

**EVALUATION CHANGES:**  
What the Practitioner needs to know

Coni Sullivan, Esq., Asst. Supt. HR/Legal Services  
Kent Intermediate School District

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- We have to understand the past to appreciate the future. Let us not forget 2010:
  - School Code Section 1249 – Evaluation
  - School Code Section 1250 – Merit Pay



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- School Code Section 1249:
  - “Not later than September 1, 2011, and subject to subsection (9)\*, with involvement of teachers and school administrators, the board... **shall** adopt and implement for all teachers and school administrators a rigorous, transparent, and fair evaluation system that does the following....”
  - \* Collective bargaining agreement expiration

**MCL 380.1249(1)**

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• Student Growth Data

“Establishes clear approaches to measuring student growth and provides teachers and school administrators with relevant data on student growth.”

Note:

- Addresses growth and not proficiency.
- Suggests need for pre and post test.

**MCL 380.1249 (1) (b)**  
**MCL 380.1249 (5) (a) (iv)**

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• Student Growth Measures

“Student Growth shall be measured by National, State, or local assessments and other objective criteria.”



**MCL 380.1249(1)(c)**

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• Multiple Rating Categories

“Evaluates a teacher’s or school administrator’s job performance, using **multiple rating categories** that take into account data in student growth as a **significant** factor.”

- Effective 2013-14, student growth data for the most recent three (3) year period should be used whenever possible; otherwise, whatever is available.

**MCL 380.1249(1)(c)**

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• And the Rating Categories Are...

No later than September 19, 2011\*, evaluation ratings for teachers and administrators must be:

- Highly effective
- Effective
- Minimally Effective
- Ineffective

\*Exception: if CBA in effect as of date of passage (July 19, 2011), can wait until the expiration of agreement.

**MCL 380.1249(1)(c)**

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• Student Growth as a "significant" factor:

What constitutes "significant" ?

- 2013-2014 - 25%
- 2014-2015 - 40%
- 2015-2016 and thereafter - 50%

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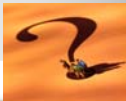
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• Some lingering questions surrounding section 1249 still remain for the practitioner:

- How in God's green earth are we going to evaluate every teacher comprehensively every year?
- What specifically are the components of the new evaluation? (what the heck does it look like?)
- How, realistically, are we going to assess student growth?
- How are we defining "teacher" and "administrator"?
- Last, but not least, given the stakes, how will we consistently define what a highly effective, effective, minimally effective, and an ineffective teacher look like?

**7 Traits**



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• The Governor to the rescue...??????

The Governor's Council on Educator Effectiveness is directed to convene by October 31, 2011. The Council is charged with producing a report no later than April 30, 2012 that recommends the following:

- Student Growth Assessment Tool
- State Evaluation tool for Teachers and Administrators.
  - Waiver by November 1, 2011

**MCL 380.1249(4)**

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• School Code Section 1250: Performance Based Compensation:

A District shall implement a compensation method for teachers and administrators that includes "job performance and job accomplishments as a significant factor" to determine "compensation and additional compensation."\*

\*If a CBA is in effect for teachers or administrators as of January 4, 2010, and if that agreement prevents compliance, then this provision does not apply until the expiration of that agreement.

**MCL 380.1250(2)**

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• Linger questions about Merit pay for the practitioner?

- Will my precursory \$1.00 suffice?
- Is it a violation of the Michigan Constitution?
- Now that it is a prohibited subject of bargaining, is my current language, unenforceable?
- Now that it is a prohibits subject of bargaining, once my contract expires can I automatically tie step increases to performance?
- Is it a demotion if I discontinue or reduce compensation paid as pursuant to section 1250?

**AG Opinion No. 7257**  
**MDE Title II, FAQ #17 (Aug. 8, 2010)**  
**MCL 38.74, PA 100 2011**

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**2011 Reforms**  
Round II, Let's Review...

But first, let's bid a fond farewell to the old  
Michigan Teacher Tenure Law culture...

[Tenured Teacher Song](#)

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- PA 100: Amends Teacher Tenure Act (TTA)
  - Highlights
    - Dismissal of tenured teachers now subject to the "arbitrary and capricious" standard, rather than "just cause." Same standard as Administrators.
    - Demotion is now defined as suspension for fifteen (15) or more consecutive days, reduction in compensation for the school year equivalent to thirty (30) days compensation or transfer to a position with lower salary.
      - Does not include loss of compensation for a suspension allowable under the teacher tenure act; necessary reduction of personnel, which includes reduction of work weeks or work days; or loss of performance based pay under section 1250.

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- PA 100 Highlights cont.
  - For teachers with criminal charges pending, it allows for placement of pay into an escrow account during any suspension prior to a tenure hearing. The board may discontinue health and life insurance during suspension/tenure charges.
    - Be careful, if you lose, you could be on the hook for medical costs, which could be substantial.
  - Allows the Board to renew unrequested leave of absence due to a physical or mental disability (previously 1 year) and to require acceptable verification that the returning teacher has the ability to perform the essential functions of the job.
    - Don't forget the ADA... ability to perform the essential functions of the job with or without reasonable accommodations.

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- PA 101 Amends TTA
- Highlights:
  - Probationary teachers rated "effective" or "highly effective" under a compliant performance evaluation system (Section 1249) are not subject to being displaced by teachers on tenure solely due to their tenure status. Such decisions must now be made on assessment of teacher effectiveness.
    - Individual Performance (majority factor)
      - Evidence of Student growth (predominant factor)
      - Teacher's demonstrated pedagogical skills
      - Classroom Management
      - Attendance and Disciplinary Record
    - Significant, relevant, accomplishments and contributions.
    - Relevant special training

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- PA 101 Highlights (cont.)
- Tenured teachers are no longer entitled to preferential recall over laid off teachers.
- Probationary period increases from four (4) to five (5) years; however, a teacher rated highly effective on the last three (3) year end evaluations receives tenure after four (4) years (i.e., in years 2, 3,4).
- Notification of non-renewal is now required only fifteen (15) days prior to the end of the school year. Written notice that work has not been effective is still required. Silence is no longer a presumption of satisfactory performance.
- Clarifies that probationary teachers can be discharged at any time, not just non-renewal at year end.

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- PA 101 Highlights (cont.)
- IDP is now required at the beginning of the first year of teaching for a probationary teacher. They are also entitled to a mid-year review and a mentor for the duration of the probationary period.
- Provides that the Board will determine the number and format of teacher observations for both tenured and probationary teachers, in consultation with teachers and administrators (consultation does not equal bargaining). Eliminates requirement that they be at least 30 days apart.
- At least annual year end evaluation for all teachers based on Section 1249 criteria. Probationary and tenured teachers with an IDP are entitled to a mid year review.
- Administrative contracts must not provide for continuing tenure in any classroom other than an active classroom teacher.

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- PA 101 Highlights (cont.)
  - Tenured teachers receiving an "ineffective" or "minimally effective" rating shall have an IDP with goals to be accomplished within a specified period of time, not to exceed 180 days. Year end evaluations shall be based on "multiple" classroom evaluations, and must include assessment of progress on meeting identified goals, in addition to normal section 1249 criteria.
  - Shortened timelines for tenure hearing; hearing must start within forty five (45) days after Board serves its answer to the teacher tenure appeal (was sixty (60) days); hearing must be concluded within seventy five (75) days after teacher appeal was filed (was ninety (90)).

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- PA 102 creates an entirely new section of the school code, section 1248, for teachers covered under the TTA.  
Highlights:
  - Requires that teacher effectiveness be the primary basis for making staffing decisions in layoff, recall, and other position elimination situations.
    - Tip – Board needs to adopt a policy outlining the procedure as it will no longer be in the CBA.
    - If a CBA is in effect as of the effective date of section 1248, and if that CBA prevents compliance with that Section, then section 1248 does not apply until after the expiration of that CBA.
    - If challenged in court and the teacher wins, the only recourse is reinstatement within 30 days and no lost wages.

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- PA 102 Highlights (cont.)
  - Evaluation systems must rate performance as Highly effective, effective, minimally effective and ineffective. This is immediate effect ( by Sept. 17, 2011).
  - Must provide annual evaluations in accordance with section 1249 for all teachers and administrators in accordance with Section 1249 for all teachers and administrators. Teachers and Administrators evaluated as "highly effective" for three (3) consecutive years may go to biennial evaluations, until not rated as "highly effective."
  - The evaluation system must allow tenured teacher to appeal an "ineffective rating to the Superintendent or designee within twenty (20) days of the evaluations.

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• PA 103 Highlights (cont.)

- Governor's Council on Educator Effectiveness is to prepare model compliant policy. Districts must adopt the model policy unless they already have one in place as of July 19 that complies with all of the Act's requirement.
- Section 1249a provides that beginning in 2015-2016, if a student is assigned to a teacher that has been rated ineffective on their two (2) most recent evaluations, notice must be sent to the student's parent or guardian.
- Teachers and administrators who receive three (3) consecutive "ineffective" ratings must be dismissed. Does not prohibit the district from dismissing an employee with less than three (3) ineffective ratings.
- Administrators rated "ineffective" or "minimally effective" must be provided with an IDP, with professional development opportunities and other measures to improve rating.

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• PA 103 amends PERA to create additional "prohibited" subjects of bargaining, which include:

- Decisions regarding the placement of teachers or **the impact** of the decisions on the employee or bargaining unit.
- Decisions about reductions in force, elimination of positions, recalls or hires after reduction in force. Subject to section 1248.
- Decisions about development or implementation of performance evaluation system under 1249.
- Decisions about policy or implementation of discipline and discharged of employees covered under the TTA.

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• PA 103, Prohibited Subjects of Bargaining (cont.)

- Decisions about format, timing, or the number of classroom observations conducted for probationary teachers.
- Decisions about Merit pay under section 1250.
- Decisions about notifications of parents about ineffective teachers under section 1249(a)

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• **Conflicting Information:**

- Who does the new five (5) year probationary period apply to?
- When does the three year "ineffective" timeline start to toll?
- Which prohibited subjects of bargaining can we enforce immediately?
- Does the 5 year probationary period apply to a teacher who was hired pre-July 19, 2011, but whose contract was for worked performed after the legislative effective date?
- At the conclusion of the third year of ineffective ratings, what process must we use to terminate?

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• **5 Recommendations to stay out of trouble (i.e. court)**

1. Remember that the statutes do not exist in a bubble and frequently "talk" to one another.
2. Follow your current evaluation timelines and previously agreed up processes until your contract expires.
3. Remove all language related to prohibited subjects of bargaining when your current contract expires.
4. Adopt Board policies covering the areas previously embedded in your contract (evaluation processes, layoff and recall, etc.).
5. Keep in mind who these changes apply to: "teachers and administrators."

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• **Questions**



**Coni Sullivan**  
[conisullivan@kentisd.org](mailto:conisullivan@kentisd.org)  
**(616) 365-2220**

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