PECBR 151(1997).

In 1997, Bryant and Derfler attacked the system of "teacher tenure" contained in the Fair Dismissal Law, and proposed a series of multi-year contracts for teachers and administrators past their probationary years. In the original legislation, post-probationary educators (now called "contract teachers" and "contract administrators") had the right to FDAB appeal if dismissed during the term of such a multi-year contract, but school boards had the right to simply nonrenew at the end of the two- or three-year contract, with no recourse for the teacher. However, in order to obtain the agreement of Gov. John Kitzhaber to other parts of the law (eventually SB 880), the bill's sponsors had to accept FDAB appeal rights for "nonextended" contract teachers. Administrators whose two- or three-year contracts were not extended were accorded no such appeal rights.

Requirements for evaluation procedures for Oregon school districts were revised slightly in SB880, but these changes made the dismissal or nonrenewal of teachers more exhaustive, not less. A definition of a "Program of Assistance for Improvement" was added to ORS 342.805, guaranteeing the right to "peer assistance" if the teacher on a Plan requested, but such peers were prohibited from testifying in a dismissal hearing unless both sides agreed. Annual evaluations continued to be required for probationary teachers, but districts were given a free hand in deciding how often "contract" teachers were to be evaluated.

In reality, the passage of SB 880 made no difference in the practices of Oregon school districts and the small percentage of teachers nonrenewed or dismissed. Only two dismissal cases involving inadequate teacher performance were brought before the FDAB in the years between 1990 and the present – and although in both cases the dismissals were sustained, dismissal came after very lengthy plans of assistance (18 months in the case of *Sharron Packard v. Corvallis School District* (1997)). Even given an intensive POA, the public member of the FDAB panel in the 2004 case. *Ferguson v. Dayton School District*, voted to overturn the dismissal based on the conclusion that the District's evaluator should have done more to help the teacher improve, while the FDAB panel's teacher and school board member both voted to uphold the dismissal. AWOP (2006).

Many more teacher Plans of Assistance (or Programs of Assistance for Improvement) resulted in the resignations of teachers who were unsuccessful and recommended for



dismissal. But in the usual case, “contract” teachers resigned only after settlement payments which school districts agreed to in order to avoid the risk and expense of a FDAB hearing.

At the same time, renewed bargaining pressure in the 1990’s and 2000’s resulted in language more binding than the Fair Dismissal Law (renamed by SB 880 as the Accountability for Schools for the 21<sup>st</sup> Century” Act). A number of districts agreed to proposals by teacher associations to give dismissed “contract” teachers the right to choose arbitration rather than a FDAB hearing, or agreed to “just cause” clauses governing teacher dismissal and even nonrenewal of 2<sup>nd</sup> and 3<sup>rd</sup>-year probationary teachers, in some cases. Arbitrators, without the education background of the FDAB panels, had no requirement of following the 30-year prior FDAB precedents—nor were their decisions appealable to the Court of Appeals. Under those contracts, dismissals or nonrenewals became even more uncertain in their outcome.

### **Teacher evaluation after the year 2000**

During the last decade, teacher associations began to press for CBA language that would forbid the consideration of student achievement in determining whether a teacher met performance standards or suffered some consequence. Although “watered down” somewhat in the give-and-take of bargaining, the language agreed to by school districts may be directly contrary to the mandate of SB 290 that student achievement must be part of the standards of performance (for example, in the one CBA, “no teacher may be placed upon a plan of assistance based student test scores.” )

Although such CBA language would make the use of student achievement data problematic, the real reasons why the evaluation system was not perceived by either teachers or administrators as effective in leading to improved teaching performance were systemic and complex:

- Reduced number of building administrators made it difficult to schedule enough time in classrooms for the evaluator to either assist or make the case for dismissal.
- Complex CBA language on complaint procedures and evaluation made it likely for an administrator/evaluator to “slip up” in some respect, leading to threats of grievance activity and reversal of dismissals and nonrenewals.
- Election of school board members in some districts who were supported by teacher associations and were therefore unwilling to vote for the dismissal or nonrenewal of teachers.
- A belief by administrators that pressuring a teacher for improved performance came with a heavy cost—loss of support from the rest of the staff and unwillingness of staff to cooperate on a variety of other problems.
- A lack of skill by administrators in observing and identifying good performance or identifying the causes of inadequate performance, and a lack of pre-service and in-service preparation on the these skills.
- Perhaps most significant, the belief and reality for administrators that the process of documenting performance problems and instituting corrective action was time-consuming, conflict-provoking work with uncertain outcomes.

