

Act No. 102
Public Acts of 2011
Approved by the Governor
July 19, 2011
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011**

Introduced by Rep. O'Brien

ENROLLED HOUSE BILL No. 4627

AN ACT to amend 1976 PA 451, entitled "An act to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and clarify the laws relating to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies, intermediate school districts, and other public school entities; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, intermediate school districts, and other public school entities; to provide for the regulation of school teachers and certain other school employees; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure of boarding schools; to prescribe penalties; and to repeal acts and parts of acts," by amending section 1249 (MCL 380.1249), as amended by 2010 PA 336, and by adding sections 1248 and 1249a.

The People of the State of Michigan enact:

Sec. 1248. (1) For teachers, as defined in section 1 of article I of 1937 (Ex Sess) PA 4, MCL 38.71, all of the following apply to policies regarding personnel decisions when conducting a staffing or program reduction or any other personnel determination resulting in the elimination of a position, when conducting a recall from a staffing or program reduction or any other personnel determination resulting in the elimination of a position, or in hiring after a staffing or program reduction or any other personnel determination resulting in the elimination of a position by a school district or intermediate school district:

(a) Subject to subdivision (c), the board of a school district or intermediate school district shall not adopt, implement, maintain, or comply with a policy that provides that length of service or tenure status is the primary or determining factor in personnel decisions when conducting a staffing or program reduction or any other personnel determination resulting in the elimination of a position, when conducting a recall from a staffing or program reduction or any other personnel determination resulting in the elimination of a position, or in hiring after a staffing or program reduction or any other personnel determination resulting in the elimination of a position.

(b) Subject to subdivision (c), the board of a school district or intermediate school district shall ensure that the school district or intermediate school district adopts, implements, maintains, and complies with a policy that provides that all personnel decisions when conducting a staffing or program reduction or any other personnel determination resulting in the elimination of a position, when conducting a recall from a staffing or program reduction or any other personnel determination resulting in the elimination of a position, or in hiring after a staffing or program reduction or any other

personnel determination resulting in the elimination of a position, are based on retaining effective teachers. The policy shall ensure that a teacher who has been rated as ineffective under the performance evaluation system under section 1249 is not given any preference that would result in that teacher being retained over a teacher who is evaluated as minimally effective, effective, or highly effective under the performance evaluation system under section 1249. Effectiveness shall be measured by the performance evaluation system under section 1249, and the personnel decisions shall be made based on the following factors:

(i) Individual performance shall be the majority factor in making the decision, and shall consist of but is not limited to all of the following:

(A) Evidence of student growth, which shall be the predominant factor in assessing an employee's individual performance.

(B) The teacher's demonstrated pedagogical skills, including at least a special determination concerning the teacher's knowledge of his or her subject area and the ability to impart that knowledge through planning, delivering rigorous content, checking for and building higher-level understanding, differentiating, and managing a classroom; and consistent preparation to maximize instructional time.

(C) The teacher's management of the classroom, manner and efficacy of disciplining pupils, rapport with parents and other teachers, and ability to withstand the strain of teaching.

(D) The teacher's attendance and disciplinary record, if any.

(ii) Significant, relevant accomplishments and contributions. This factor shall be based on whether the individual contributes to the overall performance of the school by making clear, significant, relevant contributions above the normal expectations for an individual in his or her peer group and having demonstrated a record of exceptional performance.

(iii) Relevant special training. This factor shall be based on completion of relevant training other than the professional development or continuing education that is required by the employer or by state law, and integration of that training into instruction in a meaningful way.

(c) Except as otherwise provided in this subdivision, length of service or tenure status shall not be a factor in a personnel decision described in subdivision (a) or (b). However, if that personnel decision involves 2 or more employees and all other factors distinguishing those employees from each other are equal, then length of service or tenure status may be considered as a tiebreaker.

(2) If a collective bargaining agreement is in effect for employees of a school district or intermediate school district as of the effective date of this section and if that collective bargaining agreement prevents compliance with subsection (1), then subsection (1) does not apply to that school district or intermediate school district until after the expiration of that collective bargaining agreement.

(3) If a teacher brings an action against a school district or intermediate school district based on this section, the teacher's sole and exclusive remedy shall be an order of reinstatement commencing 30 days after a decision by a court of competent jurisdiction. The remedy in an action brought by a teacher based on this section shall not include lost wages, lost benefits, or any other economic damages.

Sec. 1249. (1) Not later than September 1, 2011, and subject to subsection (9), with the involvement of teachers and school administrators, the board of a school district or intermediate school district or board of directors of a public school academy shall adopt and implement for all teachers and school administrators a rigorous, transparent, and fair performance evaluation system that does all of the following:

(a) Evaluates the teacher's or school administrator's job performance at least annually while providing timely and constructive feedback.

(b) Establishes clear approaches to measuring student growth and provides teachers and school administrators with relevant data on student growth.

(c) Evaluates a teacher's or school administrator's job performance, using multiple rating categories that take into account data on student growth as a significant factor. For these purposes, student growth shall be measured by national, state, or local assessments and other objective criteria. If the performance evaluation system implemented by a school district, intermediate school district, or public school academy under this section does not already include the rating of teachers as highly effective, effective, minimally effective, and ineffective, then the school district, intermediate school district, or public school academy shall revise the performance evaluation system within 60 days after the effective date of the amendatory act that added this sentence to ensure that it rates teachers as highly effective, effective, minimally effective, or ineffective.

(d) Uses the evaluations, at a minimum, to inform decisions regarding all of the following:

(i) The effectiveness of teachers and school administrators, ensuring that they are given ample opportunities for improvement.

(ii) Promotion, retention, and development of teachers and school administrators, including providing relevant coaching, instruction support, or professional development.

(iii) Whether to grant tenure or full certification, or both, to teachers and school administrators using rigorous standards and streamlined, transparent, and fair procedures.

(iv) Removing ineffective tenured and untenured teachers and school administrators after they have had ample opportunities to improve, and ensuring that these decisions are made using rigorous standards and streamlined, transparent, and fair procedures.

(2) Beginning with the 2013-2014 school year, the board of a school district or intermediate school district or board of directors of a public school academy shall ensure that the performance evaluation system for teachers meets all of the following:

(a) The performance evaluation system shall include at least an annual year-end evaluation for all teachers. An annual year-end evaluation shall meet all of the following:

(i) For the annual year-end evaluation for the 2013-2014 school year, at least 25% of the annual year-end evaluation shall be based on student growth and assessment data. For the annual year-end evaluation for the 2014-2015 school year, at least 40% of the annual year-end evaluation shall be based on student growth and assessment data. Beginning with the annual year-end evaluation for the 2015-2016 school year, at least 50% of the annual year-end evaluation shall be based on student growth and assessment data. All student growth and assessment data shall be measured using the student growth assessment tool that is required under legislation enacted by the legislature under subsection (6) after review of the recommendations contained in the report of the governor's council on educator effectiveness submitted under subsection (5).

(ii) If there are student growth and assessment data available for a teacher for at least 3 school years, the annual year-end evaluation shall be based on the student growth and assessment data for the most recent 3-consecutive-school-year period. If there are not student growth and assessment data available for a teacher for at least 3 school years, the annual year-end evaluation shall be based on all student growth and assessment data that are available for the teacher.

(iii) The annual year-end evaluation shall include specific performance goals that will assist in improving effectiveness for the next school year and are developed by the school administrator or his or her designee conducting the evaluation, in consultation with the teacher, and any recommended training identified by the school administrator or designee, in consultation with the teacher, that would assist the teacher in meeting these goals. For a teacher described in subdivision (b), the school administrator or designee shall develop, in consultation with the teacher, an individualized development plan that includes these goals and training and is designed to assist the teacher to improve his or her effectiveness.

(b) The performance evaluation system shall include a midyear progress report for a teacher who is in the first year of the probationary period prescribed by section 1 of article II of 1937 (Ex Sess) PA 4, MCL 38.81, or who received a rating of minimally effective or ineffective in his or her most recent annual year-end evaluation. The midyear progress report shall be used as a supplemental tool to gauge a teacher's improvement from the preceding school year and to assist a teacher to improve. All of the following apply to the midyear progress report:

(i) The midyear progress report shall be based at least in part on student achievement.

(ii) The midyear progress report shall be aligned with the teacher's individualized development plan under subdivision (a)(iii).

(iii) The midyear progress report shall include specific performance goals for the remainder of the school year that are developed by the school administrator conducting the annual year-end evaluation or his or her designee and any recommended training identified by the school administrator or designee that would assist the teacher in meeting these goals. At the midyear progress report, the school administrator or designee shall develop, in consultation with the teacher, a written improvement plan that includes these goals and training and is designed to assist the teacher to improve his or her rating.

(iv) The midyear progress report shall not take the place of an annual year-end evaluation.

(c) The performance evaluation system shall include classroom observations to assist in the performance evaluations. All of the following apply to these classroom observations:

(i) Except as provided in this subdivision, the manner in which a classroom observation is conducted shall be prescribed in the evaluation tool for teachers described in subdivision (d).

(ii) A classroom observation shall include a review of the teacher's lesson plan and the state curriculum standard being used in the lesson and a review of pupil engagement in the lesson.

(iii) A classroom observation does not have to be for an entire class period.

(iv) Unless a teacher has received a rating of effective or highly effective on his or her 2 most recent annual year-end evaluations, there shall be multiple classroom observations of the teacher each school year.

(d) For the purposes of conducting annual year-end evaluations under the performance evaluation system, the school district, intermediate school district, or public school academy shall adopt and implement the state evaluation tool for teachers that is required under legislation enacted by the legislature under subsection (6) after review of the recommendations contained in the report of the governor's council on educator effectiveness submitted under subsection (5). However, if a school district, intermediate school district, or public school academy has a local evaluation tool for teachers that is consistent with the state evaluation tool, the school district, intermediate school district, or public school academy may conduct annual year-end evaluations for teachers using that local evaluation tool.

(e) The performance evaluation system shall assign an effectiveness rating to each teacher of highly effective, effective, minimally effective, or ineffective, based on his or her score on the annual year-end evaluation described in this subsection.

(f) As part of the performance evaluation system, and in addition to the requirements of section 1526, a school district, intermediate school district, or public school academy is encouraged to assign a mentor or coach to each teacher who is described in subdivision (b).

(g) The performance evaluation system may allow for exemption of student growth data for a particular pupil for a school year upon the recommendation of the school administrator conducting the annual year-end evaluation or his or her designee and approval of the school district superintendent or his or her designee, intermediate superintendent or his or her designee, or chief administrator of the public school academy, as applicable.

(h) The performance evaluation system shall provide that, if a teacher is rated as ineffective on 3 consecutive annual year-end evaluations, the school district, public school academy, or intermediate school district shall dismiss the teacher from his or her employment. This subdivision does not affect the ability of a school district, intermediate school district, or public school academy to dismiss an ineffective teacher from his or her employment regardless of whether the teacher is rated as ineffective on 3 consecutive annual year-end evaluations.

(i) The performance evaluation system shall provide that, if a teacher is rated as highly effective on 3 consecutive annual year-end evaluations, the school district, intermediate school district, or public school academy may choose to conduct a year-end evaluation biennially instead of annually. However, if a teacher is not rated as highly effective on 1 of these biennial year-end evaluations, the teacher shall again be provided with annual year-end evaluations.

(j) The performance evaluation system shall provide that, if a teacher who is not in a probationary period prescribed by section 1 of article II of 1937 (Ex Sess) PA 4, MCL 38.81, is rated as ineffective on an annual year-end evaluation, the teacher may request a review of the evaluation and the rating by the school district superintendent, intermediate superintendent, or chief administrator of the public school academy, as applicable. The request for a review must be submitted in writing within 20 days after the teacher is informed of the rating. Upon receipt of the request, the school district superintendent, intermediate superintendent, or chief administrator of the public school academy, as applicable, shall review the evaluation and rating and may make any modifications as appropriate based on his or her review. However, the performance evaluation system shall not allow for a review as described in this subdivision more than twice in a 3-school-year period.

(3) Beginning with the 2013-2014 school year, the board of a school district or intermediate school district or board of directors of a public school academy shall ensure that the performance evaluation system for building-level school administrators and for central office-level school administrators who are regularly involved in instructional matters meets all of the following:

(a) The performance evaluation system shall include at least an annual year-end evaluation for all school administrators described in this subsection by the school district superintendent or his or her designee, intermediate superintendent or his or her designee, or chief administrator of the public school academy, as applicable, except that a superintendent or chief administrator shall be evaluated by the board or board of directors.

(b) For the annual year-end evaluation for the 2013-2014 school year, at least 25% of the annual year-end evaluation shall be based on student growth and assessment data. For the annual year-end evaluation for the 2014-2015 school year, at least 40% of the annual year-end evaluation shall be based on student growth and assessment data. Beginning with the annual year-end evaluation for the 2015-2016 school year, at least 50% of the annual year-end evaluation shall be based on student growth and assessment data. The student growth and assessment data to be used for the school administrator annual year-end evaluation are the aggregate student growth and assessment data that are used in teacher annual year-end evaluations in each school in which the school administrator works as an administrator or, for a central-office level school administrator, for the entire school district or intermediate school district.

(c) The portion of the annual year-end evaluation that is not based on student growth and assessment data shall be based on at least the following for each school in which the school administrator works as an administrator or, for a central-office level school administrator, for the entire school district or intermediate school district:

(i) If the school administrator conducts teacher performance evaluations, the school administrator's training and proficiency in using the evaluation tool for teachers described in subsection (2)(d), including a random sampling of his or her teacher performance evaluations to assess the quality of the school administrator's input in the teacher performance evaluation system. If the school administrator designates another person to conduct teacher performance evaluations,

the evaluation of the school administrator on this factor shall be based on the designee's training and proficiency in using the evaluation tool for teachers described in subsection (2)(d), including a random sampling of the designee's teacher performance evaluations to assess the quality of the designee's input in the teacher performance evaluation system, with the designee's performance to be counted as if it were the school administrator personally conducting the teacher performance evaluations.

(ii) The progress made by the school or school district in meeting the goals set forth in the school's school improvement plan or the school district's school improvement plans.

(iii) Pupil attendance in the school or school district.

(iv) Student, parent, and teacher feedback, and other information considered pertinent by the superintendent or other school administrator conducting the performance evaluation or the board or board of directors.

(d) For the purposes of conducting performance evaluations under the performance evaluation system, the school district, intermediate school district, or public school academy shall adopt and implement the state evaluation tool for school administrators described in this subsection that is required under legislation enacted by the legislature under subsection (6) after review of the recommendations contained in the report of the governor's council on educator effectiveness submitted under subsection (5). However, if a school district, intermediate school district, or public school academy has a local evaluation tool for school administrators described in this subsection that is consistent with the state evaluation tool, the school district, intermediate school district, or public school academy may conduct performance evaluations for school administrators using that local evaluation tool.

(e) The performance evaluation system shall assign an effectiveness rating to each school administrator described in this subsection of highly effective, effective, minimally effective, or ineffective, based on his or her score on the evaluation tool described in subdivision (d).

(f) The performance evaluation system shall ensure that if a school administrator described in this subsection is rated as minimally effective or ineffective, the person or persons conducting the evaluation shall develop and require the school administrator to implement an improvement plan to correct the deficiencies. The improvement plan shall recommend professional development opportunities and other measures designed to improve the rating of the school administrator on his or her next annual year-end evaluation.

(g) The performance evaluation system shall provide that, if a school administrator described in this subsection is rated as ineffective on 3 consecutive annual year-end evaluations, the school district, public school academy, or intermediate school district shall dismiss the school administrator from his or her employment. However, this subdivision applies only if the 3 consecutive annual year-end evaluations are conducted using the same evaluation tool and under the same performance evaluation system. This subdivision does not affect the ability of a school district, intermediate school district, or public school academy to dismiss an ineffective school administrator from his or her employment regardless of whether the school administrator is rated as ineffective on 3 consecutive annual year-end evaluations.

(h) The performance evaluation system shall provide that, if a school administrator is rated as highly effective on 3 consecutive annual year-end evaluations, the school district, intermediate school district, or public school academy may choose to conduct a year-end evaluation biennially instead of annually. However, if a school administrator is not rated as highly effective on 1 of these biennial year-end evaluations, the school administrator shall again be provided with annual year-end evaluations.

(4) The governor's council on educator effectiveness is created as a temporary commission described in section 4 of article V of the state constitution of 1963. All of the following apply to the governor's council on educator effectiveness:

(a) The governor's council on educator effectiveness shall consist of the following 5 voting members:

(i) The governor shall appoint 3 members.

(ii) The senate majority leader shall appoint 1 member.

(iii) The speaker of the house of representatives shall appoint 1 member.

(b) In addition to the members appointed under subdivision (a), the superintendent of public instruction or his or her designee shall serve as a nonvoting member.

(c) The members appointed under subdivision (a), and the designee of the superintendent of public instruction if he or she appoints a designee, shall have expertise in 1 or more of the following areas: psychometrics, measurement, performance-based educator evaluation models, educator effectiveness, or development of educator evaluation frameworks in other states.

(d) Not later than October 31, 2011, the governor's council on educator effectiveness shall contract with 1 or more additional experts in the areas described in subdivision (c) as the council considers necessary.

(e) The governor shall appoint an advisory committee for the governor's council on educator effectiveness to provide input on the council's recommendations. The advisory committee shall consist of public school teachers, public school administrators, and parents of public school pupils.

(f) The governor's office shall provide staffing and support for the governor's council on educator effectiveness.

(5) Not later than April 30, 2012, the governor's council on educator effectiveness shall submit to the state board, the governor, and the legislature a report that identifies and recommends all of the following for the purposes of this section and that includes recommendations on evaluation processes and other matters related to the purposes of this section:

(a) A student growth and assessment tool. The student growth and assessment tool shall meet all of the following:

(i) Is a value-added model that takes into account student achievement and assessment data, and is based on an assessment tool that has been determined to be reliable and valid for the purposes of measuring value-added data.

(ii) In addition to measuring student growth in the core subject areas of mathematics, science, English language arts, and social science, will measure student growth in other subject areas.

(iii) Complies with all current state and federal law for students with a disability.

(iv) Has at least a pre- and post-test.

(v) Is able to be used for pupils of all achievement levels.

(b) A state evaluation tool for teachers. All of the following apply to this recommendation:

(i) In addition to the student growth and assessment tool, the recommended state evaluation tool for teachers may include, but is not limited to, instructional leadership abilities, teacher and pupil attendance, professional contributions, training, progress report achievement, school improvement plan progress, peer input, and pupil and parent feedback.

(ii) The council shall ensure that the recommended state evaluation tool for teachers will allow all special education teachers to be rated.

(iii) The council shall seek input from school districts, intermediate school districts, and public school academies that have already developed and implemented successful, effective performance evaluation systems.

(c) A state evaluation tool for school administrators described in subsection (3). In addition to the student growth and assessment tool, the recommended state evaluation tool for these school administrators may include, but is not limited to, teacher and pupil attendance, graduation rates, professional contributions, training, progress report achievement, school improvement plan progress, peer input, and pupil and parent feedback.

(d) For the purposes of the recommended state evaluation tools for teachers and school administrators under subdivisions (b) and (c), recommended parameters for the effectiveness rating categories for teachers under subsection (2)(e) and for school administrators under subsection (3)(e).

(e) Recommended changes to be made in the requirements for a professional education teaching certificate that will ensure that a teacher is not required to complete additional postsecondary credit hours beyond the credit hours required for a provisional teaching certificate.

(f) A process for evaluating and approving local evaluation tools for teachers under subsection (2)(d) and school administrators under subsection (3)(d).

(6) It is the intent of the legislature to review the report submitted by the governor's council on educator effectiveness under subsection (5) and to enact appropriate legislation to put into place a statewide performance evaluation system taking into consideration the recommendations contained in the report.

(7) If all of the following apply for a public school operated by a school district, intermediate school district, or public school academy, then the school district, intermediate school district, or public school academy is not required to comply with subsection (2) or (3) for that public school:

(a) As of the effective date of this subsection, the school district, intermediate school district, or public school academy has already implemented and is currently using a performance evaluation system for that public school that meets all of the following requirements:

(i) Under the system, the most significant portion of a teacher's or school administrator's evaluation is based on student growth and assessment data, which may include value-added measures.

(ii) The system uses research-based measures to determine student growth, which may be measured by standards-based, nationally normed assessments.

(iii) The system determines professional competence through multiple direct observations of classroom practices and professional practices throughout the school year.

(iv) Under the system, teacher effectiveness and ratings, as measured by student achievement and growth data, are factored into teacher retention, promotion, and termination decisions.

(v) Under the system, teacher and school administrator performance evaluation results are used to inform teacher professional development for the succeeding year.

(vi) The system ensures that teachers and school administrators are evaluated at least annually.

(b) The school district, intermediate school district, or public school academy notifies the governor's council on educator effectiveness by November 1, 2011 that it is exempt under this subsection from the requirements of subsections (2) and (3).

(c) The school district, intermediate school district, or public school academy posts a description of its evaluation system on its website.

(8) If, after the effective date of this subsection, a school district, intermediate school district, or public school academy begins operating a new public school, or implements a new performance evaluation system for a public school it operates, and all of the following apply, then the school district, intermediate school district, or public school academy is not required to comply with subsection (2) or (3) for that public school:

(a) The performance evaluation system adopted and implemented for that public school replicates and is identical to the performance evaluation system of a public school that is exempt under subsection (7).

(b) The school district, intermediate school district, or public school academy posts a description of the performance evaluation system on its website.

(9) If a collective bargaining agreement is in effect for teachers or school administrators of a school district, public school academy, or intermediate school district as of the effective date of the 2011 amendatory act that amended this subsection, and if that collective bargaining agreement prevents compliance with subsection (1), then subsection (1) does not apply to that school district, public school academy, or intermediate school district until after the expiration of that collective bargaining agreement.

(10) A school district, intermediate school district, or public school academy shall continue to conduct the evaluations for school principals that are currently required by the department through the 2010-2011 school year. At the end of the 2010-2011 school year, a school district, intermediate school district, or public school academy shall report the most recently completed or determined "effectiveness label" from that evaluation for each principal who is in place for 2010-2011, in a form and manner prescribed by the department.

Sec. 1249a. Beginning in 2015-2016, if a pupil is assigned to be taught by a teacher who has been rated as ineffective on his or her 2 most recent annual year-end evaluations under section 1249, the board of the school district or intermediate school district or board of directors of the public school academy in which the pupil is enrolled shall notify the pupil's parent or legal guardian that the pupil has been assigned to a teacher who has been rated as ineffective on his or her 2 most recent annual year-end evaluations. The notification shall be in writing, shall be delivered to the parent or legal guardian not later than July 15 immediately preceding the beginning of the school year for which the pupil is assigned to the teacher, and shall identify the teacher who is the subject of the notification.

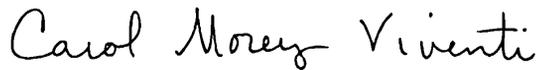
Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 96th Legislature are enacted into law:

- (a) House Bill No. 4625.
- (b) House Bill No. 4626.
- (c) House Bill No. 4628.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor