

THRUN EVALUATION TRACKER: GOAL SETTING AND TERMINATING INEFFECTIVE TEACHERS

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After returning from spring break, school administrators face the daunting task of wrapping up teacher evaluations and making difficult personnel decisions. Recent changes in the law will affect those decisions.

Wrapping Up Year-End Evaluations

The Revised School Code requires that a teacher's annual year-end evaluation include specific performance goals that will assist in improving the teacher's effectiveness *for the next school year*. To comply, administrators must discuss with the teacher those areas in which the teacher's performance could improve and must draft "specific" goals to address those areas. Although this process may currently occur on an informal basis in your school, it is important to document both that the discussion took place and the resulting specific performance goals. When the 2016-17 school year begins, both the teacher and the administrator should be in agreement about the performance goals for that year.

The goals must be developed by the school administrator (or designee) conducting the evaluation and must take place "in consultation" with the teacher. As we addressed in previous *Evaluation Tracker* articles, "consultation" means that the teacher be given a meaningful opportunity to provide input about the development of the teacher's performance goals.

Finally, if the administrator (or designee) recommends or identifies training that would assist the teacher in meeting the goals, the administrator should document that recommendation in the year-end performance evaluation. Again,

the administrator must consult with the teacher over the recommended or identified training and provide an opportunity for the teacher's input.

Any probationary or tenured teacher who receives a "minimally effective" or "ineffective" evaluation rating at the year-end performance evaluation must receive an individualized development plan ("IDP") prepared in consultation with the teacher. The IDP must include both the specific performance goals and training outlined above. The IDP must be designed to assist the teacher with improving his or her effectiveness.

Nonrenewing a Probationary Teacher

Based on a teacher's performance during the school year, school officials may consider not renewing a probationary teacher's employment contract. The Tenure Act contains a procedure and timeline for nonrenewing a probationary teacher's contract. The board must provide the probationary teacher with a "definite written statement" as to whether the teacher's work has been effective. The teacher must receive this statement *at least 15 days* before the end of the school year. The school year ends on June 30, 2016, which requires that the board act to nonrenew the teacher and provide the requisite notice to the teacher by June 15 (i.e., received by the teacher)

There is an exception to this timeline if the teacher attained tenure from another Michigan public school district or ISD and is serving a shortened two-year probationary period. In that case, notice from the board as to whether the teacher's work has been effective must be provided to the teacher *at least 60 days* before the end of the school year (by April 30).

A year-end evaluation indicating that the probationary teacher's performance was "minimally effective" or "ineffective" does not by itself satisfy the Tenure Act's requirements. The board still must provide the teacher with the above-described notices to comply with the Tenure Act.

Terminating a Tenured Teacher

If school officials decide to discharge a tenured teacher due to poor performance or incompetency, the Tenure Act must be followed. Those procedures include drafting thorough and comprehensive written tenure charges outlining the performance deficiencies and incompetency and recommending the teacher's discharge from employment. The teacher must receive a copy of the tenure charges before the board considers the charges.

At a board meeting, either during open or closed session at the teacher's discretion, the board may consider the charges and decide whether to proceed with or modify the charges. Any board action must be taken in open session. If the board votes to proceed with the charges, the board must provide the teacher with a copy of the charges, the board's resolution, and a copy of the Tenure Act no more than five days after the board's action. The teacher has the right to appeal the board's decision to the Tenure Commission.

This procedure and timeline apply even if the teacher receives three consecutive "ineffective" performance ratings under the school's performance evaluation system, mandating discharge under Section 1249 of the Revised School Code. Schools are not prohibited from discharging a teacher if they have not received three ineffective performance evaluations, but school officials must follow the procedures and timeline in the Tenure Act.

The Legislature has set forth a strict procedure for implementing personnel decisions. Thrun Law Firm routinely advises clients on these procedures and provides the necessary guidance and documentation to take nonrenewal and discharge actions.