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October 24, 2023

Dear Members of the House Education Committee,

Thank you for the opportunity to provide insights and commentary into the contents of Senate Bill 395. This is a matter of great importance and should not be rushed through the legislative process.

As a public educator in Michigan for more than 32 years, I have over a decade of teaching experience, six years as a building principal and several years working as a district level administrator. Therefore, unlike some others who may be offering testimony, I have experienced performance evaluation as a teacher, an evaluator (principal,) and as a district leader working with principals. I appreciate and support all hard-working teachers and educators across Michigan. Collectively, they deserve that this matter be addressed thoroughly and thoughtfully, focused on what's best for students and learning, without partisan agendas.

In recent years, I have been part of many conversations across various forums about the needs for adjustments to educator evaluation. Consistently, the common ground or consensus areas tend to be centered around loosening the annual requirements, removing the highly effective rating, sensible adjustments to student growth percentage. Not once in any of the multitude of conversations have I ever heard an expressed desire for many of the additional elements proposed in SB 395. Earlier today, I had the opportunity to discuss this matter with my colleagues across Kent County during one of our regular meetings. Nearly all of the twenty public school districts were represented. While the views expressed here are my own, I can say with a high level of confidence that the concerns detailed herein are very closely aligned with the concerns and sentiments of my colleagues here in Kent County, and across the state.

We are concerned that enacting such far reaching legislation into law may only serve to see a future state legislature swing the pendulum too far in the opposite direction. We'd suggest a more balanced approach that may stand the test of time. A better approach focuses on the areas of agreement – that the current evaluation process is too time consuming and changes are needed in the student growth requirements. Public educators are increasingly weary of being political pawns as lawmakers rush to propose complex and important education reforms in a political ping-pong match with little comprehensive and balanced input from educators.

While my concerns and objections within SB 395 are many, the three highest priority concerns are:

1. The inclusion of unprecedented language calling for binding arbitration
2. Changing the definition of unprofessional conduct, which is completely outside the scope of educator evaluation
3. Proposed changes to student growth as a required factor in performance evaluations

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Below is an explanation of each of these three priority areas:

1. The bill's statutory ***mediation and grievance/arbitration are unnecessary, inappropriate and far too burdensome.*** They place the administration in the position of having to defend its evaluation to a third-party who has no education or training in teacher evaluations. Under what circumstances and how a district and association address evaluations, and any review of evaluations should be a matter that is locally bargained and should never be dictated in state law.

   This cumbersome process will result in very few teachers identified as having performance deficiencies. Administrators will not evaluate tenured teachers as "needing support", thereby avoiding the grievance procedure, and teachers who are ineffective will remain employed without any consequence. While that may be the goal for some advocates of SB 395, that is not in the interest of our schools, our students, their communities or even the long-term viability of our economy. Students will be impacted. Administrator burnout will likely increase as every performance concern and "needing support" rating they give will be under a microscope for challenge, diverting time and resources to such disputes. This impact of this bill does not create value-added time for educators, but shifts any time saved into unnecessary mediations and arbitrations.

   The legislation's arbitration process is ambiguous. The review standard under the proposed bill is "reasonable and just cause". This is misplaced and inappropriate. Just cause is a disciplinary standard, not pertinent to performance evaluation. The bill does not identify which party has the burden of proof in an arbitration over an evaluation rating or the process. In disciplinary cases, where applicable, the district has the burden to show that just cause exists for the disciplinary action. Requiring a district to establish that it has just cause for an evaluation is an unreasonable burden to show that a teacher "needs support". Also, the standard to review an evaluation under the bill will ironically be higher than the standard to terminate a tenured teacher for incompetency, which is "not arbitrary or capricious".

   In most grievance procedures, a bargaining unit member may only bring a grievance in one forum, but the procedure in the bill allows the teacher to challenge their evaluation rating in mediation, in arbitration, and then challenge a termination decision, based on the poor evaluation, in the Tenure Commission. Arbitration typically takes 6 to 12 months to complete, and the Tenure process likewise takes 9-12 months. During these proceedings, the teacher would continue to be paid even if they are removed from the classroom due to poor performance.

   Recent data trends show that a relatively low percentage of teachers are rated in the lowest categories. While some may suggest that the data minimizes the impact of the proposed mediation and grievance/arbitration requirements, I believe the opposite to be true. Since the data shows that this references a low percentage of educators, we should give schools the support and latitude they need to address such matters efficiently for the sake of students who are served by those educators. I reflect on the many excellent teachers and administrators I have had the privilege to work with over the years. Without exception, those teachers and

principals have had little patience or regard for educators who are not properly serving students. Please don't mistake the SB 395 advocacy at your doorstep as representing the sentiment of all educators. That would be a mistake.

It is clear that within most any profession there are some who for a lack of skill and/or will do not perform at an acceptable level. Educators are no different. We do not support legislation that seeks to retain the small the percentage of those who are not equipped for what our students and parents deserve. In what other profession is there the ability to arbitrate your performance evaluation? I ask that any arbitration provision be removed from SB 395.

2. The changes to 1230b will have long lasting effects on student safety. Section 1230b was enacted because school officials in Michigan were "passing the trash" meaning educators and other school employees engaged in serious misconduct and they would leave the district to move to another district without any forewarning of their misconduct to their new employer. Section 1230b was *intentionally* drafted to be broad, similar to the mandatory reporting of child abuse or neglect, to protect districts from unknowingly hiring applicants who engaged in misconduct at their previous district and protect student safety. The Bullard Plawecki Employee Right to Know Act states that "An employer shall review a personnel record before releasing information to a third party and delete disciplinary reports, letters of reprimand, or other records of disciplinary action that are more than 4 years old." Section 1230b effectively created an exception to this language and allowed evidence of unprofessional conduct to be disclosed to potential school employers even if it was more than 4 years old. If the definition of unprofessional conduct is amended, *very serious acts of misconduct will not be disclosed to potential school employers including the following examples*:
    - Endangering the safety of a student which leads to employee's voluntary resignation
    - Misappropriation of public funds or property
    - Unprofessional conduct among co-workers such as harassment, discrimination, stalking, violence, and other workplace conflicts that did not involve endanger the safety of a student
    - Drug transactions or criminal offenses
    - Engaging in sex acts on school property with a significant other
    - Misuse of district technology
    - Reporting to work intoxicated or under the influence of drugs or other substances
    - Insubordination – failure to follow a directive
    - Serious dereliction of duties or job abandonment (i.e. from state tenure cases teacher failed to perform regular progress reporting for his special education students regarding progress towards their IEP goals and teacher spent several hours a day surfing the internet regarding non-school related issues
    - Grooming or boundary issues between a teacher and student where the student's physical safety was never endangered or the student consented to the actions (i.e. from state tenure cases male teacher allowed female student to spend the night in his house, and male teacher assisted female student with obtaining an abortion
    - Actions that violate the Michigan Educator's Code of Ethics

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- Acts against students that may not endanger the student's physical safety but cause emotional harm such as some forms of corporal punishment (i.e. spanking), seclusion, restraint, or excessive, unnecessary, or unreasonable use of force (i.e. from tenure case teacher dragged a special education student across the floor several feet and took video of the student defecating in her pants and emailed it to former school employees)

Section 1230b does not prevent a school district from hiring an employee who has an employment history of unprofessional conduct. In recent years, with the labor shortage in almost every aspect of school employment, schools have hired employees at various levels who have the "yes" box checked on unprofessional conduct because schools are in desperate need of staff. Those decisions are made with full transparency of what actions the employee engaged in and knowledge of the potential risk of employment. If the definition of misconduct is narrowed as currently drafted, evidence of misconduct will be suppressed and expunged from personnel files resulting in schools unknowingly hiring employees who have engaged in serious misconduct and compromising the safety of students. School districts should have information pertaining to serious misconduct committed by an applicant in a prior district to determine whether to hire the applicant to teach vulnerable children. ***In a time of unprecedented school safety challenges, there are serious concerns with legislation that could potentially weaken our ability ensure that schools hire employees that will serve our students and communities safely and professionally.*** I ask that this provision be removed from SB 395.

3. ***Student growth measures*** have undoubtedly been a challenging aspect of the current law. Rather than eliminate student growth altogether, or even worse leave it to individual districts to determine, perhaps instead consider requiring that student growth remain a consideration in an educator's evaluation overall performance not to exceed a percentage. In the event that an educator's established pattern of student performance data, documented over two or more school years, reveals a distinct deficiency when compared to similarly situated educators that cannot be attributed to other factors, the district shall factor that into the teacher's rating. Where such a discrepancy does not exist, that percentage of the evaluation is effective.

Thank you once again for your review and consideration on this complex and important issue that impacts every student in our schools.

Respectfully,

Dave Rodgers
Asst. Superintendent of Human Resources & Legal Services
Kent ISD