



# Key Legislative Updates: PERA, Sections 1248 & 1249, and Section 164K

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# Public Act 113 of 2023 (HB 4044)

- Repealed section 15b of the PERA (MCL 423.215b)
  - Section 15b is more commonly known as PA 54
- PA 54 was the limitation that public school employers could pay no more in wages or medical benefits than was in place at the time of contract expiration
- Went effect February 13, 2024

# Impact of PA 113

- Will likely have a dramatic effect on the timing, pace, and process of bargaining
  - Likely to have more protracted bargaining
  - May lead to a rise in the use of mediation and fact finding
  - Along with these items, we can expect an increase in Union impasse breaking tactics
- PA 54 limitations may be placed into contract . . . but it won't be easy

# Public Act 114 of 2023 (HB 4233)

- Repealed the portion of the PERA that made it unlawful for a public school employer to automatically deduct union dues
- It is a may not a shall
- Again, effective February 13, 2024

# Public Act 114 of 2023

- Payment of dues would be subject to the obligation to bargain
- Understand the impact of auto-dues deduction and importance to unions
- Will have an impact when bargaining
- Good bargaining chip – include an indemnification provision in your CBA to protect the school district from liability related to union dues deductions (e.g., If an employee challenges the legality of dues deductions, the union—not the district—bears responsibility for defending and paying any resulting costs).

# Public Act 115 of 2023 (HB 4354)

- Repealed all of the prohibited subjects of bargaining added in 2011
  - Teacher placement
  - 1248 personnel decisions (layoff/recall)
  - Teacher evaluation
  - Teacher discipline or discharge
  - Classroom observations
  - Merit pay
  - 1249a notifications
- Effective February 13, 2024

# Impact of Removal of Prohibited Subjects

- Will significantly modify bargaining during next round
- Topics are not automatically in contract *unless* current contract says that they are
- It will be important to think very critically about what we accept and agree to relative to these topics – particularly in the next contract

# Public Act 143 of 2023 (HB 4356)

- Removes prohibited subject relative to the decision to contract with third party for noninstructional support (e.g., food service workers, bus drivers, custodians, maintenance staff).
- Effective February 13, 2024
- Will not impact currently contracted parties, but will impact ability to contract in the future
  - May still contract for services, but subject to notice and demand to bargain
  - Unions may assert that services need to come back into the bargaining unit in the future.

# Public Act 116 of 2023 (HB 4820)

- Significant modification of section 1248
- Effective July 1, 2024 – for the 2024-25 school year
- Section 1248 previously only addressed decision-making on layoff and recall
- 1248 decisions were also a prohibited subject of bargaining

# Public Act 116 of 2023

- “This section does not prohibit, impair, or limit the right or duty of a public school employer and a collective bargaining representative to engage in collective bargaining. . . . However, a collective bargaining agreement must include, at a minimum, the standards in this section.”
- Now applies to “*when filling a vacancy, placing a teacher in a classroom*, or conducting a staffing or program reduction or any other personnel determination resulting in the elimination of a position.”
- “. . . shall *not* adopt, implement, maintain, or comply with a policy or collective bargaining agreement that provides length of service as the *sole* factor in personnel decisions.”

# Public Act 116 of 2023 (HB 4820)

- The board of a school . . . *shall adopt, implement, maintain, and comply with clear and transparent procedures for all personnel decisions under this section.* Effectiveness as measured under the performance evaluation system in section 1249 *or as otherwise collectively bargained* must be used as a factor for personnel decisions under this section. Any other relevant factors *may* be used for personnel decisions under this section, including, but not limited to, the following:
  - (a) The teacher’s length of service in a grade level or subject area.
  - (b) The teacher’s disciplinary record.
  - (c) Relevant special training. This factor may 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.

# Impact of PA 116

- Impacts teacher placement or any filling of a vacancy
  - This will include things like transfers, assignments, or the filling of open positions
  - Encompasses layoffs and recalls as well
- While length of service cannot be the **sole** factor, it leaves the rest open to bargaining . . . or policy/procedure
- Any procedures negotiated into a contract could end up subject to grievance procedures – including arbitration
  - May be modified by contract

# Public Act 224 of 2023 (SB 395)

- Significantly modifies section 1249 of the RSC
  - 1249 is the statute that governs teacher evaluation
- Effective July 1, 2024 for the 2024-25 school year
  - Prohibited subject relating to the topic is repealed effective February 13, 2024
- “This section does not prohibit, impair, or limit 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 . . .”
  - Must comply with statute, but all issues surrounding teacher evaluation now subject to bargaining obligation

# Public Act 224 of 2023

- Changes evaluation labels and removes “highly effective”
  - Now Effective, Developing, or Needing Support
- Modifies requirements on student growth data
  - 20% for 2024-25
  - Does not require state-wide assessments be used
  - Now, “locally agreed-on student growth and assessment data or student learning objectives metrics”
  - Metrics subject to collective bargaining

# Public Act 224 of 2023

- Modifies observation requirements
  - Must be at least 15 minutes in length
  - At least one *may* be unscheduled
  - Must provide written feedback within 30 calendar days
- Also adds mandatory review of evaluation when teacher receives “needing support”
  - Internal review by Supt or BOE – if unresolved MERC mediation
  - If two consecutive “needing support” may grieve under contract and if not available seek arbitration with AAA
- May negotiate local evaluation tool if it meets statutory requirements (otherwise must use state approved)

# Public Act 224 of 2023

- A teacher must not be assigned an evaluation rating and must be designated as unevaluated for a school year :
  - (i) The teacher worked less than 60 days in that school year.
  - (ii) The teacher's evaluation results were vacated through the grievance procedure described in subdivision (l).
  - (iii) There are extenuating circumstances and the teacher and the school district, intermediate school district, or public school academy agree to designate the teacher as unevaluated because of the extenuating circumstances.
- Teacher rated “*effective*” or “*highly effective*” in three consecutive years may be evaluated biennially or *triennially*

# Public Act 224 of 2023

- Keeps many elements of the former 1249
  - Portion of evaluation not based on student growth is based on tool
  - Evaluation must have goals for improvement for the next year
  - Teachers in first probationary year or rated less than effective must have a mid-year progress report
  - At least 2 observations must be done, one of which must be done by the administrator responsible for evaluation
  - Teacher in first year or rated less than effective shall be provided a mentor teacher

# Best Practices for Bargaining Legislative Changes



# Measure Twice, Cut Once

- Be as conservative and cautious as possible when considering adding any formerly prohibited subject to a collective bargaining agreement
- Once an item (especially an employee right) is placed into a contract, it is extremely difficult to get it out if we believe it is not working well for us
- Remember that the bargaining obligation only requires we meet and confer in good faith; it does not require any agreement – or even a proposal on a topic

# Best Practices

- Allowing an item into a contract comes with other consequences
  - Access to the grievance procedure, potential for arbitration
  - These matters will result in higher cost
- Always start from the position: “what is best for the students”
  - Some modifications may not have an impact while others will
  - Ex. 1: Teacher Placement and the filling of vacancies
  - Ex. 2: Teacher discipline standard – “just cause” v. “arbitrary or capricious”
  - Ex. 3: Extensive evaluation procedures

# Section 164k

# New Compliance Requirements – Section 164k (MCL 388.1764k)

- Effective FY 2025-2026
  - Applied to districts and ISD
  - Noncompliance = 5% state aid withholding
  - Enforced by MDE
- Key Requirements
  - School Meal Regulations
  - Household Applications
  - Pupil County Day
  - Survey Transparency
  - Curriculum Notification

# Risk Management Actions

- State compliance audits now (meals, surveys, curriculum)
- Develop parent communication templates
- Train staff on new restrictions (count day incentives)
- Monitor MDE updates for approved curriculum list
- Bottom Line:
  - Section 164k adds financial consequences to operational compliance – act now to avoid funding penalties.

# New ADA Rules



# ADA Title II Final Rule (Effective June 24, 2024)

- DOJ now requires state and local governments—including public schools—to make websites and mobile apps accessible.
- Establishes **WCAG 2.1 Level AA** as the required accessibility standard.
- Expands ADA focus from physical access to **digital accessibility** for students, parents, and staff.

# What Does This Mean for School Districts?

- All district web content and mobile apps *must* meet **WCAG 2.1 AA**, including content from vendors or contractors



# Educational Technology & LMS

- Platforms like Google Classroom, Canvas, Schoology.
- Includes assignments, gradebooks, feedback tools, video conferencing.
  - Must support:
    - ✓ Screen readers
    - ✓ Keyboard navigation
    - ✓ Captions
    - ✓ Color contrast
    - ✓ Internal School Systems
    - ✓ Registration and enrollment portals
    - ✓ Scheduling and transportation systems
    - ✓ Parent communication portals
    - ✓ Staff HR/payroll systems
    - ✓ Requires clear labels, keyboard access, accessible documents.

# Third-Party EdTech Tools

- Payment systems, assessments, digital libraries, e-textbooks, learning apps.
  - Districts remain responsible even when vendors create the content.
  - Contracts should require **WCAG 2.1 AA compliance** and periodic audits.



# Compliance Deadlines

- Large districts (population  $\geq 50,000$ ): April 24, 2026
- Small districts (population  $< 50,000$ ): April 26, 2027



*(Population is based on Census estimates for the district, not student enrollment.)*

# Key Obligations

- Accessibility applies to websites, mobile apps, PDFs, and other electronic documents.
- **Exceptions** include:
  - Archived content (old materials kept for reference only)
  - Preexisting documents not used for current services
  - Independent third-party posts (not under contract)
  - Individualized, password-protected or otherwise secured conventional electronic documents
    - Conventional electronic documents are (1) about a specific individual, their property, or their account; and (2) password-protected or otherwise secured
  - Preexisting social media posts
- If compliance would result in a **fundamental alteration** in the nature of a service, program, or activity or in **undue financial and administrative burden**, districts must:
  - Document the reason
  - Provide alternative access to the maximum extent possible

# Next Steps for Compliance

- ✓ Verify your district's population to determine your compliance deadline
- ✓ Review all district websites and mobile apps for accessibility gaps
- ✓ Audit LMS platforms and third-party tools for WCAG 2.1 Level AA compliance



# Questions?





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