

AMEND TEACHER EVALUATION REQUIREMENTS

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Senate Bill 395 (H-2) as reported from House committee
Sponsor: Sen. Dayna Polehanki

Analysis available at
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Senate Bill 396 as reported from House committee
Sponsor: Sen. Kristen McDonald Rivet

(Enacted as Public Acts 224 and 225 of 2023)

House Committee: Education
Senate Committee: Education
Complete to 11-1-23

BRIEF 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 in SB 395 regarding educator evaluations 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.

FISCAL IMPACT: The bills would have a minimal fiscal impact on the state and an indeterminate fiscal impact on districts, intermediate school districts (ISDs), and public school academies (PSAs, commonly referred to as charter schools). (Please see *Fiscal Information*, below, for more information.)

THE CONTENT OF THE BILLS:

Under current law, educators who work as teachers and administrators in school districts, ISDs, and PSAs are required to receive annual performance evaluations in accordance with 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.

Except as it would apply to review of an evaluation rating, **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

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

- 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 system would still have to include rating categories that take into account student growth and assessment data. The bill would modify this by allowing student growth and assessment data or ***student learning objectives*** metrics. Both student growth and learning objectives would be measured using metrics agreed upon through collective bargaining, if applicable.
- An evaluation system could only be adopted by a school's board or board of directors after collective bargaining, if applicable, with any collective bargaining representative of teachers and school administrators.

Student learning objectives would mean measurable, long-term, academic goals, informed by available data, that a teacher or teacher team sets at the beginning of the year for all students.

The bill would retain a requirement that a school use one of the teacher 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. However, the bill would remove a requirement that MDE include on its approved tools list teacher evaluation models (Charlotte Danielson's Framework for Teaching, Marzano Teacher Evaluation Model, The Thoughtful Classroom, or 5 Dimensions of Teaching and Learning) recommended by the Michigan Council on Educator Effectiveness in a July 2013 report.¹

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, starting with the 2024-2025 school year, require that 20% of the evaluation be based on student growth and assessment data or student learning objectives metrics. The bill also requires the year-end evaluation to include locally agreed-on student growth and assessment data or student learning objectives metrics. The data or metrics would have to be determined through collective bargaining, if applicable. However, the bill does not offer a definition for "locally agreed-on," making it unclear how schools without a collective bargaining unit would proceed in determining who would participate in the process of agreeing on the data or metrics used.

¹ https://goschooladvance.org/wp-content/uploads/2019/05/midnightreport_july24_2013.pdf

The bill would also specify that the percentage not dedicated to data or objectives, or that is not allocated by the evaluation tool adopted by the school, must be based on objective criteria. The percentage that data and learning objectives would be used in both teacher and administrator evaluations would be set at 20%.

Student growth and assessment data and student learning objectives metrics

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 would add the option of using student learning objectives metrics. What constitutes data or metrics for purposes of the bill would be determined through collective bargaining, if applicable.

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 at least two observations in each year a teacher is evaluated and require each 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 of the observations 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 and Review Process

Under current law, a teacher or administrator receiving three consecutive ratings of ineffective is 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 the 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, along with specifying that the definition of *teacher* as it applies to who is eligible to pursue several options laid out by the bill if they receive a rating of needing support would have the same meaning as it does in section 1 of the teachers’ tenure act (MCL 38.71): “A certificated individual employed for a full school year by any board of education or controlling board.”

Also under current law, a teacher who is not in their probationary period and 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 remove *chief administrator* as the person that receives a request for rating review. This would have the effect of making the bill’s changes regarding rating review not applicable to a teacher at a public school academy. A rating review requested by a teacher or administrator at a PSA would instead be done in accordance with whatever policies that school puts in place, in accordance with any contracts with its teachers or administrators and state law.

Senate Bill 395 would make this review available to a teacher who receives a needing support rating, revising the window for making a review request so it is 30 calendar days from time of being informed of the rating. It would also eliminate the maximum of two requests in three years. The bill would also require a written response of findings from the superintendent 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. Then, within 15 days of receiving the mediation request, the superintendent 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 American Arbitration Association within 30 calendar days after the teacher receives the written response from the school district superintendent, intermediate superintendent.

The arbitration would be subject to the Uniform Arbitration Act and would have to adhere to all the following:

- The arbitrator must be selected through procedures administered American Arbitration Association in accordance with its rules.
- The arbitrator must have the authority to issue any appropriate remedy.

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. The bill would also require that a contract governing the employment of a school district or ISD superintendent 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.

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 neither can take effect unless both are enacted.

BRIEF DISCUSSION:

Like personnel performance reviews done by supervisors across industries, educators in Michigan are evaluated annually by their respective supervisors, with those rated highly in their evaluations more likely to be considered for promotions and pay raises, and those who are scored poorly given additional opportunities for growth and improvement before being

demoted or terminated. However, unlike performance reviews in the private sector or other occupations licensed or certified by Michigan, public school educators must have annual reviews done in a manner that is detailed in state law.

Supporters of these bills believe the current law inappropriately curtails decision-making that should be done by schools and districts in accordance with the needs of their respective students and staff, and that a rigid emphasis on student growth and assessment data, while perhaps well-intentioned, fails to account for the many variables that impact student learning and in doing so, unfairly penalizes teachers and administrators in their respective evaluations. The intent in making these changes is to allow for greater educator input in each school and district for what the year-end evaluation considers in making its final rating.

Presently, MDE has approved the following tools for teacher evaluations:

- Charlotte Danielson’s Framework for Teaching
- Marzano Teacher Evaluation Model
- Marzano Focused Teacher Evaluation Model
- Thoughtful Classroom
- Five Dimensions of Teaching and Learning

For administrators, the approved evaluation tools are the Michigan Association of School Administrators’ School Advance Administrator Evaluation Instrument and the Multidimensional Leadership Performance System. Additional evaluation tools for teacher and administrator evaluations may also be used if they comply with current law.

It is unclear whether any of these approved tools would be noncompliant with the changes in SB 395 or 396. Furthermore, because SB 395 leaves the determination of which evaluation system or tool to use, it is possible that a school may elect to continue using the tool they currently do and adjust the weighting percentages for student growth data or student learning objectives.

FISCAL INFORMATION:

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 or student learning objectives metrics, but the bill would require only 20% of the total evaluation to be based on these components. 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.

The bill allows for teachers and administrators in districts and ISDs to request mediation to resolve disagreements over an evaluation if the traditional review process fails to resolve any issues. The mediation process may result in additional costs for districts and ISDs.

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

ARGUMENTS:

For:

Supporters of these bills include teacher and school principal associations, who contend that allowing greater flexibility in how teacher and administrator effectiveness is measured will lead to a more accurate rating of an educator. Additionally, refocusing the ratings to reflect that even the best teachers and administrators have room for continuing improvement is a more accurate and appropriate rating label. Taken together, they believe changes made would improve educator morale, leading to less burnout and increased retention as the revised evaluation model becomes more responsive to identifying individual educator needs rather than being forced to narrowly focus on aspects covered in an evaluation.

Against:

Opponents of the bill say that the evaluation process as would be implemented under SB 395 is too favorable to poorly performing educators, and that it would become significantly easier for an educator to avoid demotion or termination for poor performance, both as a result of what can be part of an evaluation as well as the increased appeal options for an educator who receives the latest rating which opponents believe will lead to fewer needing supports ratings being given. Additionally, critics say reducing the reliance on student growth and assessment data in evaluations will mean that teachers with students who do not score well on state and local assessments can still earn effective ratings.

POSITIONS:

Representatives of the following entities testified in support of the bills (10-25-23):

- Michigan Education Association
- Holt Education Association

The following entities indicated support for the bills:

- Michigan Department of Education (10-25-23)
- American Federation of Teachers – Michigan (10-25-23)
- Dearborn Federation of School Employees (10-25-23)
- Dearborn Federation of Teachers (10-25-23)

- Michigan Association of School Boards (10-31-23)
- Michigan Association of Secondary School Principals (10-25-23)
- Michigan Elementary and Middle School Principals Association (10-25-23)
- National Heritage Academies (10-31-23)

The following entities indicated a neutral position on the bills:

- Education Advocates of West Michigan (10-31-23)
- Michigan Association of Superintendents and Administrators (10-31-23)
- Wayne County Regional Educational Service Agency (10-25-23)

The following entities indicated opposition to the bills:

- Education Trust Midwest (10-25-23)
- Great Lakes Education Project Education Fund (10-25-23)
- Great Lakes Justice Center (10-25-23)
- Mackinac Center for Public Policy (10-31-23)
- Oakland Schools (10-25-23)
- West Michigan Policy Forum (10-25-23)

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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.