

# Legislative Analysis



## AMEND TEACHER EVALUATION REQUIREMENTS

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**Senate Bill 395 (S-5) as passed by the Senate**  
**Sponsor: Sen. Dayna Polehanki**

Analysis available at  
<http://www.legislature.mi.gov>

**Senate Bill 396 as passed by Senate**  
**Sponsor: Sen. Kristen McDonald Rivet**

**House Committee: Education**  
**Senate Committee: Education**  
**Complete to 10-25-23**

### SUMMARY:

Senate Bill 395 would amend the Revised School Code to change the way required evaluations of public school educators (teachers and administrators) are conducted.

Senate Bill 396 would amend 1937 (Ex Sess) PA 4 to reflect changes made regarding educator evaluations in SB 395 and to lower, from five to four, the number of years that a probationary teacher must receive an adequate evaluation rating to successfully complete the probationary period.

#### **Senate Bill 395**

Under current law, educators who work as teachers and administrators in school districts, intermediate school districts (ISDs), and public school academies (PSAs, commonly referred to as charter schools) are required to receive annual performance evaluations in accordance with the provisions of the Revised School Code.

Senate Bill 395 would make several changes to the components that must be a part of a school's evaluation system, including the criteria that an educator is evaluated on, the rating labels assigned based on the outcome of the evaluation, and what actions may or must be taken as the result of a specific rating, and would eliminate other requirements relating to evaluations or rating labels that would be renamed or removed. Generally speaking, provisions relating to teacher evaluations are contained in section 1249 of the code, while section 1249b covers school administrator evaluations.

As used here, *teacher* means an individual who has a valid Michigan teaching certificate or authorization or an individual teaching under section 1233b authorization; who is employed, or contracted for, by a school district, ISD, or PSA; and who is assigned by the school district, ISD, or PSA to deliver direct instruction to pupils in any of grades K to 12 as a teacher of record.

#### **Rating labels**

Presently, an educator is assigned a rating of "highly effective," "effective," "minimally effective," or "ineffective," based on the outcome of their performance evaluation. The bill would change these labels to "effective," "developing," or "needing support."

### Requirements of an evaluation system

The bill would modify the required components and uses of the evaluation system adopted by a school district, ISD, or PSA. Under SB 395:

- The system would no longer have to be performed annually (if other criteria are met).
- Evaluations would no longer have to inform decisions about any of the following:
  - Promotion and retention of teachers and administrators.
  - Granting of tenure or full certification.
  - Removal of ineffective tenured and untenured teachers and administrators.

The bill would retain a requirement that a school use one of the evaluation tools on a list approved by the Michigan Department of Education (MDE), unless it has a compliant local evaluation tool or modification to an MDE-approved tool.

### Weighting of evaluation

The code contains requirements for what must be a part of an educator's evaluation, as well as how each must be weighted. The current breakdown is as follows:

- 40% of the evaluation is based on student growth and assessment data. Of this 40%, for teachers who teach a core content area measured by a state assessment, half of the student growth must be measured using the state assessment and the other half using other methods that are research-based or meet other criteria.
- The remaining 60% is based on the evaluation tool developed or adopted by the school.

The bill would eliminate the language concerning percentages for core content areas and would cap student growth and assessment data use at no more than 20% of the year-end evaluation, with the percentage determined through collective bargaining. The bill would also specify that the percentage not dedicated to student growth and assessment data must be based on objective criteria. The percentage that student growth and assessment data is used for both teachers and administrators would have to be the same.

### Student growth and assessment data

In the S-5 substitute, as written, the bill is unclear on whether student growth and assessment data must be a part of a year-end evaluation for teachers, as the bill retains a current requirement that the performance evaluation tool for teachers and school administrators *must* take into account student growth and assessment data, and that student data and assessment *must* be measured using metrics agreed upon through collective bargaining (without stating what should happen if a school does not have a collective bargaining unit), before going on to provide that, beginning with the 2024-25 school year, for a teacher's year-end evaluation, the evaluation *may* be based on student growth and assessment data metrics determined through collective bargaining.

The bill would eliminate a current requirement that student growth and assessment data for the three most recent school years be included in the evaluation (or two most recent, or most recent, if three are not available), along with a provision that allows the evaluation system to have a student growth exemption if certain criteria are met.

### Frequency of evaluation

Under current law, educators who receive three consecutive "highly effective" ratings can move to a biennial evaluation if they continue to meet certain criteria. A midyear progress report is a required part of the evaluation for a teacher who is in the first year of their

probationary period or has received a minimally effective or ineffective rating on their most recent annual evaluation. Provisions regarding the midyear evaluation of school administrators would also be added.

A midyear progress report must be done each year that the school administrator is evaluated. The midyear progress report must be used as a supplemental tool to gauge a school administrator's improvement from the preceding evaluation and to assist a school administrator to improve. The midyear report would have to include specific performance goals for the remainder of the school year for building-level school administrators, or for the remainder of the calendar year for all other school administrators, that are developed by the individual conducting the annual evaluation or the individual's designee, as well as any recommended training identified by the individual or designee that would assist the school administrator in meeting these goals. At the midyear progress report, the individual conducting the annual evaluation or the individual's designee must develop, in consultation with the school administrator, a written improvement plan that includes these goals and training and is designed to assist the school administrator to improve the school administrator's rating.

Senate Bill 395 would extend this ability to those teachers receiving three consecutive ratings of effective (reflecting the bill's elimination of the highly effective label), while also giving those who meet the three-consecutive-year requirement the ability to move to evaluations once every three years. However, if one of their biennial or triennial evaluations does not result in a rating of effective, then they would revert back to regular year-end evaluations. Probationary teachers would remain ineligible for the exemption from annual evaluations.

Senate Bill 395 would also require teachers who received a rating of needing support or developing to receive a midyear progress report while eliminating a requirement that the progress report be based, at least in part, on student achievement. Midyear progress reports cannot take the place of a year end evaluation for any educator.

School administrators would not be eligible to move to triennial evaluations, and an administrator would need to receive annual evaluations if any of the following apply:

- They receive a rating other than effective on a biennial evaluation.
- For a building-level school administrator, their supervisor or evaluator changes.
- For an individual employed as a school district or ISD superintendent or as a chief administrator, the individual obtains employment with a different school district, ISD, or PSA.

#### Classroom and building observations

A classroom observation is a required part of a teacher's evaluation. The bill would make changes to how the observation is conducted for teachers and add requirements for the observation of school administrators.

The bill would add a requirement that the teacher and school administrator conducting the observation discuss the teacher's lesson plan and corresponding state curriculum standard for that lesson and a review of pupil engagement during the lesson during a post-observation meeting. Presently, those topics must be reviewed as part of the evaluation, but it is not required that they be discussed during a post-observation meeting.

For a building-level school administrator, the individual conducting the evaluation would be required to visit the school building where that administrator works, review the administrator's

school improvement plan, and observe classrooms with the building-level school administrator to collect evidence of the school improvement plan strategies being implemented and the impact the school improvement plan has on learning.

Requirements about frequency and duration of observation would be modified. Currently, if a teacher has received a rating of highly effective or effective during their two most recent annual year-end evaluations, they do not have to have two classroom observations. The bill would require two observations in each year a teacher is evaluated and require an observation to last at least 15 minutes. Presently, there is no minimum time definition for what constitutes an observation, other than to state that an observation does not need to last the entire class period. The bill would also change an existing provision that states at least one observation must be unscheduled by making optional that one observation be unscheduled.

Finally, SB 395 would require *written* feedback be provided with 30 *calendar* days of each observation (italics reflect language added by the bill).

#### Assignment of evaluation ratings and exemptions

Beginning July 1, 2024, the new rating labels would be used for evaluation purposes. An evaluation and feedback must be provided in writing to the evaluated educator, and if the evaluation is not provided in writing, then that educator would be deemed effective.

If one of the following applied to a teacher or school administrator, then an evaluation rating could not be assigned, and the designation of “unevaluated” used instead:

- The individual worked less than 60 days in that school year.
- The individual’s evaluation results were vacated through the grievance process established by the bill.
- There were extenuating circumstances and the teacher or administrator and their employing school district, ISD, or PSA agree to use the unevaluated designation as a result.

If a teacher receives the unevaluated designation, then the rating received immediately preceding the designation would be used for purposes of determining applicability of provisions that use consecutive ratings in section 1249. For a school administrator, the rating from the year immediately prior to the unevaluated designation could be used if both apply:

- The school administrator continues to be employed in the same position that the school administrator was employed in the year before receiving the designation.
- The school administrator continues to be employed by the same school district, ISD, or PSA that employed them in the year before they received the designation.

#### Ineffective and Needing Support Ratings

Under current law, a teacher receiving three consecutive ratings of ineffective should be dismissed from employment. The bill would add “needing support” to this requirement so three consecutive ratings of either label would result in dismissal, subject to 1937 PA 4, which governs teachers’ tenure and procedures that must be followed in order to discharge or demote a teacher with tenure. The reference to the teachers’ tenure act would be added by the bill as well. For administrators, three consecutive ineffective or needing support ratings would still result in dismissal.

Also under current law, a teacher who receives an ineffective rating can request a review of the evaluation by the district or ISD superintendent or the PSA chief administrator within 20 days

of being informed of the rating. That superintendent or administrator then reviews the assigned rating and make any modifications as appropriate. This review can be requested no more than twice in a three-year period. The bill would make this review available to a teacher who receives a needing support rating, revise the window for making a review request so it is 30 calendar days from time of being informed of the rating, and eliminate the maximum of two requests in three years. Senate Bill 395 would also require a written response of findings from the superintendent or chief administrator to the requesting teacher within 30 calendar days of receiving the review request, prior to any modifications being made to the teacher's rating.

The bill would establish additional actions for a teacher who receives a rating of needing support. If the written response does not resolve the matter, the teacher or collective bargaining representative may request mediation as provided for in 1947 PA 336 (which establishes the mediation process for public employees).

The request for mediation would have to be submitted in writing within 30 calendar days after the teacher receives the written response from the superintendent or chief administrator. Then, within 15 days of receiving the mediation request, the superintendent or chief administrator must provide a written response to the teacher or collective bargaining representative stating that the mediation will be scheduled as appropriate.

If a teacher receives two consecutive ratings of needing support, the teacher could demand to use the grievance procedure of an applicable collective bargaining agreement or employment contract that concerns the teacher's second evaluation rating and the evaluation process. If that collective bargaining agreement or employment contract did not contain a grievance procedure that ends in binding arbitration, the teacher could then request binding arbitration by filing a demand for arbitration with the Michigan Employment Relations Commission within 30 calendar days after the teacher receives the written response from the school district superintendent, intermediate superintendent, or chief administrator.

The arbitration would subject to the Uniform Arbitration Act, 2012 PA 371, and would have to adhere to all the following:

- The arbitrator must be selected through procedures administered by the Michigan Employment Relations Commission in accordance with its rules.
- The arbitrator must have the authority to issue any appropriate remedy.
- The arbitrator must utilize a "reasonable and just cause" standard of review when issuing any findings and remedies.

The process outlined for requesting a review of a needing support rating by a teacher would also apply to a school administrator who receives the same rating, and the bill would also require that a contract governing the employment of a school district superintendent, ISD superintendent, or chief administrator of a PSA includes an appeal process concerning the evaluation process and rating received. This would apply to a contract entered into, extended, renewed, or modified on or after the effective date of the bill.

#### School administrator evaluations

The bill would add several new provisions regarding how the evaluation of school administrators should be conducted, and eliminate the currently specified criteria, replacing it with language that mirrors the requirement for teacher evaluation systems.

As part of the performance evaluation system for school administrators, the bill would require a school district, ISD, or PSA to assign a mentor or coach to each school administrator, not including a superintendent or a chief administrator, for the first three years in which the school administrator is in a new administrative position.

#### Rater reliability

Senate Bill 395 would require that, not later than September 1, 2024, and then every three years after, each person who conducts an evaluation of teachers and/or school administrators must conduct a rater reliability training provided by the school district, ISD, PSA, or other entity that employs that rater. This training must contain the following:

- A clear and consistent set of evaluation criteria that all evaluators can use when assessing teacher performance.
- Clear expectations for what evaluators should look for when assessing teacher performance, including identifying key behaviors and practices that are associated with effective teaching.
- Training on the evaluation process itself, including how to conduct classroom observations, collect data, and analyze results.
- Calibration exercises that help evaluators practice using the evaluation criteria and establish consistency in the evaluator’s evaluations.
- Ongoing support for evaluators, including feedback and coaching to help the evaluators improve their skills and ensure they are consistently applying the evaluation criteria.

#### Students taught by ineffective and needing support teachers

Under current law, a pupil cannot be taught in consecutive years by a teacher who has been rated as ineffective on the teacher’s most recent annual year-end evaluations. If a school is unable to comply with this requirement, they must notify an impact’s pupil’s parents or guardians. The bill would extend this requirement to teachers with a rating of needing support, and stipulate that if a teacher requested a review of their rating, then the notice could not be sent until that review process was completed.

#### Definition changes

The definition of ***unprofessional conduct*** as used in section 1320b would be amended to remove “misconduct” and replace it with one or more acts that “endanger the safety of any student and directly lead to the separation of employment.”

#### Section 1280f (reading proficiency) amendment

The bill would amend this section by requiring that a diagnostic reading assessment system be performed within the first 90 days of the school year for a student in kindergarten, and within the first 30 days of school for students in grades 1 to 3. Presently, the requirement is for the assessment to be conducted within the first 30 days of the school year for grades K to 3.

#### Repealers

The bill would repeal sections 1250, 1531j, and 1531k of the Revised School Code. Section 1250 requires a school district, ISD, or PSA to implement and maintain a method of compensation that uses job performance and job accomplishments as a significant factor in determining compensation and additional compensation. Sections 1531j and 1531k contain requirements for issuance of an initial professional teaching certificate and advanced

professional teaching certificate, respectively. The professional and advanced professional certificates are optional levels of licensure beyond the Standard Teaching Certificate.

MCL 380.1230b et seq.

### **Senate Bill 396**

Under the bill, the change from five years to four would take effect after July 1, 2024. At that time, probationary teachers who had earned three consecutive ratings of “effective” or “highly effective” on their evaluation and had completed at least four full school years of employment within that probationary period would be considered to have successfully completed the probationary period. The bill would also update a reference to the currently lowest ratings of “ineffective” and “minimally effective” and replace them with “needing support,” which is the label SB 395 would implement for teachers not rated as effective.

MCL 38.74 et seq.

Each bill would take effect on July 1, 2024. They are tie-barred to one another, which means that they cannot take effect unless both are enacted.

### **FISCAL IMPACT:**

**Senate Bill 395** would have a minimal fiscal impact on the state and an indeterminate fiscal impact on districts, intermediate school districts, and public school academies.

Under current law, the Michigan Department of Education is required to maintain a list of teacher and school administrator evaluation tools. Due to changes in the bill, MDE may be required to revise the list of eligible tools and review new evaluation tools. This cost would likely be absorbed using existing staff time.

Each district, ISD, and PSA would likely be impacted differently by SB 395. Under the bill, the performance evaluation system for teachers and school administrators must be determined through collective bargaining. Currently, 40% of the evaluation must be based on student growth and assessment data, but the bill would cap it at no more than 20% of the total evaluation. The overall fiscal impact these changes would have is indeterminate.

Additionally, certain districts, ISDs, and PSAs may realize increased costs as part of updating evaluation tools to reflect the changes required by SB 395, but these increased costs would likely be absorbed using existing staff time. The bill allows districts, ISDs, and PSAs to conduct evaluations either biennially or triennially for teachers and school administrators who are rated as highly effective or effective on the three most recent year-end evaluations and grants exceptions from evaluations for certain other teachers and school administrators. These changes could reduce costs for certain districts, ISDs, and PSAs that choose to implement fewer evaluations each year.

**Senate Bill 396** would have no fiscal impact on the state or on districts, ISDs, and PSAs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.