



Legal Issues in Administrator Evaluation, Dismissal and Nonrenewal

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Introduction

- Legal protections for TSPC-licensed administrators were once the same as teachers, but that changed in 1973, and again in 1997.



Oregon

- Administrators are not eligible to bargain in
- Contract administrators may appeal dismissals to FDAB but not nonrenewals

“Contractual” Rights

School administrators with superintendent in title are not covered by the “fair dismissal” law.

As per *ORS 342.513-.549*, school administrators with “superintendent” in their title must have an individual employment contract that addresses:

- *renewal and dismissal procedures*
- *term of the contract (no more than 3 years), and*
- *resignation*

Notice of nonrenewal by Mar. 15 of final year of contract.

“Contractual” Job Protection provisions

School administrators not covered by the “fair dismissal” law may negotiate certain job protection features into their individual employment contract:

- *Required procedures for dealing with complaints*
- *Required procedures for addressing poor performance, such as notice and a time period for improvement.*
- *Right to “due process”-type hearing with school board before any decision to dismiss is made.*

“Contractual” Termination provisions

By law (ORS 342.549(3)), school boards “may not enter into an employment contract with an administrator that contains provisions that expressly obligate the district to compensate the administrator for work that is not performed.” However:

- *Some employment agreements provide for “no cause” unilateral termination of contract with payment of 6 months or more as a “severance” payment – literally payment for entering into an agreement that gives the school board greater flexibility.*
- *Some districts negotiate early termination of a contract with a cash payout “in settlement of disputed claims.”*

Administrator Group “Contractual” provisions

Many larger districts have administrator groups that “negotiate” group agreements. What is the status of such agreements?

- *Not enforceable by ERB because administrators have no bargaining rights. Enforceable by courts?*
- *Maybe not binding on individual members of the group unless they sign off on an individual contract incorporating the “group agreement.”*

Administrators below Asst. Supt.:

- Serve a probationary period of *up to 3 years*, with annual renewal/nonrenewal by Mar. 15, but could be offered a 1 or 2 year probationary period.
- After becoming contract administrators, are employed on 3-year contracts, with notice of extension/ nonextension by March 15 of 2nd year.
Options:
 - A. *New 3-year contract;*
 - B. *Add one year to current contract;*
 - C. *No extension; current contract in place until expiration;*
 - D. *In some cases, right to vacant teaching position.*
- **NO RIGHT TO F.D.A.B. appeal after nonrenewal.**

Administrators below Asst. Supt.:

- If probationary, may be dismissed at any time “for any cause deemed in good faith sufficient by the school board.”
- If contract status, may be dismissed during term of 3-year contract for any reason in ORS 342.865 (inadequate performance, neglect of duty, insubordination, immorality, etc.)

Administrators below Asst. Supt.: Rights in case of dismissal

- A pre-termination hearing before the Supt. and/or Board + right to know specific charges, opportunity to respond, and right to counsel.
- If a contract administrator, a post-dismissal hearing before the FDAB. ORS 342.895-.905.
- If a probationary administrator, a full post-dismissal hearing before the school board.

Administrators below Asst. Supt.: Rights in case of layoff/recall

- Layoff decisions based on seniority (as an administrator), licensure, merit (as contrasted with others in the group), and “competence” (recent experience at a grade level and/or type of position).
- 27 months recall rights. Criteria for recall in school board policy. ORS 342.934

Administrators below Asst. Supt.: Rights in transfer situations

- May be transferred to any other administrative position as long as salary is maintained.
- May be transferred to a teaching position upon mutual agreement.
- May accept a lesser work year position and lower salary, upon mutual agreement.

Oregon Experience



- Oregon's SB 290 applies to administrators as well as teachers.
- In 2011, Oregon Legislature enacted law requiring the State Board of Education to adopt core administrator standards that parallel ILLSC national 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."

ORS 342.856(1).

Oregon Experience



- No case of dismissal of Oregon contract administrator for failing to meet goals in student learning and growth. Such a dismissal would have to follow case law for proving “inadequate performance.”
- Probationary administrators could be dismissed for failure to “turn around” a school’s student performance, as dismissal is allowed “for any cause considered in good faith sufficient by the board.” ORS 342.835(1)

Oregon Board of Education's Framework

- Requires each district's evaluation system be “based on *significant consideration of student learning*,” including school-wide academic growth, as determined by:
 - statewide assessments, and
 - at least two classroom-level student learning goals set and measured annually.
- Weighting percentage (20%) adopted in 2014 using matrix
- Expectation is that evaluations are to have consequences on employment

Dismissal case law in Oregon

- Most cases of dismissal of administrators heard by FDAB involve neglect of duty or misconduct.
- If FDAB finds facts alleged to be substantiated and sufficient to support one or more of the statutory grounds for dismissal, then FDAB is to defer to local school board on issue of whether dismissal should take place.

Dismissal case law in Oregon

More frequently today, dismissals of administrators or supervisors are challenged in court as unlawful employment practices, such as:

- *Discrimination based on protected class*
- *Whistle-blowing*
- *Retaliation for advocacy for protected class member*
- *Violation of constitutional rights, including "due process" of law.*

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