

Michigan Governor Whitmer Signs into Law Major K-12 Teacher Performance Evaluations Reforms

November 27, 2023

On November 22, 2023, Michigan Governor Gretchen E. Whitmer signed into law two bills (SB 395 & SB 396) reforming the teacher and school administrator evaluation processes at K-12 schools. The new legislation introduces significant changes to teacher and school administrator evaluations, shifting the focus towards more streamlined rating categories, modifying the basis for evaluations with an emphasis on teacher performance, and mandating the involvement of educators in developing evaluation tools.

Some of the key changes to Michigan's Revised School Code and the Teachers' Tenure Act include:

- Beginning on July 1, 2024, teacher and administrator evaluations will be based on the following rating categories: (1) effective, (2) developing or (3) needing support. Until that time, schools would continue to evaluate teachers and administrators as highly effective, effective, minimally effective, and ineffective.
- If a teacher is not given a year-end evaluation, the teacher is deemed "effective."
- A teacher or school administrator may request a review of their respective evaluation (i.e., rating). A written response must be provided by the school no later than 30 calendar days after receipt of the request for a review. If the written response from the school does not resolve the disagreement, the teacher may request mediation with the Michigan Employment Relations Commission ("MERC"), as specified under the Public Employment Relations Act, Michigan's public labor law statute.
- Subject to protections under the Teachers' Tenure Act, a school "**shall**" dismiss (i.e., terminate) a teacher from their employment who receives the "needing support" rating on three consecutive year-end evaluations.
- If a teacher has received a "needing support" rating on a year-end performance evaluation, a school district is required to "provide the teacher with an individualized development plan developed by appropriate administrative personnel in consultation with the individual teacher" that is aimed at ensuring "progress toward individual development goals within a specified time period, not to exceed 180 days."
- If a teacher receives two consecutive "needing support" ratings, the teacher "may demand to use the grievance procedure" under an applicable collective bargaining agreement ("CBA") or employment contract. However, if no CBA or employment contract provides a grievance mechanism, "the teacher may request binding arbitration by filing a demand for arbitration with the American Arbitration Association [AAA]..." The new law specifies that the arbitrator be selected through AAA rules and that the arbitrator "must have the authority to issue any appropriate remedy."
- Beginning July 1, 2024, if a teacher has been rated as effective on or after July 1, 2024, or highly effective before July 1, 2024, on three consecutive year-end performance evaluations, and has completed at least four full school years of employment in a probationary period, the teacher is considered to have successfully completed the probationary period.

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- A teacher should not be evaluated and instead designated as “unevaluated” for a school year if one of the following conditions exist: (a) the teacher worked less than 60 days in that school year; or (b) the teacher’s evaluation results were “vacated” through a grievance process (see previous bullet point); or (c) “extenuating circumstances” exist and the “teacher and the school district” agree to designate the teacher as “unevaluated because of the extenuating circumstances.” The phrase “extenuating circumstances” is left undefined.
- A non-probationary teacher rated “highly effective” or “effective” on the three most recent consecutive year-end evaluations may receive their year-end evaluation every other year or “triennially instead of annually.”
- The current basis for evaluating teacher performance—principally grounded on student performance and assessment data—would be modified to allow for targeted district-specific evaluation tools and objective criteria with a central emphasis on teacher performance as the principal barometer. The new basis for teacher performance evaluation would be developed “with the involvement of teachers and school administrators” and after collective bargaining, and ultimately approved and promulgated by a board of education (or board of directors at charter schools). Importantly, metrics for measuring items such as “student growth, assessment data, or student learning objectives metrics” must be agreed upon through collective bargaining (when applicable). Thus, the topic of teacher performance evaluations has effectively become a mandatory subject of bargaining.
- Current Michigan law requires 40% of a teacher’s annual evaluation be based on student growth and assessment data. The new law changes that—beginning with the 2024-2025 school year, only 20% of the year-end evaluation can be based on student growth and assessment data or “student learning objectives metrics.” The remaining 60% for teacher evaluation “must be based primarily on a teacher’s performance as measured by the evaluation tool developed or adopted by the school district.” In addition, annual teacher evaluations must include specific performance goals to assist in improving effectiveness for the next school year and are to be developed by the school administrator or the school administrator’s designee conducting the evaluation, in consultation with the teacher, alongside any recommended training identified by the school administrator or designee, in consultation with the teacher, that would assist the teacher in meeting these goals.
- Classroom observation (part of a teacher’s year-end evaluation) must be a minimum of 15 minutes and the observations “must be discussed during a post-observation meeting between the school administrator conducting the observation and the teacher.”
- School administrators will now be subject to midyear evaluations under certain circumstances, like the current requirement for teachers. 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 improvement.”
- For teachers, the midyear progress report can no longer include any discussion on student achievement metrics (that statutory language has been removed).
- The word “demote” in the Teachers’ Tenure Act has been redefined to mean an “act to suspend without pay for 15 or more consecutive days or reduce compensation for a particular school year by more than an amount equivalent to 30 days’ compensation or to transfer to a position carrying a lower salary.” The redefined meaning of demote

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however does except from its definition "a reduction in personnel, including, but not limited to, a reduction in workweeks or workdays."

Should you have any questions about the changes to Michigan school laws, including assistance in formulating teacher performance metrics, please do not hesitate to contact the authors of this article or your Miller Canfield attorney.