

Legislative Analysis



REPEAL PROHIBITION ON LENGTH OF SERVICE AS AN ALLOWABLE COLLECTIVE BARGAINING ITEM

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House Bill 4820 as enacted
Public Act 116 of 2023
Sponsor: Rep. Phil Skaggs
House Committee: Education
Senate Committee: Education [Discharged]
Complete to 9-5-24

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

SUMMARY:

House Bill 4820 amends section 1248 of the Revised School Code to modify the extent to which length of service (i.e., seniority) may be used in a policy governing certain personnel decisions made by the board of a school district or intermediate school district (ISD) or the board of directors of a public school academy (PSA), as well as making other changes regarding what may be part of such a policy.

The bill amends the definition of who constitutes a teacher for purposes of applicability of the provisions of section 1248 of the code. Previously, *teacher* meant a certificated individual employed for a full school year by any board of education or controlling board.

Under the bill, *teacher* means an individual who has a valid Michigan teaching certificate or authorization or who is engaged to teach under section 1233b of the code;¹ 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 students in any of grades K to 12 as a teacher of record.

Previously, the school board of a school district or ISD could not adopt a policy under which length of service or tenure status was the *primary* or *determining* factor in making certain personnel decisions regarding eliminating positions, layoffs, or hiring or recalling staff after a staffing or program reduction.

The bill instead prohibits a board from adopting a policy under which length of service is the *sole* factor in making personnel decisions when filling a vacancy, placing a teacher in a classroom, or conducting a staffing or program reduction or another personnel determination that results in the elimination of a position. (As before, length of service may be considered as a tiebreaker in making personnel decisions about employees in cases where the other applicable factors are equal.)

The law also previously required that the personnel policy prioritize retaining effective educators and that, as part of the policy, individual performance be the majority factor in determining personnel decisions (using specified criteria). It also stipulated that an individual who was rated as ineffective under the educator evaluation system in section 1249 of the code could not be given any preference, under a policy adopted by a board, that would result in their

¹ <http://legislature.mi.gov/doc.aspx?mcl-380-1233b>

being retained over a teacher with a rating higher than ineffective. The bill eliminates these provisions.

The bill adds language stating that a board or board of directors must adopt, implement, maintain, and comply with clear and transparent procedures for all personnel decisions under section 1248. The bill requires that effectiveness, as measured under the performance evaluation system in section 1249 of the code² or as otherwise collectively bargained, *must* be used as a factor for personnel decisions under section 1248. The bill further specifies that any other relevant factors *may* be used for personnel decisions, including the following:

- The teacher's length of service in a grade level or subject area.
- The teacher's disciplinary record. [Previously, a teacher's attendance and disciplinary record were among the factors required to be considered as part of a teacher's individual performance.]
- Relevant special training. [This factor was previously required to be considered, but not as part of a teacher's individual performance.]

Finally, the bill eliminates language that previously provided that a teacher's sole form of legal remedy for an alleged violation of section 1248 was a court order of reinstatement commencing within 30 days of the court decision and could not include lost wages, lost benefits, or other economic damages.

The bill took effect July 1, 2024.

MCL 380.1248

BACKGROUND:

Section 1248 was added by 2011 PA 102 as part of a four-bill package that modified teacher tenure practices in Michigan, required more frequent evaluations, and amended the layoff and recall procedures that schools could use when placing teachers.³

Prior to 2011 PA 102, layoffs and recalls were often done on a last-in-first-out (LIFO) basis, meaning that the most recently hired teachers were the first to be laid off if positions needed to be eliminated. This policy led to new teachers losing their jobs during layoffs, while colleagues who had received tenure (which was granted following four years of teaching on a probationary basis) were less likely to lose their positions. This led to complaints about fairness, as newer teachers, regardless of their efficacy, were being laid off before teachers with more years of service, even if the more experienced teacher had received lower evaluation ratings in the prior year or had previously faced disciplinary action.

2011 PA 102 implemented restrictions on LIFO-based policies, prohibiting school boards from adopting a policy for layoff and recall placements that was based on length of service, and instead requiring that policies be created and implemented with the goal of retaining effective teachers and basing layoffs and recalls on factors other than seniority. 2011 PA 103 included a specific prohibition on teacher placement being a part of a collective bargaining agreement,

² <http://legislature.mi.gov/doc.aspx?mcl-380-1249-amended> (This version of section 1249 reflects amendments made by 2023 PA 224 that will also take effect July 1, 2024.)

³ <https://www.legislature.mi.gov/documents/2011-2012/billanalysis/House/pdf/2011-HLA-4625-4.pdf>

effectively leaving decisions regarding what policy should govern teacher placement up to each school board or PSA board of directors. (House Bill 4354, enacted as 2023 PA 115, repealed this prohibition.⁴)

While opponents of the 2011 reforms characterized them as anti-union measures that would make the teaching profession less attractive, supporters claimed the opposite, saying that individuals would be more likely to enter the profession if they knew their effectiveness as a teacher, rather than their years of service in a school or district, was the primary factor for determining which positions may be eliminated. However, a 2019 study authored by researchers from Michigan State University and the University of Connecticut found “no evidence” that the changes made in the 2011 laws increased the attrition rates of late-, mid-, or early-career teachers relative to professional staff in the short run.⁵

Because House Bill 4820 does not require that placement policies follow a single standard, it is possible that a district and its union could agree to continue an existing policy for determining placement of teachers. However, due to the bill’s definition change, those who are certified as teachers but working in non-classroom roles such as instruction coach or interventionist would need to be explicitly addressed in collective bargaining agreements signed after the bill’s effective date to either intentionally include or exclude them, depending on what is determined through collective bargaining.

BRIEF DISCUSSION:

Supporters of the bill argue that it will allow teachers a greater say in their placement and allow teachers in each district to have formal input, through the collective bargaining process, in establishing the placement policy in their district. If a school currently has a personnel placement model that is supported by both teachers and administrators, enshrining that policy into a collective bargaining agreement will provide stability and certainty to teachers working in that school or district if there is turnover in that school’s or district’s administration.

Supporters also note that, with many districts struggling with teacher turnover, it is appropriate to reward loyalty by offering teachers who have the most experience in that school or district preference in choosing which class or classes they want to teach. Additionally, supporters of the bill argue that having placement policies solely reliant on teacher performance as measured by their students’ standardized testing results makes teachers less willing to take on a different assignment with a new grade or subject for fear that a decrease in standardized test performance from the prior class to their new one will have an adverse impact on their evaluation.

Two main arguments against the bill have been presented. The first is that allowing consideration of length of service to play a role in determining teacher placement detracts from what critics say should be the only consideration: teacher performance as measured by standardized measures taken annually. The second argument is similar to criticisms regarding labor contracts in general, which is that those contracts do not allow enough flexibility to managers (or administrators, in the case of schools) to make personnel decisions quickly when unanticipated circumstances arise. With many Michigan schools reporting difficulties in filling vacancies, school administrators fear that allowing additional criteria regarding personnel

⁴ <http://legislature.mi.gov/doc.aspx?2023-HB-4354>

⁵ https://www.bridgemi.com/sites/default/files/2023-05/TLM_Responses_to_Statewide_Reform.pdf

placement for collective bargaining will make filling vacancies even more difficult if a teacher does not want to give up an existing assignment to take on a new one based on perceived need by their school administration.

FISCAL IMPACT:

The bill would have no impact on the state and would have an indeterminate impact on local school districts, ISDs, and PSAs. The bill permits, but does not require, other factors that determine personnel placement (e.g., seniority) to be included in a collective bargaining agreement. The bill expands the scope of personnel decisions that would apply and limits the scope of the definition of "teacher" for whom the provisions would apply. The fiscal impact on an individual district, ISD, or PSA will depend on how the district, ISD, or PSA revises a collective bargaining agreement given the changes in the bill.

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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.