

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Education

Bureau name:

Superintendent of Public Instruction

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Rule Set Information:

ARD assigned rule set number:

2023-77 ED

Title of proposed rule set:

Teacher and School Administrator Evaluation Tools

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

There are no parallel federal rules or standards set by a state or national licensing agency or accreditation association.

A. Are these rules required by state law or federal mandate?

The rules are required by sections 1249 and 1249b of the revised school code, 1976 PA 451, MCL 380.1249 and 380.1249b.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

There is no applicable federal standard.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The proposed rules do not set standards but are only procedural as required by MCL 380.1249 and 380.1249b. The legislature set the applicable standards in MCL 380.1249 and 380.1249b. Other states take different approaches to the issue of school district use of evaluation tools. Some states have a statewide evaluation tool that is used by all school districts. Other states allow school districts to select their own evaluation tool. For example, among Great Lakes states in 2022, in Minnesota, Illinois, and Indiana, school districts designed their own evaluation systems based on state criteria; in Wisconsin, school districts were allowed to use the state's evaluation system or develop their own system; and, in Ohio, school districts were required to use the state's evaluation system.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The proposed rules do not set standards but are only procedural as required by MCL 380.1249 and 380.1249b. As is the case in many other states, Michigan school districts may use any evaluation system that satisfies state criteria.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

No laws, rules, or other legal requirements duplicate, overlap, or conflict with the proposed rules.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

There are no federal, state, or local laws applicable to the same activity or subject matter as the proposed rules.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(8) does not apply.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(9) does not apply.

Purpose and Objectives of the Rule(s)

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The proposed rules will remove a 90-day timeline for responding to requests to add teacher and school administrator evaluation tools to the statutorily required lists of those tools.

The proposed rules only address the procedures for adding evaluation tools to the lists required by MCL 380.1249 and 380.1249b. With the exception of removal of the 90-day timeline imposed on the Department of Education, the proposed rules are not designed to alter behavior but only to provide an option for school districts, intermediate school districts, public school academies, and public and private organizations, at their discretion, to request that the Department of Education place evaluation tools on the lists.

There are currently 6 teacher evaluation tools on the approved list required by MCL 380.1249. There were 4 teacher evaluation tools on the original list of approved tools in 2015. Since promulgation of the rules in 2017, the Department of Education has received applications from 2 organizations to add tools to that list. The applications were reviewed by an external group using grant funds that expired in fiscal year 2019. MCL 388.1695a, as amended by 2019 PA 58 and repealed by 2020 PA 165. The Department of Education initially denied both applications but approved them after they were resubmitted. The time that elapsed for responding to the initially submitted applications was 107 days for 1 application and 13 days for the other. The time that elapsed for responding to the resubmitted applications was 86 days for 1 and 204 days for the other.

In 2015, there were 2 administrator evaluation tools on the approved list required by MCL 380.1249b. There have been no additions to or removals from that list and the Department of Education has received no applications to add tools to it.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

Whether the proposed rules will lead to a change in the frequency of requests to add evaluator tools to the lists or to a change in the time it takes the Department of Education to review such requests is unknown. Grant funds to employ an entity external to the Department of Education to review such requests expired in fiscal year 2019. See MCL 388.1695a, as amended by 2019 PA 58 and repealed by 2020 PA 165. The amount of time it will take the Department of Education to respond to future requests is unknown. The Department of Education will continue to respond as expeditiously as possible to all requests.

B. Describe the difference between current behavior/practice and desired behavior/practice.

The rules currently require the Department of Education to respond within 90 days to requests to add evaluation tools to the statutorily required lists of such tools. This timeline is not enforced or enforceable and is unnecessary. The proposed rules remove the timeline, which was arbitrarily set during the rule drafting process in 2016, before the Department of Education had any experience with such reviews and when grant funds were available to employ an external entity to conduct the reviews. The timeline has proven unrealistic in light of the extensive criteria set forth in MCL 380.1249 and 380.1249b and the expiration of relevant grant funding.

C. What is the desired outcome?

The desired outcome is that the rules will not include an arbitrary and unrealistic 90-day timeline for responding to requests to add evaluation tools to the statutorily required lists of those tools.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

There is no need for a 90-day timeline to respond to requests to add evaluation tools to the statutorily required lists of such tools. The timeline was set arbitrarily when the Department of Education had had no experience with the process set in place by 2015 PA 173 or with similar processes. The Department of Education has received only 2 such requests and has responded to those requests as expeditiously as possible. Evaluation tools must comply with many specific legislative requirements and must meet standards of reliability, validity, and efficacy. Review of applications to add tools to the lists may involve detailed conversations with applicants and review of extensive documentation relevant to statutory requirements. Removal of the 90-day timeline will recognize the need for flexibility in the event that adequate review of a request takes longer than 90 days and will recognize that some requests merit heightened scrutiny. A review period that exceeds 90 days has not and will not result in harm to any entity or individual. Under MCL 380.1249 and 380.1249b, school districts are not limited to using teacher and school administrator evaluation tools that are included on the Department of Education's lists.

A. What is the rationale for changing the rules instead of leaving them as currently written?

The 90-day timeline was arbitrarily set several years ago and has proven to be unrealistic. The Department of Education has responded as expeditiously as possible to all requests to add evaluation tools to the statutorily required lists, with responses ranging from 13 days to 204 days. Removal of the 90-day timeline will recognize the need for flexibility in the event that adequate review of a request takes longer than 90 days, as has proven true for some requests. Review may involve, for example, detailed conversations with applicants and gathering and review of documentation as it relates to extensive statutory requirements. A review period that exceeds 90 days has not and will not result in harm to any entity or individual. Under MCL 380.1249 and 380.1249b, school districts are not limited to using evaluation tools that are included on the Department of Education's lists.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rules do not directly affect the health, safety, and welfare of Michigan citizens as they only set forth procedures for placement of educator evaluation tools on lists maintained by the Department of Education as required by statute. The legislative mandate for the rules is part of the comprehensive package of legislative reforms designed to ensure a quality educator work force. The proposed deletion of a 90-day timeline for responding to requests to add evaluation tools to the statutorily required lists of such tools would not harm the health, safety, or welfare of Michigan citizens.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

There are no rules in the affected rule set that are obsolete or unnecessary and can be rescinded. The 90-day timeline in R 380.22(5) is unnecessary.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

No fiscal impact on the Department of Education is anticipated.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

There has been no agency appropriation made or funding source provided for expenditures associated with the proposed rules. No Department of Education expenditures associated with the proposed rules are anticipated.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules are necessary to remove an unnecessary 90-day timeline for review of school districts' and organizations' requests to add evaluation tools to the statutorily required lists of those tools. The proposed rules do not impose burdens on individuals.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

The proposed rules place no burdens on individuals.

Impact on Other State or Local Governmental Units

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There will be no increase or decrease in revenues or costs of other state or local governmental units as a result of the proposed rules.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

The proposed rules do not impose any program, service, duty, or responsibility on any city, county, town, village, or school district.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

The proposed rules do not impose responsibilities on cities, counties, towns, villages, school districts, or other governmental units.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

There will be no additional expenditures by state or local governmental units associated with the proposed rules.

Rural Impact

16. In general, what impact will the rules have on rural areas?

The proposed rules concern procedures to be followed by the Department of Education and have no disproportionate impact on rural areas.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

The proposed rules only affect procedures followed by the Department of Education, which do not vary depending on whether rural areas are involved.

Environmental Impact

17. Do the proposed rules have any impact on the environment? If yes, please explain.

The proposed rules do not impact the environment.

Small Business Impact Statement

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

The proposed rules do not impose obligations on or otherwise affect small businesses.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

The proposed rules do not impose obligations on or otherwise affect small businesses.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

The proposed rules do not impose obligations on or otherwise affect small businesses.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The proposed rules do not impose obligations on or otherwise affect small businesses.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The proposed rules do not impose obligations on or otherwise affect small businesses.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The proposed rules do not set standards but are only procedural. The proposed rules do not impose obligations on or otherwise affect small businesses.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rules do not impose obligations on or otherwise affect small businesses.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

The proposed rules do not impose obligations on or otherwise affect small businesses.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

The proposed rules do not impose obligations on or otherwise affect small businesses.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

The proposed rules do not impose obligations on or otherwise affect small businesses.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

The proposed rules do not impose obligations on or otherwise affect small businesses.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

The proposed rules do not impose obligations on or otherwise affect small businesses.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The proposed rules do not impose obligations on or otherwise affect small businesses.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

Small businesses were not involved in the development of the proposed rules, which do not impose obligations on or otherwise affect small businesses.

A. If small businesses were involved in the development of the rules, please identify the business(es).

No small businesses were involved in the development of the proposed rules.

Cost-Benefit Analysis of Rules (independent of statutory impact)

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

There will be no actual statewide compliance costs of the proposed rule amendments on businesses or groups.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

The proposed rules will directly affect only the Department of Education.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

No additional costs will be imposed on businesses and other groups as a result of the proposed rules.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

There will be no actual statewide compliance costs of the proposed rules on individuals.

A. How many and what category of individuals will be affected by the rules?

Individuals will not be directly affected by the proposed rules.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The proposed changes in the rules will have no qualitative or quantitative impact on individuals.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

No overall cost reductions to businesses, individuals, groups of individuals, or governmental units are anticipated as a result of the proposed rules.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

Removal of the 90-day timeline of R 380.22(5) will benefit the Department of Education by recognizing the need for flexibility in reviewing applications for inclusion of evaluation tools on the statutorily required lists of such tools.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rules will not impact business growth or job creation or elimination in Michigan.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

Individuals and businesses will not be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

Data about evaluation tools in Michigan has been collected by the Department of Education since 2015. The Department relied on the 2022 report of the National Council on Teacher Quality to respond to question #2. The report is available at: <https://www.nctq.org/publications/State-of-the-States-2022:-Teacher-and-Principal-Evaluation-Policies>.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

No estimates or assumptions were made in compiling the regulatory impact statement.

Alternative to Regulation

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

The proposed rules are required by MCL 380.1249 and 380.1249b. There is no alternative to the proposed rules other than amendment of those statutes.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

It would be necessary to amend MCL 380.1249 and 380.1249b to remove the requirement that the Department of Education promulgate the proposed rules.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

A regulatory program other than that mandated by the legislature would not be feasible due to increased costs and concerns about the reliability, validity, and efficacy of evaluation tools.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

No significant alternatives were considered during development of the proposed rules.

Additional Information

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

There are no instructions regarding the method of complying with the proposed rules as described in MCL 24.245b (1)(c). All relevant instructions are set forth in the rules.