

Michigan Teacher and Tenure

Tenured Teachers

1. Performance Evaluation System

- a. With the involvement of teachers and school administrators, a board must adopt and implement for all teachers a *rigorous, transparent, and fair* performance evaluation system that does all of the following:
 - i. Provides at least an annual evaluation;
 - ii. Establishes clear approaches to measuring student growth;
 - iii. Evaluates teacher's performance using multiple ratings that take into account data on **student growth**.
 - a) **For the 2017-2018 school year, 25%** of the annual year-end evaluation shall be based on student growth and assessment data.
 - b) **Beginning with the 2018-2019 school year, 40%** of the annual year-end evaluation shall be based on student growth and assessment data.)
 - iv. Uses ratings of "highly effective," "effective," "minimally effective" and "ineffective" for teacher and administrator performance; and
 - v. **Uses evaluations to inform decisions regarding:**
 - a) Effectiveness of teachers;
 - b) Promotion, retention, and development of teachers;
 - c) Whether to grant tenure or full certification; and
 - d) Removing ineffective tenured teachers.
- b. Decisions about development, content, standards, procedures, adoption and implementation of performance evaluation system is now a *prohibited subject of bargaining*. However, a teacher may be able to challenge his or her overall effectiveness rating and data upon which the district relied to determine that rating, where the CBA allows grievances for violations of board policy.

2. Annual Year-End Evaluations

- a. Tenured teachers must have at least an **annual year-end performance evaluation**, pursuant to the Revised School Code ("RSC") and Teachers' Tenure Act ("TTA"). (MCL 380.1249(2)(a); MCL 38.93).
 - i. Under the RSC, a district may choose to conduct a year-end evaluation biennially for tenured teachers rated as "highly effective" on 3 consecutive annual year-end evaluations; a tenured teacher who is not rated as "highly effective" on 1 biennial year-end evaluation shall return to annual year-end evaluations—This option is not provided in the TTA.
- b. 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 a state-approved tool, a modified tool, or a local tool, that complies with the requirements

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August 18, 2017

listed in MCL 380.1249. Evaluation tools must be used consistently among schools so that all similarly situated teachers are evaluated using the same evaluation tool.

- c. A tenured teacher rated **ineffective** may request review of that rating by the superintendent. This review may not be requested more than twice in a 3-year period. (MCL 380.1248(2)(l)).
 - i. The RSC *does not* state that a teacher rated minimally effective may request review of that rating by the superintendent.

3. Multiple Observations

- a. The TTA does not specify the number of observations required, but states that tenured teachers' annual year-end performance evaluations must be based on "**multiple classroom observations.**" (MCL 38.93).
 - i. The TTA reserves the determination of format and number of observations to the controlling board in consultation with teachers and school administrators.
- b. The RSC requires **at least 2 classroom observations.** (MCL 380.1249(2)(e)).
 - i. Under the RSC, if a teacher received a rating of effective or highly effective on his or her 2 most recent annual year-end evaluations, he or she may be observed fewer than 2 times in a school year.
- c. With respect to classroom observations, the RSC provides:
 - i. The observation shall include a review of the teacher's lesson plan, the state curriculum standard being used in the lesson, and pupil engagement in the lesson;
 - ii. The observation does not have to be for an entire class period;
 - iii. At least 1 observation must be unscheduled;
 - iv. The school administrator responsible for the teacher's performance evaluation must conduct at least 1 of the observations and other observations may be conducted by those trained in the evaluation tool, including teacher leaders; and
 - v. The teacher must be provided with feedback within **30 days** after each observation.
- d. Teacher evaluation tools generally prescribe the manner in which classroom observations are to be conducted.
 - i. School districts must include information on their website about their teacher evaluation tool, including "[a] description of the processes for conducting classroom observations, collecting evidence, conducting evaluation conferences, developing performance ratings, and developing performance improvement plans." (MCL 380.1249(3)(e)).

4. Individual Development Plans ("IDPs")

- a. A tenured teacher rated "ineffective" or "minimally effective" on his or her annual year-end performance evaluation must be provided with an IDP which requires the teacher to make progress toward individual development goals within a specified time period, not to exceed 180 days. (See MCL 38.93).
 - i. The IDP must be developed by appropriate administrative personnel in consultation with the individual teacher.

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- b. TTA regarding IDPs were not revised; therefore, the IDP format and content pursuant to the TTA remain intact.
- c. The RSC states that IDPs must include specific performance goals and recommended training identified by the school administrator or designee. (MCL 380.1249(2)(c)).

5. Mid-Year Progress Reports

- a. Under the RSC, a midyear progress report must be created for all tenured teachers rated as “minimally effective” or “ineffective” in his or her most recent annual year-end evaluation. (MCL 380.1249a(2)(d) of RSC). Midyear progress reports –
 - i. Must be based in part on student achievement;
 - ii. Must be aligned with teacher’s IDP; and
 - iii. Must include specific performance goals for remainder of school year.
- b. The statute does not provide a definition of “midyear.”
- c. The district “is encouraged” to assign a mentor or coach to each teacher required to receive midyear progress reports.

6. No Presumption of Satisfactory Performance.

The TTA no longer provides a presumption of satisfactory performance for a tenured teacher where the district fails to comply with the requirements regarding performance evaluations, IDPs, or midyear progress reports. While the statutory language providing that a probationary teacher shall be employed in the ensuing year where a district fails to follow the notification requirements of the TTA is not in place for tenured teachers, a tenured teacher may argue an adverse employment claim in violation of the TTA requirements using the “arbitrary or capricious” standard.

7. Dismissal.

A tenured teacher **must be dismissed after 3 consecutive years of “ineffective” ratings** on his or her annual year-end evaluations. This provision does not limit a district’s ability to dismiss a teacher before 3 consecutive “ineffective” ratings (MCL 380.1248(2)(j)).

- a. There is no similar *requirement* that a district dismiss a teacher after 3 consecutive years of “minimally effective” ratings, but a district is not precluded from doing so.

8. Discipline or Discharge

- a. The Tenure Commission (“Commission”) will review discipline and discharge decisions to determine whether district’s decision was “**arbitrary or capricious**” (MCL 38.101(1)).
- b. Discipline and discharge matters are now prohibited subjects of bargaining for school employees subject to the Tenure Act; Standard for discipline and discharge of these employees must be “arbitrary or capricious” (MCL 423.215(3)(m)).
- c. The TTA retains the same procedural hearing protections for tenured teachers, but shortened the tenure hearing timelines by 15 days. The TTA now provides that a tenure hearing may not begin more than **45 days** after service of the controlling board’s answer to the claim of appeal and must not conclude more than **75 days** after a claim of appeal is filed. (MCL 38.104(2), (5)(g)).

9. Layoff/Recall

- a. Pursuant to RSC, length of service or tenure status may not be primary or determining factor in layoff and recall decisions. (MCL 380.1248(1)).

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- i. **Layoff and recall decisions must be based on retaining effective teachers**, as determined by performance evaluation system under RSC, Section 1249.
- b. Tenure Commission **does not have jurisdiction over layoff/recall of tenured teachers**. (MCL 380.1248(3); *Baumgartner v Perry Pub Schs*, 309 Mich App 507 (2015)).
 - i. **Unlike** cases of **discipline and discharge** of tenured teachers, which are decided by the Tenure Commission, cases alleging violation of teachers' rights under the RSC, Sec. 1248 (re: layoff/recall) must be brought in court.
- c. RSC states that the remedy for a district's violation of Sec. 1248 is "an order of reinstatement commencing 30 days" after court decision. (MCL 380.1248(3)).

4815-5744-4429, v. 1

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