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BILL ANALYSIS

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Senate Bill 395 (Substitute S-5 as passed by the Senate)
Senate Bill 396 (as passed by the Senate)
Sponsor: Senator Dayna Polehanki (S.B. 395)
Senator Kristin McDonald Rivet (S.B. 396)
Committee: Education

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INTRODUCTION

Collectively, the bills would amend teacher and school administrator evaluations. They would base evaluations on district-adopted evaluation tools, objective criteria, and student performance and assessment data. The percentage of the annual evaluation based on student performance and assessment data would have to be determined through collective bargaining and could not exceed 20%. The bills would require a school district, intermediate school district (ISD), or public school academy (PSA) to include the rating of teachers and school administrators as highly effective, effective, minimally effective, and ineffective until July 1, 2024. Then, the performance evaluation system implemented would have to include the ratings of effective, developing, and needing support. School administrators, like teachers, also could be subject to midyear evaluations. In addition, the bill would modify requirements related to midyear evaluations and classroom observations and prohibit evaluations from being used to inform tenure or full certification for teachers or administrators or the removal of ineffective teachers and school administrators.

FISCAL IMPACT

The bills would have a minimal fiscal impact on the Michigan Department of Education and an indeterminate fiscal impact on local school districts, ISDs, and PSAs. The Department would experience a minor fiscal impact to update the list of teacher evaluation tools with tools that were developed and that demonstrated evidence of efficacy. School districts, ISDs, and PSAs would experience an indeterminate fiscal impact. Schools could experience costs to update teacher and school administrator evaluations and to include collective bargaining agreements as part of that process. Allowing more teachers that show multiple years of effective ratings to be evaluated less often could reduce the annual cost of conducting evaluations. Similarly, allowing some exemption for teachers' evaluations also would result in savings. The difference in schools, teachers, and collective bargaining makes an overall fiscal impact indeterminate.

BRIEF RATIONALE

In 2011, the Legislature enacted Public Acts 100 through 103, which amended the Code to establish the evaluation system still largely used today. These reforms sought to hold teachers and administrators accountable for their work in the classroom for the benefit of students; however, according to testimony, the current evaluation system instead harms teachers and fails students. Reportedly, many teachers are stressed by the demands, implementation, and potential punitive action from evaluations, which may not accurately measure capabilities. It has been suggested that the teacher and administrator evaluation system be modified.

MCL 380.1230b et al. (S.B. 395)
38.74 et al. (S.B. 396)

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CONTENT

Senate Bill 395 (S-5) would amend the Revised School Code to do the following:

- Require, beginning the 2024-2025 school year, the percentage of teacher and administrator year-end evaluations based on student performance and assessment data to be determined through collective bargaining agreements; however, the percentage could not exceed 20%.
- Require, before July 1, 2024, the performance evaluation system implemented by a school district, ISD, or PSA to include the ratings of highly effective, effective, minimally effective, and ineffective, and beginning July 1, 2024, the ratings of effective, developing, and needing support.
- Prescribe the conditions under which a teacher or school administrator could be deemed unevaluated.
- Prohibit evaluation results from being used to decide whether to grant tenure or full certification to teachers or administrators or whether to remove ineffective tenured and untenured teachers and school administrators.
- Require teachers and administrators to be evaluated at the end of each year by an evaluation tool and other objective criteria, deleting current requirements.
- Require school administrators to be subject to midyear evaluations under certain circumstances, similar to the current requirement for teachers.
- Modify requirements related to teacher midyear evaluations and classroom observations.
- Require a teacher or administrator to be dismissed from employment if the teacher or administrator received the rating of "needing support" on three consecutive year-end evaluations, instead of the rating of "ineffective".
- Allow an administrator to be evaluated biennially or, for a teacher, triennially, if administrator or teacher were rated as highly effective or effective on the three most recent consecutive-year-end evaluations.
- Allow a teacher or school administrator to request a review of an evaluation if the teacher or school administrator were rated as needing support.
- Allow a teacher or school administrator to request binding arbitration by filing a demand for arbitration with the Michigan Employment Relations Commission, if the administrator or teacher's contract or collective bargaining agreement did not contain a grievance procedure.
- Require an individual who conducted an evaluation to complete rater reliability training provided by the school district, ISD, PSA, or the entity that employed the individual and prescribe the standards of this training.
- Modify provisions related to Grade 3 reading assessments and programs.
- Modify provisions related to unprofessional conduct disclosure procedures.
- Repeal sections 1250, 1531j, and 1531k of the Revised School Code.

Senate Bill 396 would amend the teachers' tenure Act to do the following:

- Modify the definition of "demote".
- Update provisions related to teachers' probationary periods and evaluations in accordance with **Senate Bill 395 (S-5)**.

The bills are tie-barred and would take effect July 1, 2024.

Senate Bill 395 (S-5)

Annual Evaluations for Teachers and Administrators

The Revised School Code requires the board of a school district or ISD or board of directors of a PSA to adopt and implement for all teachers and school administrators a rigorous, transparent, and fair performance evaluation system. Under the bill, the system would have to be developed after collective bargaining with any collective bargaining representative of teachers and school administrators. The bill would specify that the Code's provisions concerning annual evaluations would not impair the right or duty of a public school employer and a collective bargaining representative to engage in collective bargaining over the topic of performance evaluations under the public employment relations Act.

Currently, the evaluation system must fulfill the following requirements:

- Evaluate the teacher or school administrator's job performance at least annually while providing timely and constructive feedback.
- Establish clear approaches to measuring student growth and provide teachers and school administrators with relevant data on student growth.
- Evaluate a teacher or school administrator's job performance, using multiple rating categories that consider student growth and assessment data.

The bill would delete a provision requiring student growth to be measured using multiple measures that may include student learning objectives, achievement of individualized education program goals, nationally normed or locally developed assessments that are aligned to State standards, research-based growth measures, or alternative assessments that are rigorous and comparable across schools within the school district, ISD, or PSA. Instead, it would require student growth and assessment data to be measured using metrics agreed upon through collective bargaining. Beginning in the 2025-2025 school year, the percentage of the annual year end evaluations based on student growth and assessment data also would have to be determined through collective bargaining but could not exceed 20% of the evaluation.¹ This percentage would have to be the same for teachers and school administrators.

Additionally, the bill would retain the requirement that the evaluation system evaluate a teacher's or administrator's performance while providing timely and constructive feedback but would remove the requirement that this be conducted *at least annually*.

Under the bill, the current performance evaluation system implemented by a school district, ISD, or PSA would have to include the rating of teachers and school administrators as highly effective, effective, minimally effective, and ineffective before July 1, 2024. Beginning July 1, 2024, the performance evaluation system implemented by a school district, ISD, or PSA would have to include the rating of teachers and administrators as effective, developing, and needing support.

An evaluation and feedback concerning the evaluation would have to be provided, in writing, to the teacher or administrator being evaluated. If a written evaluation were not provided, the teacher would be deemed effective. A teacher or administrator could not be assigned an evaluation rating and would be designated as unevaluated for a school year if any of the following applied to the teacher or administrator:

¹ Currently, 40% of year end evaluations are based on student growth and assessment data.

- The teacher or administrator worked fewer than 60 days in that school year.
- The teacher or administrator's evaluation results were vacated through the grievance procedure or arbitration.
- There were extenuating circumstances and the teacher or administrator and the school district, ISD, or PSA decided to designate the teacher or administrator as unevaluated because of this.

If an administrator received an unevaluated designation, the administrator's rating from the school year prior to that designation would have to be used if a rating were necessary and if the following circumstances were met:

- The school administrator continued to be employed in the same position the administrator was employed in before the administrator received the unevaluated designation.
- The school administrator continued to be employed by the same school district, ISD, or PSA that employed the administrator before the administrator received the unevaluated designation.

Currently, evaluations must be used to inform decisions regarding the following:

- The effectiveness of teachers and school administrators, ensuring that they are given ample opportunities for improvement.
- The promotion, retention, and development of teachers and school administrators, including providing relevant coaching, instruction support, or professional development.
- Whether to grant tenure or full certification, or both, to teachers and school administrators using rigorous standards and streamlined, transparent, and fair procedures.
- Removing ineffective tenured and untenured teachers and school administrators after they have had ample opportunities to improve, ensuring that these decisions are made using rigorous standards and streamlined, transparent, and fair procedures.

The bill would delete the latter two uses of evaluations, their use for granting tenure or full certification and their use for removing ineffective teachers. Additionally, evaluations could not be used to inform decisions regarding the *promotion or retention* of teachers and school administrators.

Additionally, the bill would delete the following teacher-specific year-end evaluation requirements:

- For core content areas in grades and subjects in which State assessments are administered, 50% of student growth must be measured using the State assessments, and the portion of student growth not measured using State assessments must be measured using multiple research-based growth measures or alternative assessments that are rigorous and comparable across schools within the school district, ISD, or PSA.
- If there are student growth and assessment data available for a teacher for at least three school years, the annual year-end evaluation must be based on the student growth and assessment data for the most recent three-consecutive-school-year period.
- 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 and approval of the school district superintendent, intermediate superintendent, or administrator of a PSA, or their designees.

Currently, the student growth and assessment data to be used for the school administrator annual 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 ISD. The portion of an evaluation not based on student growth and assessment data must be based on, for a school administrator who conducts teacher performance evaluations, the school administrator's proficiency in using their school's evaluation tool for teachers; for an administrator who designates this task to another person, the designee's performance, counted as if it were the school administrator personally conducting the teacher performance evaluations; 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; pupil attendance in the school or school district; student, parent, and teacher feedback, as available, and other information considered pertinent by the superintendent or other school administrator conducting the performance evaluation or the board or board of directors. The bill would delete these provisions.

The bill would maintain a current requirement that the school district, ISD, or PSA must develop or adopt and implement an evaluation tool for teachers and school administrators, which would measure performance. Any portion of an evaluation not based on this evaluation tool would have to be based on objective criteria.

For a building-level school administrator's evaluation, the individual conducting the evaluation would have to visit the school building where the building-level school administrator worked, review the building-level school 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 had on learning.

Additionally, as part of the performance evaluation system, a school district, ISD, or PSA must assign a mentor or coach to each school administrator for the first three years in which the administrator is in a new administrative position. This provision would not include a school district superintendent, an intermediate superintendent, or a chief administrator.

Midyear Evaluations for Teachers and Administrators

The performance evaluation system must include a midyear progress report for a teacher who is in the first year of the probationary period under Chapter II (Probationary Period) of the teachers' tenure Act.^[1] A teacher who received a rating of minimally effective or ineffective, or, under the bill, needing support or developing, during the previous year-end evaluation also would have to receive a midyear progress report. The bill would delete a requirement that the midyear progress report be based at least in part on student achievement.

Under the bill, the performance evaluation system also would have to include a midyear progress report for a school administrator each year that the school administrator was evaluated. The midyear progress report would have to 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 progress 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 were developed by the individual conducting the year-end evaluation or the individual's designee and 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 year-end evaluation or the individual's designee would have to develop, in consultation with the school administrator, a

written improvement plan that included these goals and training and was designed to assist the school administrator to improve the school administrator's rating. The midyear progress report could not take the place of a year-end evaluation.

Teacher Classroom Observations

Currently, the performance evaluation system must include classroom observations to assist in the evaluations. A classroom observation must include a review of a teacher's lesson plan and the State curriculum standard being used in the lesson, as well as a review of pupil engagement in the lesson. The bill would require these reviews to be discussed during a post-observation meeting between the school administrator conducting the observation and the teacher, as well as provided to the teacher in written form at least 30 calendar days after the observation. Additionally, the bill would require a classroom observation to last at least 15 minutes.

Currently, the Code requires at least two classroom observations to be conducted for each teacher, unless a teacher has received a rating of effective or highly effective on his or her most recent annual year-end evaluation. The bill would delete this exemption, requiring all teachers, regardless of rating, to undergo two classroom observations each school year. The Code requires one of these two classroom observations to be unscheduled; the bill would make this optional.

Evaluation Outcomes

If a teacher or administrator is rated as ineffective on three consecutive year-end evaluations, the school district, ISD, or PSA must dismiss that teacher or administrator from employment. Under the bill, a teacher or administrator also could be dismissed if they received a rating of needing support for three consecutive years.

Additionally, under the bill, the performance evaluation system would have to provide that, if a school administrator or teacher who was not in a probationary period under the teachers' tenure Act was rated as highly effective or effective on the three most recent consecutive annual year-end evaluations, the school district, ISD, or PSA could conduct a year-end evaluation biennially, for administrators, or biennially or triennially, for teachers. If a teacher who was not in a probationary period was not rated as effective on one of these biennial or triennial year-end evaluations, the teacher would have to again be provided with annual year end evaluations. The bill also would require a building-level school administrator's evaluations to occur annually again if the school administrator's supervisor or evaluator changed. For an individual employed as a school district superintendent, an intermediate superintendent, or a chief administrator, evaluations would have to occur annually if the individual obtained employment with a different school district, ISD, or PSA. Additionally, if a school administrator were described as developing or needing support, the individual conducting the evaluation would have to develop and require the school administrator to implement an improvement plan to correct the deficiencies.

Currently, if a teacher is rated as ineffective, the teacher may request a review of the evaluation and the rating by the school district superintendent, intermediate superintendent, or chief administrator of the PSA as applicable. A teacher has 20 days after evaluation to submit such a request. Under the bill, if a teacher were rated as needing support, the teacher could request a review as described above within 30 days. Additionally, the bill would delete a provision limiting a review of the evaluation to more than twice in a three-school-year period.

The bill would require a written response regarding the school district superintendent's, intermediate superintendent's, or chief administrator's findings in a review described above to be provided to the teacher who requested the review within 30 calendar days after receipt of the request for a review and before making any modifications. If the written response from the school district superintendent's or intermediate superintendent's review did not resolve the matter, the teacher or collective bargaining representative could request mediation. The request for mediation would have to be submitted in writing within 30 calendar days after the teacher received the written response. Within 15 days after the receipt of the request, the school district superintendent, intermediate superintendent, or chief administrator would have to provide a written response to the teacher or collective bargaining representative stating that the mediation would be scheduled as appropriate.

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

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

Any contract entered or modified after the bill's effective date that governed the employment of a school district superintendent, intermediate superintendent, or chief administrator of a PSA would have to include an appeal process concerning the evaluation process and rating received.

Under the bill, if a school administrator were rated as needing support on an evaluation, the administrator also could request a review as described above. This provision would not apply to a school district superintendent, an intermediate superintendent, or a chief administrator.

The Code specifies that if the school administrator receives two consecutive ratings of needing support, the administrator may demand to use the grievance procedure of an applicable collective bargaining agreement or of a contract governing the administrator's employment that concerned the second evaluation rating and process. Under the bill, if a collective bargaining agreement or a contract governing the school administrator's employment did not contain a grievance procedure, the administrator could request binding arbitration that concerned the second evaluation rating and process.

Currently, the Code prohibits a pupil from being taught in the same subject area for two consecutive years by a teacher rated ineffective on the teacher's two most recent year-end evaluations. If a school district, ISD, or PSA is unable to fulfill this requirement and planned to assign a pupil to an ineffective teacher for two consecutive years, the school district, ISD, or PSA must notify the student's parent or legal guardian by no later than July 15 immediately preceding the school year, in writing, and include an explanation for this decision. Under the bill, these provisions would apply to teachers rated as needing support; however, if the teacher requested a review of the teacher's evaluation rating, the board or board of directors

could not issue the notification to parents or legal guardians until the review process was completed.

Rater Reliability Training

Under the bill, by September 1, 2024, and every three years after, each individual who conducted an evaluation for a teacher or administrator would have to complete a rater reliability training provided by the school district, ISD, PSA, or the entity that employed the individual. The training would have to include at least all the following:

- A clear and consistent set of evaluation criteria that all evaluators could use when assessing teacher performance.
- Clear expectations for what evaluators should look for when assessing teacher performance, including identifying key behaviors and practices that were associated with effective teaching.
- Training on the evaluation process itself, including how to conduct classroom observations, collect data, and analyze results.
- Calibration exercises that helped 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 were consistently applying the evaluation criteria.

Grade 3 Reading

To ensure that more pupils will achieve a score of at least proficient in English language arts on the grade 3 State assessment, the board of a school district or board of directors of a PSA must, among other things, periodically assess a pupil's progress in reading skills at least three times per school year in grades K to 3. The bill would require the first of these assessments for a school year in kindergarten to be conducted within the first 90 school days of the school year. The first of these assessments for a school year in grades 1 to 3 would have to occur within the first 30 days.

The Code requires a school district or PSA to provide to a grade 3 pupil who has a reading deficiency based on the grade 3 State English language arts assessment a reading intervention program that is intended to correct the pupil's specific reading deficiency. Part of this program includes the use of a highly effective teacher of reading as determined by the teacher evaluation system. Under the bill, a teacher who had been rated as effective could serve a pupil with a reading deficiency as part of the program.

Unprofessional Conduct

Among other things, the Code requires an applicant for employment in a school district, local art school district, PSA, ISD, or nonpublic school to sign a statement authorizing the applicant's current or former employers to disclose any unprofessional conduct by the applicant and to make available copies of all documents in the employee's personnel record maintained by the current or former employers related to that unprofessional conduct. The statement also releases the current or former employer, and employees acting on behalf of the current or former employer, from any liability for providing such information and from providing any required written notice. The bill would specify that the board of directors, in addition to the board or governing body of one of the school districts above, could not hire an applicant who did not sign this statement.

Additionally, the board or an official of an applicable school district cannot enter a collective bargaining agreement, individual employment contract, resignation agreement, severance agreement, or any other contract or agreement that has the effect of suppressing information about unprofessional conduct of an employee or former employee or of expunging information about that unprofessional conduct from personnel records. The bill specifies that this provision would apply to the board of directors or governing body of an applicable school district.

Currently, "unprofessional conduct" means one or more acts of misconduct; one or more acts of immorality, moral turpitude, or inappropriate behavior involving a minor; or commission of a crime involving a minor. The bill would delete reference to one or more acts of misconduct, replacing it with one or more acts of misconduct that endanger the safety of any student and directly lead to separation of employment.

Repeal

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 for its teachers and school administrators that includes job performance and job accomplishments as a significant factor in determining compensation and additional compensation. Section 1531j requires current evaluation standards to be considered before the SPI can grant an initial professional teaching certificate, among other things. Section 1531k requires current evaluation standards to be considered before the SPI can grant an initial or renewed advanced professional education certificate.

Senate Bill 396

Under the teachers' tenure Act, "demote" means 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 term does not include discontinuation of salary under the Act, the discontinuation or reduction of performance-based compensation paid under the Revised School Code, or a reduction in personnel, including a reduction in workweeks or workdays. The bill would remove from the definition reference to the discontinuation or reduction of performance-based compensation under the Revised School Code.

The Act specifies that a probationary teacher who is rated as effective or highly effective on the probationary teacher's most recent annual performance evaluation under the Revised School Code is not subject to displacement by a teacher on continuing tenure solely because the other teacher has continuing tenure. Under the bill, this provision would only apply to a probationary teacher rated as effective.

A teacher is not considered to have successfully completed the probationary period unless the teacher has been rated as effective or highly effective on the teacher's three most recent annual performance evaluations and has completed at least five full school years of employment in a probationary period. Additionally, if a teacher has been rated as highly effective on three consecutive annual 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. Under the bill, these provisions would apply before July 1, 2024.

Beginning July 1, 2024, if a teacher were rated as effective on or after July 1, 2024, or highly effective before July 1, 2024, on three consecutive year-end performance evaluations and

had completed at least four full school years of employment in a probationary period, the teacher would be considered to have successfully completed the probationary period.

Under the Act, if a teacher has received a rating of ineffective or minimally effective on an annual performance evaluation, the school district must provide the teacher with an individualized development plan developed by appropriate administrative personnel in consultation with the individual teacher. The bill would replace reference to "ineffective or minimally effective" with a "needing-support" ranking.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

Senate Bill 395 is similar to Senate Bills 56 and 57 and House Bill 5104 of the 2021-2022 Legislative Session. Senate Bill 396 is similar to Senate Bill 5105 of the 2021-2022 session.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.