



Fixing Tenure

A proposal for assuring teacher effectiveness and due process

Joan Baratz-Snowden Education Study Center

Prepared for the Center for American Progress

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Contents

1 Executive summary

5 What is tenure?

7 How does the tenure system work?

7 Earning tenure—is quality assured?

8 Revoking tenure—does tenure interfere with removing ineffective teachers?

10 Bottom line

11 Teacher evaluation: The heart of the matter

13 Teacher quality: The public's view and teachers' view

14 What would a teacher evaluation system that supports both teacher improvement and fair dismissal procedures look like?

19 Bottom line

20 Can't we do better?

22 The Toledo Plan

23 The Minneapolis Model

25 The Green Dot Contract with the Los Angeles Teacher Union

27 Findings and recommendations

30 Endnotes

32 Acknowledgements and About the author

Executive summary

Quality teaching is clearly critical to assuring student success. Studies have shown that teacher quality is the most important in-school factor related to student academic achievement. This finding has led to an intense policy focus on teacher quality. Policymakers are concerned with identifying teacher excellence, understanding the barriers to assuring excellent teachers in every classroom, and developing policies to cultivate and nurture excellence. They are also focused on identifying and removing weak teachers. Thus, discussions of teacher quality invariably lead to discussions of tenure, a concept much misunderstood, and often unfairly identified as the major obstacle to assuring that all children are taught by effective teachers.

Teacher tenure in elementary and secondary school has been part of the educational landscape since 1909, when New Jersey passed a law to protect teachers from the whims of autocratic principals and patronage allocating administrators. Until then, teachers could be fired for speaking up, questioning educational practices, or merely because an administrator wished to give the job to someone else for political reasons or nepotism. Other states soon followed New Jersey's lead. Today, every state has a tenure law, although many use other descriptors to describe the policy such as "fair dismissal procedures, continuing contract or service, permanent status, career status, and post-probationary status."¹

The initial impulse for developing tenure laws was to protect teachers from unfair dismissal, but today there is concern that tenure laws are anachronistic and create more problems than they solve. Many education policymakers now believe that civil rights legislation passed over the last half century protects teachers from unfair dismissal, making tenure laws obsolete. They further claim that tenure laws do not assure quality teaching and often lead to unnecessary complications in dismissing veteran teachers who are ineffective. Teachers and their unions, however, insist that guarantees of due process are still necessary given the current harsh political climate in which school administrators often find themselves. They fear that teachers unfairly will be made the scapegoats for all the ills of public education² and will suffer undeserved consequences at the hands of poorly developed accountability systems.³

This report examines whether tenure, as it currently operates in the states, lives up to its original goals of assuring a high quality veteran teaching force and protecting teachers from arbitrary and capricious dismissal. It concludes that tenure laws need fixing. There

are few meaningful standards for earning tenure in most places other than survival in the classroom, and, in general, there is an unwieldy, expensive, and adversarial dismissal process in place when tenured teachers' competence is challenged. The paper finds that:

1. There is widespread confusion and considerable misunderstanding surrounding the concept of “teacher tenure,” and the term should be abandoned. Instead, debate should be about earning “continuing employment status,” and “due process” dismissals.
2. Most current state and district tenure provisions, both for earning tenure and revoking it, need a serious overhaul.
3. School systems need to consider evidence of student learning when granting continuing status to teachers.
4. In general, learning-working conditions are not considered in tenure decisions.
5. Tenure decisions too often are made at the school level by principals with little oversight from the district to assure that standards for granting tenure are comparable across district schools.
6. There is a need for more research on teacher effectiveness—both how to measure it, and how to develop and sustain it.
7. States and districts do not invest in the development and implementation of teacher standards or the robust assessments necessary to assure that those beginning teachers who earn permanent status meet rigorous criteria of quality teaching.
8. Teachers need due process protections given the current status of principal and other administrator training, the lack of investment in serious teacher standards and evaluation, and the stress placed on the school system by demands for accountability, reasonable and otherwise.
9. Labor-management agreements can develop rigorous, fair, and streamlined systems for granting continuing employment to effective teachers and removing veteran teachers who are not performing up to standards.
10. Merely eliminating tenure without addressing the conditions that lead to the recruitment, development, and retention of teachers will neither address the major causes for the presence of inadequate teachers in the system nor lead to significantly improved teacher quality.

What is clear from this review is that fixing tenure first and foremost involves defining what effective practice is. We cannot “fix” the tenure process without clear, shared stan-

dards of excellent practice and tools and procedures to measure that practice. Our current teacher evaluation practices are weak and designed at best to weed out the most egregious teachers, rather than to cultivate rigorous performance of all teachers.

School districts must develop effective teacher evaluation systems collaboratively with teachers. Such systems must be both summative and formative, based on a set of standards of practice that account for the complexities of teaching, include evidence of student achievement based on multiple measures of learning, provide professional development for teachers to improve their practice, and consider the context in which learning takes place.

Teacher tenure must be based on a strong comprehensive evaluation system specifically designed to support best practice, and one that builds in due process to support dismissal when necessary. The report presents three models of improved practice for earning tenure and/or addressing dismissal in a fair way: the Toledo Plan, the Minneapolis Model, and the Green Dot Contract. All these plans were negotiated with the local union and include clear standards, criteria for demonstrating effectiveness, professional development plans, and dismissal procedures.

Given those findings, the report recommends that an effective and defensible system for granting continuing employment status and/or dismissing incompetent teachers include the following:

- 1. Rigorous professional standards that reflect the complexity of teaching and learning.** Both teachers and administrators need a common understanding of all the facets of teacher effectiveness, as well as the indicators and evidence that teachers must present to demonstrate that they are meeting the standards. Such an evaluation process can be a very potent tool for improving teaching and learning as teachers and administrators together examine teaching practices and come to agreement on what constitutes best practice.
- 2. A credible evaluation system that is multidimensional and requires multiple data sources, including standardized test scores where available.** No single criterion can be used to identify teacher effectiveness. We need a comprehensive evaluation system that, in the words of Lee Shulman, “represents a marriage of insufficiencies,” where the limitations of some data are offset by the strengths of other data.
- 3. Collaboration between teachers and administrators.** Too often systems of evaluation and dismissal are imposed on teachers rather than developed with them. Evaluation systems should be negotiated with the union. When teachers are a part of the process, their professional wisdom is essential for buy-in and for assuring a system grounded in well-developed classroom practices.

4. **Evidence of student learning.** Standardized test scores can play a role in presenting evidence of learning, but using standardized test scores as the sole or predominant measure of achievement is unwarranted and unwise given the inadequacy of such tests for capturing the complexities and breadth of student learning and the current limitations of value-added methodologies. Nonetheless, it is absolutely essential that teachers present evidence of student learning—through test results and other material—as part of the tenure system if it is to be credible. Calling upon experienced teachers to help develop the multiple sources of such evidence is essential in redesigning the tenure system.
5. **Evidence of teachers' teaching and learning environment.** Data from teachers, parents, and students, where appropriate, concerning school leadership, school facilities, access to books and other educational supplies, specialists, issues of school safety and school culture should all be part of the information that is considered when making tenure decisions. Effective teaching and learning is a product not only of individual behavior effort, knowledge, and skill, but also of the learning conditions where teaching and learning takes place. Requiring such information when considering promotion and dismissal provides incentives for school administrators to assure that necessary tools and conditions support teachers' efforts to educate children.
6. **Professional judgment to grant and revoke tenure.** In a complex system where data from multiple sources are evaluated, it is necessary to have judgment in the hands of trained professionals who understand teaching and learning and schools. It is important to develop systems that require professional educators, not law judges (nor economists with arcane formulas), to make decisions concerning teacher quality and competence. The process should focus on instructional practices and student outcomes rather than administrative processes, and it should be developmental rather than adversarial.

In sum, the evaluation system must be comprehensive. It must include transparent standards and rubrics for meeting those standards, access to professional development to assist in meeting the standards, and a labor and management group that examines the evidence—both for granting continuing employment status and for dismissing teachers.

These recommendations are expensive. School systems will need to create data systems; develop better measures of student achievement and classroom practices; construct professional development activities and opportunities; and work with labor-management teams on the processes for the evaluation. And teachers must understand the standards and the levels of performance required, and evaluators—administrators and peer reviewers—all must be trained to assure that they are consistent in their judgments of teacher quality.

Yet it is surely worth the investment, especially when considering the high costs of current obsolete processes, including the costs to children in lost opportunity from poor instruction and the costs to other teachers who have to deal with the consequences of students who are unprepared as a result of prior exposure to weak and incompetent teaching.

What is tenure?

It seems that everybody has an opinion about tenure. We often hear from critics that: “Tenure protects incompetent teachers,”^{4,5} “We must get rid of tenure,” or “Tenure addresses the needs of adults at the expense of children.” But tenure proponents argue that: “Tenure protects teachers who are willing to stand up to authority and advocate for the interests of students.” In addition, many teachers believe that tenure is part of the “grand bargain” they struck with their employers—that is, they would work for lower salaries in exchange for greater job security, assuming they continued to meet the system’s performance expectations.

Discussions about tenure often shed more heat than light. Many people erroneously believe that tenure is a guarantee of a job for life. The simple truth is that tenure only means that a teacher gains permanent employment status after successfully completing a probationary period—usually three years of teaching—and may not be fired or disciplined without just cause and due process.

Research indicates that the public approves of the concepts that underpin the tenure process, but rejects the term itself because of its erroneous connotation as a lifetime sinecure.

When asked directly by the Zogby poll if they supported or opposed tenure—with no definition of tenure’s due process protections offered—respondents were 43 percent in support, 46 percent opposed, and 10 percent not sure. But when asked if they would support “replacing” tenure with a system that would give teachers the right to a fair hearing before a school board could fire them, 84 percent of New York voters said yes.⁶

In fact, 99 percent of the Zogby poll respondents agreed that teachers should know the allegations against them; 90 percent believed teachers should be able to defend themselves before being fired; and nearly two-thirds said an impartial observer should decide whether the allegations are true.⁷

Tenure is not a guarantee of a job. Permanent teachers are not guaranteed their jobs if a district needs to reduce its work force due to district financial constraints. But often they will not be first on the chopping block when teaching positions are eliminated. For example, tenured art teachers do not get jobs as math teachers or third grade teachers ahead of less senior or probationary teachers who are certified in those fields. They are, however, likely to retain their teaching positions in their field ahead of less experienced colleagues in the same certification area.

Many confuse tenure with academic freedom protections. This is not the case in regard to elementary and secondary school teachers—the Scopes trial⁸ of the last century notwithstanding.⁹ Public school teachers cannot choose to teach whatever they like or believe to be important; they are required to teach the curriculum adopted by the state and or district in which they are employed:

Teachers in public schools have limited freedoms in the classroom to teach without undue restrictions on the content or subjects for discussion. Their freedoms are based on rights to freedom of expression under the First Amendment of the Bill of Rights. However, the concept of academic freedom is quite limited. The content taught by a teacher must be relevant to and consistent with the teacher's responsibilities, and a teacher cannot promote a personal political agenda in the classroom. Factors such as the age, experience, and grade level of students affect the latitude in which a court will recognize the academic freedom of a teacher.¹⁰

But tenure does protect teachers if they speak out about school policies and practices, or if they hold unpopular political opinions, embrace arcane religious beliefs, espouse social views that are not mainstream, or cross the principal or other administrators in some way unrelated to their classroom performance and instructional expertise.

How does the tenure system work?

State laws enunciate processes both for granting tenure and revoking it. Tenure laws are designed to do two things: (1) assure a high quality veteran teaching force; and (2) protect that force from arbitrary dismissal.

Earning tenure—is quality assured?

Albert Shanker, the late president of the American Federation of Teachers, was an early critic of the manner in which most school districts grant tenure. He believed that districts paid too little attention to the quality of teaching when making tenure decisions and called for the development of standards of excellence for earning tenure.¹¹

A 2008 review of tenure laws by the National Council on Teacher Quality concluded that what Shanker worried about decades ago is still the case today—standards are lax and, in general, the laws do not provide assurance that high quality teaching is the basis for granting tenure:

- Although all states control how and when local districts award teachers tenure, only two states require any evidence of teacher effectiveness to be considered as part of tenure decisions. All other states permit districts to award tenure virtually automatically.¹²
- Even if states did have a process that connected tenure to teacher effectiveness, 44 states allow teachers to earn tenure in three years or less, which is not enough time to accumulate sufficient objective data about teacher performance. Three states award teachers permanent status after a single year of teaching.¹³

The NCTQ review also found that “States do virtually nothing to establish teachers’ effectiveness in the classroom before awarding them permanent employment status.”¹⁴ State law relies on the local authorities—particularly principals—to make the judgment call regarding effectiveness.

NCTQ was right to be dismayed by current practices for granting tenure. Their report showed that:

- Only 29 states required districts to include classroom observation as part of the teacher evaluation for granting tenure.
- Only 15 states required districts to include objective measures of student learning as part of the evaluation.
- Only two states made student learning the preponderant criterion for tenure decisions.
- The probationary period for earning tenure was usually three years (33 states) or less (11 states).¹⁵

Most current policies and practices in granting of tenure clearly do not guarantee teacher effectiveness.

Revoking tenure—does tenure interfere with removing ineffective teachers?

The second issue surrounding the tenure debate involves processes for revoking tenure once it has been granted. There are usually three steps to the revocation process: notification of cause; a hearing to determine the facts; and an appeals process. States and districts vary in the particulars of those steps.

Notification of cause

As part of due process, teachers are entitled to know the nature of the charges against them in any tenure dismissal procedure and the evidence supporting the claim.¹⁶ The reasons can be specific or opaque and are generally defined—loosely and vaguely—in state statutes or local district bargaining agreements.

As Miller and Chait observe:

*State statutes specify a variety of causes for termination of tenured teachers. Most states include incompetence or poor performance, although 13 states do not. Other typical reasons for termination include immorality, insubordination, unprofessional or inappropriate conduct, and neglect of duties. Statutory definitions of cause are fairly vague. In many states, incompetence may not be explicitly defined as a failure to further student achievement. Furthermore, case law may or may not offer useful guidance around the kinds of evidence necessary to document incompetence.*¹⁷

Given the vague categories in many laws, it is not surprising that, in cases seeking to dismiss tenured teachers, the meaning of the charge is often subject to as much debate as the evidence to support it.

An impartial hearing

Once a teacher has been notified of the basis for dismissal, he or she is entitled to a hearing before an impartial body. State law or contract language specify the particulars, such as schedules for such proceedings, who will preside over the hearing, who will hear the evidence, what the timelines are for submitting documentation, etc. Hearing venues vary by state. For example:

- In California the hearing is before a Commission on Professional Competence. The Commission consists of one member selected by the employee, one member selected by the governing board—both of whom must be certified teachers with at least five years experience—and an administrative law judge.
- In Connecticut, the hearing is before the board of education or a subcommittee of the board, or impartial hearing officer or panel which consists of three members, one chosen by the superintendent, one by the teacher and those two members choose a third, with help from the American Arbitration Association if necessary.
- In Georgia, the hearing panel consists of not less than three and no more than five impartial persons with academic experience.
- In Kansas, a hearing officer selected by the teacher and the district board from a list provided by the commissioner of higher education.
- In New Jersey, the hearing is before an administrative law judge selected after review by the state commissioners of education or before a person appointed by the commissioner.¹⁸

An appeals process

Once the hearing is complete, either the teacher or the administration may appeal the decision. State law or contract provisions specify the grounds for appeals. The case may then leave the schools' jurisdiction and may become a full-fledged court proceeding. Venues for appeals vary. For example:

- In California, appeal is to the Superior Court.
- In Georgia, it is the State Board of Education.
- In Idaho, appeal goes to district court in the county where the teacher is employed.
- In New Mexico, the appeal is to binding arbitration by an independent arbitrator selected by the board and employee or appointed by the presiding judge.¹⁹

The processes for revoking tenure are usually adversarial, cumbersome, and costly. Dismissal of tenured teachers tends to be more about procedure than about substance—not surprising given the fact that hearing officers are frequently not educators and can more easily make judgments about process than about teaching practice. In fact, because reasons are often nebulous, bureaucratic procedures are complex, and administrators are inept at following the rules. The process can take months—if not years—involve the

school administration as well as the courts, and be very costly to all concerned—including unions and the administration. Less than 1 percent of tenured teachers are involuntarily retired from the classroom.²⁰

Teachers agree that tenure policy and practice generally does not live up to its goals of assuring a high quality teaching force and efficient removal of incompetent practitioners. A recent survey by Education Sector found:

Well over half of the teachers surveyed (55 percent) [said] that in their district it is very difficult and time consuming to remove clearly ineffective teachers who shouldn't be in the classroom but who are past their probationary period. ... And almost half of teachers (46 percent) [said] they know a teacher in their building who is past the probationary period but who is clearly ineffective and shouldn't be in the classroom.²¹

But teachers still believe they need due process protections from incompetent and/or vindictive administrators.

Bottom line

Tenure as we know it needs fixing. There are few meaningful standards in most states and districts other than survival in the classroom for earning tenure. And, in general, there is an unwieldy, time consuming, expensive, and adversarial dismissal process in place when a tenured teacher's competence is challenged.

Teacher evaluation: The heart of the matter

At the crux of any discussion of teacher quality and tenure is the question of what effective practice is. What are the standards of excellence? How are they measured and by whom?

Without a shared set of standards of professional practice, teacher quality is in the eye of the beholder and floats about at the whim of the observer. In such a system, it is easy for form—didactic instruction, small group collaborative models, student enthusiasm—to override substance—student engagement and learning. And it is easy for inappropriate and insufficient outcome measures such as standardized student test scores to hijack the process and narrow the concept of effective teaching.

What we know about the current state of teacher evaluation is not promising for granting tenure and assuring quality instruction for all children. Most teacher evaluation in school districts across the United States falls into the category of “common law” assessment. Evaluations are generally undertaken to meet state mandates and local requirements, and are variations on a common format that rates teachers on the basis of observable skills and accepted practices.

These systems typically involve brief observations of teaching by the principal or another school administrator, with results recorded on a form that is often organized as a checklist. The evaluator assesses overall teacher performance using a rating scale ranging from “outstanding” to “unsatisfactory.” A conference between the teacher and administrator may conclude the formal evaluation sequence, and the teacher usually has the right to comment orally and in writing on the evaluation report.

There are several exceptional examples of teacher evaluation practices based on shared standards of teaching excellence, including the National Board for Professional Teaching Standards’ standards and assessments; the Teacher Advancement Program model, or TAP, which uses a modified Charlotte Danielson framework of teacher excellence based on NBPTS; and the work of Ray Pechone and his colleagues in California, which includes antecedents to work in Connecticut dating back to the early 1980s. But most districts, as a recent Education Sector report found, rely on teacher evaluation practices that:

... are typically of little value—a single, fleeting classroom visit by a principal or other building administrator untrained in evaluation and wielding a checklist of classroom conditions and teacher behaviors that often don’t even focus directly on the quality of teacher instruction.²²

Their findings echo those of the American Federation of Teachers, or AFT. The AFT examined state evaluation policies and district practices in 1998. The union found that, in general, state policies were vague, often required evaluation of permanent teachers less than once a year, and in some states did not require classroom observation as part of the assessment. Only three states required schools to take test scores into account in evaluating teachers, and one state—Indiana—explicitly forbade “an evaluation based in whole or in part on the [Indiana Standardized] test scores.”²³ District practice was no more rigorous. The preponderant practice was “drop-in” visits from principals or their designees with a checklist of practices to be observed. The checklists were rarely research based, nor were administrators specifically trained in their use. Evaluations were done for compliance—to satisfy a requirement, rather than to improve teaching.

Most districts in the AFT study—the 50 largest and 20 others chosen at random—did not routinely keep or publish quantitative results of their evaluation process. In the rare instance when such numbers were offered, less than three percent of the teaching force was identified as underperforming.²⁴

The NCTQ 2008 survey of state evaluation policies indicates that not much has changed.²⁵ The central message of the present teacher evaluation enterprise is that overall it is not a serious endeavor aimed at improving or even identifying effective—or ineffective—instructional quality.

As Toch and Rothman indicate:

*A host of factors—a lack of accountability for school performance, staffing practices that strip school systems of incentives to take teacher evaluation seriously, union ambivalence, and public education’s practice of using teacher credentials as a proxy for teacher quality—have resulted in teacher evaluation systems throughout public education that are superficial, capricious, and often don’t even directly address the quality of instruction, much less measure students’ learning.*²⁶

Teachers agree. They find little value in the evaluation practices they experience. As Duffett and her colleagues learned:

*Teachers indicate that the most obvious technique used to assess teacher quality—the formal observation and evaluation—is not doing the job. In fact, only 26 percent of teachers report that their own most recent formal evaluation was “useful and effective.” The plurality—41 percent—say it was “just a formality,” while another 32 percent say it was “well-intentioned but not particularly helpful” to their teaching practice. Almost seven in ten teachers (69 percent) say that when they hear a teacher at their school has been awarded tenure, they think that it’s “just a formality—it has little to do with whether a teacher is good or not.”*²⁷

The system is so perfunctory and puts so little investment in evaluation that there is little wonder that so few teachers are identified as “unsatisfactory” or “ineffective,” and it’s not surprising that when they are deemed inadequate, the standards are so vague and the practices so lax that assertions of incompetence are hard to defend when challenged in a dismissal procedure.

Teacher quality: The public’s view and teachers’ view

The public, policymakers, and the education community agree that improving teacher quality is essential to improving student achievement. What is in contention is how these different groups define “teacher quality” and view “teacher improvement,” and the implications of these diverse perspectives for teacher evaluation and education policy—particularly tenure.

The public, for its part, is concerned about the quality of schools and about the quality of the teachers in them. The public generally trusts teachers to make sound educational decisions. But they also believe that there is a small percentage of teachers who are not qualified and should not be teaching. Moreover, they are frustrated by what they perceive to be an inability to remove those inadequate teachers from the classroom, and they attribute the difficulty in firing bad teachers to rules and regulations developed by teacher unions.²⁸ For the public, the issue of improving teaching revolves around terminating incompetent teachers. Viewed in this light, the purpose of teacher evaluation is to identify and ferret out the “rotten apples.” This view is often reflected by pundits and public officials who seek quick policy “fixes” for the complex issue of improving teacher quality such as getting rid of tenure.

Teachers share many of the public’s concerns about instructional quality and teacher accountability. The union, they believe, has a responsibility to promote quality in the teaching profession.²⁹ They believe that the best way to ensure quality in teaching is to provide support and assistance to those teachers whose performance evaluations reveal significant areas of weakness. The nub of the teacher quality issue for teachers is not merely a matter of finding more efficient means by which to remove poor teachers from classrooms; it also encompasses a more comprehensive approach designed to improve teaching of all practitioners and provide opportunities for less-than-stellar teachers to improve their practice.

Many in the education reform community, including researchers and leaders of many education organizations, see the issue of teacher quality as one of overall mediocre performance in the teaching force. Their dilemma is not simply how to remove incompetent teachers from classrooms; they believe, the quality problem is traceable to underinvestment in teacher education, generally low standards for entry into the profession, poor induction procedures, weak continuing professional development programs, and administrative hiring and assignment practices that place unprepared and under-prepared individuals in teaching positions. Given such views, those reformers—like

teachers—see teacher evaluation as an occasion to create a teacher development system designed to identify teaching strengths and assist in improving weaknesses among the current teacher work force.

These various communities—the public and policymakers, teachers, and professionals in the education reform arena—all acknowledge the importance of teacher quality. But they are talking past each other when discussions of quality intersect with conversations about the role and function of teacher evaluation and tenure. The public and policymakers are primarily concerned with “accountability by ouster”—weeding out incompetent teachers. Teachers and other education professionals tend to focus more intensely on improving practice and cultivating teacher potential.

What do these varying perspectives portend for policy and practice concerning teacher evaluation? Evaluation has two classic functions: accountability and improvement. Evaluation discussions typically center on the accountability function—the need to assure that teachers meet standards and, when necessary, the need to remove incompetent teachers. This kind of assessment—summative evaluation—is tied to personnel decisions such as whether or not to renew a teacher’s contract or grant tenure. Formative evaluation, a topic less often considered, focuses on professional development and improving teaching practices. Formative assessments address teachers’ needs to grow in their work, gain skill and recognition, and expand the scope of their responsibilities.

The public and policymakers focus on summative evaluation in judging teacher quality, while teachers and other education professionals believe that the formative function is crucial. What is critical here in regard to tenure is that a well-developed, comprehensive evaluation system with formative evaluations and the supports that accompany them could be the basis for granting tenure and improving quality overall. What’s more, when a summative evaluation points to dismissal, it could also form the due process basis of a much improved and streamlined tenure revocation process.³⁰

What would a teacher evaluation system that supports both teacher improvement and fair dismissal procedures look like?

Teacher effectiveness is a function both of what the individual teacher brings to the learning process and how the school supports that process. Teacher evaluation ideally should be embedded within a school wide continuous improvement system that holds the school or district accountable for creating and maintaining an effective teaching and student-learning environment. Its purpose should be to improve the overall quality of the teacher workforce by recognizing and building upon teacher strengths, identifying ineffective teachers and providing support to improve their knowledge and skills, and addressing accountability by providing the foundation for fair, valid, and legal decisions concerning retention, tenure, and dismissal. If designed properly, districts can use the evaluation process as the basis for decisions regarding tenure, as well as the foundation for dismissal proceedings.

To do this, the evaluation system should be developed collaboratively with teachers, be both summative and formative, be based on a set of standards of practice that takes into account the complexities of teaching, include evidence of student achievement based on multiple measures of learning, provide professional development for teachers to improve their practice, and consider the context in which learning takes place.

Evaluation system should be developed collaboratively

The history of education reform is littered with top-down examples of efforts to impose new systems on teachers. Teacher “buy-in” of reform processes is an essential part of any successful education improvement. As Kaboollian has written:

[Collaboration] strengthens an organization by increasing its capacity to engage in, respond to, and institutionalize constructive change. Research from the National College for School Leadership shows that student achievement is more likely to improve when leadership involved in issues of education quality is selected from among the stakeholders... Employee participation in solving problems such as how to deal with poor teaching is most likely to result in improved organizational performance if the union is supportive of the effort and involved in the design and governance of the participation mechanism. It is important to remember, however, that even changes in practices require the consent of all parties. Research on participatory schemes makes clear that the positive effects of participation are greater and longer lasting when unions as well as individual employees are involved.³¹

Furthermore, teachers are the experts; they have the critical knowledge about best practice that can be harnessed in designing the system. They need to be involved in all aspects of the process, from creating the standards, to articulating the rubrics of best practice and evidence of student learning, to identifying professional development activities and setting criteria for dismissal. It is the evidence of teacher involvement in the new evaluation system that will make it credible and acceptable to other teachers.

Evaluation should be based on professional teaching standards

The problem with many of the current teacher evaluation checklists is that they are not based on rigorous standards of practice that reflect the full complexity of teaching. The standards need to be research-based and helpful to teachers in trying to improve practice. They must also be specific enough to withstand court challenges. Standards define accomplished practice and, to borrow a phrase from the National Board for Professional Teaching Standards, tell us what teachers “should know and be able to do.”

Clear, rigorous standards with examples of how those standards are instantiated in practice define for teachers, administrators, and the public what it means to be an effective

teacher. They also provide the basis for teacher education in pre-service and subsequent induction programs. As the Cheshire cat remarked, “If you don’t know where you are going, any road will take you there.” Standards provide a shared destination. Common understanding of effective teaching is the cornerstone for improvement and the basis of evidence for dismissal when necessary.

Evaluation system should provide feedback and professional development to teachers

It is not enough to develop a black box evaluation system where teachers are identified as winners or losers. To improve teacher quality, the evaluation system must provide feedback to teachers on their strengths and weaknesses and give them professional development opportunities to strengthen their practice. An essential element of an evaluation system that builds in due process is the opportunity to improve.

Evaluation should include evidence of student learning

There is much controversy today about how to measure student learning in a teacher evaluation system and the weight it should be given in decision making regarding retention, promotion, and dismissal. Using standardized student test scores in evaluating teachers is a popular proposal among many legislators, policy analysts, economists, and reformers, but many testing experts, education researchers, union leaders, and teachers are generally opposed to such a narrow gauge for teacher evaluation, citing technical, political, and educational problems.

Test scores as evidence of competence

Evaluating teachers on the basis of their students’ scores on standardized achievement tests has an easy, simplistic appeal. If the data show that more effective teachers produce students with greater gains on standardized tests, then why not use such information in evaluating the effectiveness of individual teachers? Doesn’t it follow that students who score well on standardized tests have good teachers and those who score poorly have been instructed by less qualified teachers? Not quite. As H.L. Mencken once noted, “Every complex problem has a simple solution—and it’s usually wrong.” Student test data may be very useful in helping teachers improve their instruction. And teachers and principals should focus on student achievement information—particularly achievement gains—as they work to improve student learning. But it does not follow that they can reliably use data on standardized tests alone in a valid teacher evaluation system.³²

There are a number of dilemmas related to determining teacher competence from student test scores:

- **Tests provide only a sample of student performance.** Standardized test results display performance only on a single test, usually a paper and pencil examination, but do not tap into other components of student achievement that are not measured by the test.³³ As Toch and Rothman note, most of those tests “focus on low-level skills such as the recall or restatement of information and on only a few subjects, primarily reading, math and science. They don’t measure more advanced skills such as expository writing or an ability to think creatively or analytically, and they sidestep history, art, music, and other subjects.”³⁴
- **Many standardized tests are not aligned with standards and curricula.** Tests generally measure students’ proficiency in basic skills, often in a multiple choice format. They are usually based on outdated theories of learning such as “drill and practice” that are unaligned to the curriculum and do not measure the more ambitious educational goals necessary for preparing students to function in a global society.
- **Evaluating teachers on the basis of students’ performance on standardized tests leads to “teaching to the test.”** If teachers know that they will be “graded” based on their students’ test scores, they are more likely to adapt their instruction to the specifics of the test. Teaching to the test can result in teachers using less innovative instructional techniques and relying instead on activities and exercises that mimic the test format. And, as we have seen most recently in the implementation of NCLB, a focus on student test scores tends in many instances to provide an incentive for teachers to narrow the curriculum to those subject areas that are tested.³⁵
- **Standardized tests are not available at all grade levels or for all subjects.** State tests are generally developed for a selection of grade levels—three through eight—and a few subjects—usually the “core” subjects of English-language arts, mathematics, science, and sometimes social studies. Thus, even if student standardized test scores were a plausible measure of teacher quality, data are only available for those teachers who teach at the particular grades and in the particular subjects tested, which is less than 20 percent of the current teacher workforce.
- **Test scores can be misleading.** Statistical anomalies can distort test results. For example, extreme scores—those that are especially high or especially low—tend, on retesting, to regress toward the mean, even if no instruction takes place. The unintended consequence of this may be that weaker teachers’ students may seem to do as well as stronger teachers’ students.³⁶
- **There is no agreement about what value-added metric is appropriate.** As Goldhaber and Hansen observe, “there is no consensus on the *right statistical approach*, especially when it comes to estimating the impacts of individual teachers.” Different approaches on the same data yield different results, and different tests of the same children yield different results in regard to teacher excellence.³⁷

- **Test scores show patterns over time.** Test scores are valuable as longitudinal data showing growth and progress, stagnation, or lost educational ground, but single year scores reveal little that is useful or reliable. Currently, teacher evaluation is most often based on single-year information and most states and districts do not yet have the data systems or analytic capacity to do multi-year value-added analyses. Furthermore, Sanders, Goldhaber and others have indicated that two years of test scores are minimally acceptable for value-added analysis, and more is better.³⁸
- **Teaching is context-bound.** Many of the factors that influence student achievement—and thus can influence students’ scores on standardized tests—are beyond teachers’ control. Student demographics, home support, and student attendance patterns have all been shown to affect achievement levels. Value-added methodologies address some, but not all, of these problems. For example, most methods do not adjust for factors such as school resources, class size, number of disruptive students and students with special needs, school leadership and specialist teachers. And many models control for far less.³⁹
- **Test scores can be incorrectly reported.** In 1998, New York City incorrectly identified more than 9,000 students as failing and in need of summer school. Several district superintendents were fired for failing to raise test scores on the basis of that judgment. The New York testing problem was not an isolated incident. The explosion of testing under NCLB requirements has created an environment where miscalculations are not as rare an occurrence as might be desired for such high-stakes decision making.
- **Test scores are not stable enough to predict individual teachers’ future performances.** Value-added methodologies have gotten much better since Bill Sanders first introduced them in the late 1980s. Nevertheless, as Goldhaber and Michael Hansen have demonstrated, they are not yet ready for prime time when it comes to high-stakes decisions such as tenure. As they noted, “Policies relying on the use of value-added measures of teacher effectiveness depend on the accuracy, precision, and stability of these estimates.”⁴⁰ They found in a small experiment looking at teacher performance based on value-added models of “pre-tenure” and “post-tenure” performance that most teachers stay in the quartile that they were in during their “pre-tenure” years, but there is “a non-trivial proportion of teachers (11 percent) who are judged to be relatively ineffective (lowest quintile) based on the pre-tenure period who are then judged to be among the most effective (top quintile) in the post-tenure period.”⁴¹

There is no one best measure for student learning. Standardized test scores should not be privileged among output measures of achievement. Multiple measures are necessary—student work samples, portfolios, results from teacher developed assessments, and other similar resources should all be considered in designing a teacher evaluation system. Credible evidence of student learning should be part of the documentation that teachers present when they are evaluated or earn tenure. But the current limitations of standardized testing and value-added methodologies and the unintended consequences of focusing on

test results⁴² make it clear that evaluation for earning tenure should not be based exclusively, or even predominantly, on results of student standardized test scores.⁴³

Evaluation should consider the environment in which teaching and learning occur

Studies have shown that working-learning conditions and a collaborative school culture with school leadership that involves the community in the school have large effects on both teacher performance and student outcomes.⁴⁴ Even teachers with excellent pedagogical and content knowledge skills will struggle to be effective in school environments that isolate teachers, are disorderly and unsafe, and have weak administrative leadership. As Leithwood noted:

*There is good evidence to show that teachers' working conditions matter because they have a direct effect on teachers' thoughts and feelings—their sense of individual professional efficacy, or collective professional efficacy, of job satisfaction; their organizational commitment, levels of stress and burnout, morale, engagement in the school or profession and their pedagogical content knowledge. These internal states are an important factor in what teachers do and have a direct effect in what happens in the classroom, how well students achieve, and their experience of school.*⁴⁵

Bottom line

If tenure is to meet its twin goals of identifying and retaining an effective work force on the one hand, and weeding out weak and incompetent teaching on the other, then it must be based on a strong comprehensive evaluation system specifically designed to support best practice and build in due process to support dismissal when necessary.

Can't we do better?

Teachers recognize that there are problems with the tenure system as presently implemented and that it needs to be improved, but they firmly believe that it should not be eliminated. They believe they still need protection from the incompetent or abusive administrator, the overzealous parent, and the politically motivated school board member who is willing to use a teacher's efforts to uphold high academic standards against them. Tales abound about principals who pressure teachers to change grades, lower standards, and in other ways make inappropriate demands on teachers in order to make their schools "look" successful or avoid the pressures that they experience when parents are irate or their schools do not meet the state or district learning expectations. As Duffett and colleagues put it:

... nearly half of teachers surveyed say that they personally know a teacher who is ineffective and should not be in the classroom. But, although teachers want something done about low-performing colleagues, they are leery of proposals to substantially change how teachers can be dismissed.⁴⁶

Nonetheless, a federal survey found that 78 percent of teachers support the sentiment that "swiftly getting rid of mediocre and incompetent teachers would improve the educational system." And, when asked whether they believe that it is possible to change tenure rules and the discipline process in a way that permits poor-quality teachers to be dismissed more easily and quickly while simultaneously protecting legitimate job security rights, teachers by a 2-1 margin—57 percent to 29 percent—say that it is indeed possible to achieve both goals.⁴⁷

Teachers and their unions are significant players in legislative struggles around tenure. State legislatures often revise their dismissal process to "streamline" practices and in some cases they attempt to abolish tenure altogether by making all teachers "at will" employees. For example, in 2000, then Governor Roy Barnes (D-GA) successfully abolished tenure as part of a comprehensive education reform law in Georgia, and he was defeated through union efforts in the next election. The new governor promptly restored tenure. More recently, California Governor Arnold Schwarzenegger (R-CA) was unsuccessful in his bid to increase the time necessary for a teacher to earn tenure. And New York State rejected a proposal that would have required districts to consider student test scores in the evaluation of teachers as part of the tenure process; it instead opted for a requirement that districts must consider how teachers use student test data in tenure decisions. The

entire question of how to use student test scores in New York state teacher evaluation and tenure decisions was referred to a special commission that was to report its findings to the legislature in two years.⁴⁸

Oregon won acclaim from reformers a decade ago when it “abolished tenure” and went instead to a “two-year renewable contract” for all teachers. But critics of the system still insist that it is extremely difficult to dismiss teachers:

In fact, the new law isn't very different from the old. It has some real advantages: school administrators are now easier to fire, unions can't instantly appeal a school's effort to put a teacher on a remedial plan, and it's easier to ease older teachers out of the profession. But despite the much-ballyhooed end to tenure, teachers still enjoy more or less the same protection after their probationary period. "It takes a long time and enormous expense to dismiss teachers, and this law has not helped it one bit or changed it," says Carol Matorazzo, deputy superintendent for the Portland, Oregon public school district.⁴⁹

Legislative actions may change the process and the timelines, but in general they still leave a cumbersome, expensive system in place—a system that is adversarial and turns dismissal hearings into confrontations between management and labor. Attorneys become involved, and arbitrators with legal training but no particular educational expertise, are frequently the ones who decide whether a teacher is competent. This results in decisions based on legal maneuvers, rather than teacher quality and does not make much sense. Professional competence is best judged by professionals.

How might states change the present system to address teachers' criticisms that granting tenure is often perfunctory and that dismissal procedures frequently result in too many weak teachers remaining in the system? The answer is that teachers and their unions must take their responsibility for teacher quality seriously—along with their administrative partners.

Teachers, along with students, suffer consequences when weak teachers are permitted to remain in schools. They want their unions to be proactive in regard to teacher quality. When asked what the top priority for the union should be, teachers' first choice was “promoting high teaching standards”—a priority that superseded more traditional union interests by more than 20 percent, including negotiating good salaries and benefits, protecting job security, and helping with grievances. Seventy-four percent of members said they wanted the union not only to ensure fair dismissal processes for teachers, but also to take greater responsibility for improving and strengthening the teaching force. And an overwhelming majority of respondents (77 percent) believed that the responsibility for teacher quality rests both with administrators and the union.⁵⁰

The union's goal should be preventing poor performance, not defending it. The union must take an active role—along with the administration—in identifying, assisting, or terminating poor performing teachers. The union's goal should be to ensure a high quality teaching

force, and a qualified, competent, and committed teacher for every child. To accomplish this, it will have to accept responsibility, along with the administration, for setting high standards for teaching performance and then ensuring the implementation of those standards in every district through full participation in responsible recruiting and hiring practices, induction and mentoring programs, high quality professional development, meaningful evaluation, and when necessary, fair and timely dismissal procedures.

The union must have a mechanism for maintaining a high quality teaching force. It need not contest every dismissal; it is, after all, the union's responsibility to protect the entire membership as well as individual members. As long as unions apply consistent principles and procedures for determining whether to contest a teacher's dismissal and make an independent investigation of the grievance, it is well within their authority to reject a poorly performing teacher's request for union assistance in a termination for poor performance.

There are examples of successful models of union and management collaboration to design systems for holding teachers to high standards in earning tenure and for protecting due process in dismissal actions. Below we describe three examples—the Toledo Plan, the Minneapolis Model, and the Green Dot Charter School Contract—that do just that. Publicly credible and professionally acceptable teacher evaluation systems are the backbone of these models.

The Toledo Plan

The Toledo Federation of Teachers has worked with district administrators to negotiate a nationally recognized system for teacher evaluation, intervention, and dismissal based on a peer assistance and review model. The program, which started in 1981, addresses the performance of both new teachers and veterans. It involves both evaluation and intervention.

The intern program

New teachers are assigned a consulting teacher whose responsibility it is to evaluate their progress and assist them in acquiring the skills and knowledge necessary for meeting the performance standards of the Toledo Public Schools.

The evaluation process is one of continuous mutual goal-setting using classroom observations and follow-up conferences where the intern [new teacher] and consulting teacher can analyze and set practical goals for improvement based on detailed evaluation criteria...

The consulting teacher... recommends to the Intern Board of Review the future employment status of the intern teacher. This board accepts or rejects the recommendation of the consulting teacher. The nine member board is composed of five teachers and four administrators. Six votes are required to reverse a consulting teacher's recommendation.⁵¹

The intervention program

The intervention program is a process for helping veteran teachers who are having serious teaching problems.

If intervention is recommended by the Intern Board of Review, the following procedures are used:

1. The teacher may file an appeal of the process within five days of notification of placement in intervention to an impartial arbitrator.
2. If the impartial arbitrator determines that procedures have been correctly followed and that intervention is the proper program, intervention will proceed.
3. Confidentiality will be maintained at the school and at the Intern Board of Review.
4. A consultant works with the teacher with the goal of bringing the teacher to satisfactory level of teaching performance.
5. There are no artificial time limits imposed.
6. The consulting teacher decides when the intervention ends.
7. At that time, a status report is filed with both school management and the union.
8. Representation and due process rights and procedures exist for intervention teachers who are subject to termination.⁵²

Koppich studied the Toledo Plan and found it more rigorous than traditional methods for granting tenure review and for terminating weak teachers.⁵³

Before the implementation of the Toledo Plan, teachers were evaluated by building principals. These traditional methods of teacher evaluation proved to be ineffective and burdensome, with frequent battles between labor and management concerning incomplete or delinquent evaluations. Principals did not have adequate time to evaluate and assist new teachers and a direct consequence of this was that contracts were awarded to inferior teachers. In the five years prior to the implementation of the Toledo Plan only one new teacher was terminated. Since the implementation of the Toledo Plan, 19 teachers have been terminated, 95 resigned, and 69 were non-renewed (2179 total teachers were placed in the Intern Program).⁵⁴

The Minneapolis Model

The Minneapolis Federation of Teachers along with the Minneapolis Public School District developed the Minneapolis' Achievement of Tenure process. This comprehensive approach involves a three-year process of evaluation, collegial support and professional development designed to assure that those who earn tenure have met rigorous standards.

Achieving tenure

Koppich described the system as follows:

Every ... novice teacher is supported by a district-provided mentor, an experienced teacher released full-time from the classroom to serve a number of new teachers. In addition, the novice is supported by a school-based professional development team that works with teachers on both school and individual professional development plans, or PDPs. Every teacher in Minneapolis, novice and experienced, is required to participate on a PDP team. They do it for no pay and find the time to meet by using common preparation periods and times that otherwise might have been spent in district-sponsored professional development.

Each novice teacher is required to develop an Achievement of Tenure plan, a kind of professional growth and development schema, which must be approved by the school-based Achievement of Tenure team the teacher has selected...

The negotiated MPS-MFT contract spells out the requirements for achieving tenure. These include the following:

- Orientation: All new teachers are required to participate in a joint district/union orientation program.
- Professional development: Forty hours of professional development, selected by the teacher and pegged to that individual's professional growth goals, must be completed within the 3-year probationary period.
- Cognitive coaching: All new teachers complete a 20-hour cognitive coaching course offered by the district.
- Videotape: New teachers videotape examples of their teaching and discuss these with their Achievement of Tenure team.
- Classroom visits: The contract specifies that all new teachers will have 2 days release time to visit the classrooms of other teachers to observe their teaching.
- Surveys: Annual surveys of students and families, developed by the district's professional development department, provide beginning teachers with important feedback.
- Action research: Each teacher selects a classroom-based problem and posits and tests possible solutions. Data gathered and results achieved are committed to writing and become part of the teacher's professional portfolio.
- Evaluation: Annual evaluations, conducted separately by the principal and the mentor in the first year and by teacher colleagues thereafter, are based on Minneapolis's Standards of Effective Instruction.

Approximately three months prior to the conclusion of the probationary period, teachers seeking tenure present their portfolios to their Achievement of Tenure team. If approved, a final presentation is made to other school colleagues, administrators, and district headquarters representatives. Final approval for tenure comes at this point.⁵⁵

Teachers do not see earning tenure as *pro forma*. They have worked at becoming proficient and have been asked to show evidence of their efforts. They believe it is an accomplishment, and the union publicly celebrates their achievement.

Teacher intervention and dismissal

As with the MAT program, the intervention is a collaboration between labor and management. If a veteran teacher is identified as in need of improvement, she is allocated a full-time mentor to assist in helping her improve or move out of the profession. As in Toledo, there is no set time period for completing the intervention, but it usually takes less than a year to see improvement or make recommendations for termination. If a decision to sever employment is reached, the union works with the teacher to develop an appropriate buy-out package to allow a respectful exit. The union also has a modest membership levy to cover the costs of assisting the teacher with other employment.

It is not unusual for unsuccessful teachers to find relief at being able to leave the school system. Often they know that they are not succeeding but do not know how to improve or what to do to market their skills in the labor market. The union may assist them with preparation of a curriculum vita, analysis of their skills and interests, identifying job training opportunities, and other services. This expedited, less costly, and humane system has proved remarkably successful. Only twice in 20 years has an underperforming teacher challenged the joint labor-management decision to terminate employment and taken the traditional arbitration route. And in both instances the union-management decision prevailed.⁵⁶

The Green Dot Contract with the Los Angeles Teacher Union

The Green Dot-LASU contract has a two-track evaluation system for teachers: Track I is for newer teachers and focuses on meeting the California Standards for the Teaching Profession;⁵⁷ Track II is for more experienced teachers and focuses on professional growth and continuous improvement. It is unique in that it provides greater protection to beginning teachers than is the case under most current state laws concerning probationary teachers.

All teachers are evaluated annually—Track I teachers twice a year and Track II teachers once a year, with a minimum of two classroom observations prior to any formal evaluation, which includes a written evaluation. Track I teachers are required to complete a Unit Portfolio designed to showcase their teaching in a particular curriculum unit. These portfolios assist the school community in developing curriculum material across grade levels and content areas by contributing entries to the school's collection of best units. Teachers must select a unit, and collect lesson plans, standards, and samples of student work for reflection. They must also organize the artifacts into categories that tie the portfolio entries together to provide evidence of how the teacher's work meets the California standards.

Track II activities provide teachers with opportunities to engage in their own professional growth and, as with Track I, reflects the collaborative orientation that Green Dot takes to teacher development and professionalism. Track II teachers have options. They can continue with a Unit Portfolio, or collaborate with other teachers to conduct Action Research, do their own research project, or devote time to helping with an intervention team or similar program targeted to improve student achievement or assist in professional development programs. Administrators play a role in helping teachers define their growth projects. All tasks culminate in sharing information with others.

Schools create a development plan for any teacher in Track I or II who is identified as not meeting the California Standards. That plan specifies areas of needed improvement with supporting evidence, makes specific suggestions for improvement, identifies resources to assist improvement, and enumerates how improvement will be judged. If after 45 days there is no improvement, the school must develop a 45-day improvement plan. The improvement plan must at a minimum include the four features in the development plan and a reasonable date for achieving the specified improvements. Teachers on an improvement plan have an opportunity to get direct assistance in implementing recommendations and adequate release time to visit and observe similar classes in other Green Dot schools.

The contract specifies that in the event that the teacher does not improve, Green Dot may terminate or not rehire the teacher for the following year. In such cases, the following procedures apply:

1. The teacher will be given written notice of the termination.
2. The notice shall include the reason for the action and notification of an opportunity to appeal.
3. The teacher may request a conference in writing within 10 working days of receiving the notice.
4. If the teacher doesn't submit such a request, she waives the right to a conference.
5. The conference, if requested, will be before the Board in a closed session unless the teacher requests an open session.
6. The teacher may have a union representative present if she desires.
7. If the teacher is dissatisfied with the outcome, the grievance process as stated in the collective bargaining agreement can follow.
8. The grievance process includes binding arbitration.⁵⁸

What is interesting about this contractual arrangement above and beyond the protections given to new teachers is that the evaluation process and dismissal process is developed with an eye toward improvement and collaboration with other teachers as a way to improve teacher quality. It treats teachers as professionals who want to improve and who have something to offer to their colleagues.

Findings and recommendations

There is considerable variance in how states handle tenure, due process, job security, and other teacher quality issues, but there is also widespread agreement among the public, teachers, administrators, and politicians that the current system needs fixing.

Review of the tenure landscape reveals that:

1. There is widespread confusion and considerable misunderstanding surrounding the concept of “teacher tenure,” and the term should be abandoned. Instead, debate should be about earning “continuing employment status,” and “due process” dismissals.
2. Most current state and district tenure provisions, both for earning tenure and revoking it, need a serious overhaul.
3. School systems need to consider evidence of student learning when granting continuing status to teachers.
4. In general, learning-working conditions are not considered in tenure conditions.
5. Tenure decisions are too often made at the school level by principals with little oversight from the district to assure that standards for granting tenure are comparable across district schools.
6. There is a need for more research on teacher effectiveness—both how to measure it, and how to develop and sustain it.
7. States and districts do not invest in the development and implementation of teacher standards or the robust assessments necessary to assure that those beginning teachers who earn permanent status meet rigorous criteria of quality teaching.
8. Teachers need due process protections given the current status of principal and other administrator training, the lack of investment in serious teacher standards and evaluation, and the stress placed on the school system by demands for accountability, reasonable and otherwise.

9. Labor-management agreements can develop rigorous, fair, and streamlined systems for granting continuing employment to effective teachers and removing veteran teachers who are not performing up to standards.
10. Merely eliminating tenure without addressing the conditions that lead to the recruitment, development, and retention of teachers will neither address the major causes for the presence of inadequate teachers in the system nor lead to significantly improved teacher quality.

Given these findings, it's clear that an effective and defensible system for granting continuing employment status and/or dismissing incompetent teachers must include the following:

1. **High-level standards that reflect the complexity of teaching and learning.** Both teachers and administrators need a common understanding of all the facets of teacher effectiveness and the indicators and evidence that teachers must present to demonstrate that they are meeting the standards. Such an assessment process can be a very potent tool for developing professional development activities for improving teaching and learning as teachers and administrators together examine teaching practices and come to agreement on what constitutes best practice.
2. **A credible evaluation system that is multidimensional and requires multiple data sources, including standardized test scores where available.** No single criterion can be used to identify teacher effectiveness. We need a comprehensive evaluation system that, in Lee Shulman's words, "represents a marriage of insufficiencies," where the limitations of some data are offset by the strengths of other data.
3. **Collaboration between teachers and administrators.** Too often systems of evaluation and dismissal are imposed on teachers rather than developed with them. Evaluation systems should be negotiated with the union. When teachers are a part of the process, their professional wisdom is essential for buy-in and for assuring a system grounded in well-developed classroom practices.
4. **Evidence of student learning.** Standardized test scores can play a role in presenting evidence of learning, but using standardized test scores as the sole or predominant measure of achievement is unwarranted and unwise given the inadequacy of such tests to capture the complexities and breadth of student learning and the limitations of current value-added methodologies. Nonetheless, it is absolutely essential that teachers present evidence of student learning—through test results and other material—as part of the tenure system if it is to be credible. Calling upon experienced teachers to help develop the multiple sources of such evidence is essential in redesigning the tenure system.

5. **Evidence of teachers' teaching and learning environment.** Data from teachers, parents, and students, where appropriate, concerning school leadership, school facilities, access to books and other educational supplies, specialists, issues of school safety and school culture should all be part of the information that is considered when making tenure decisions. Effective teaching and learning is a product not only of individual behavior effort, knowledge, and skill, but also of the learning conditions where teaching and learning takes place. Requiring such information when considering promotion and dismissal provides incentives for school administrators to assure that necessary tools and conditions support teachers' efforts to educate children.
6. **Professional judgment to grant and revoke tenure.** It is necessary to have judgment in the hands of trained professionals who understand teaching and learning and schools in a complex system where data from multiple sources are evaluated. It is important to develop systems that require professional educators, not law judges, nor economists with arcane formulas, to make decisions concerning teacher quality and competence. The process should focus on instructional practices and student outcomes rather than administrative processes, and it should be developmental rather than adversarial.
7. **A comprehensive system.** The evaluation system must include transparent standards and rubrics for meeting those standards, access to professional development to assist in meeting the standards, and a labor and management group that examines the evidence—both for granting continuing employment status and for dismissing teachers.

These recommendations are expensive. School systems will need to create data systems; develop better measures of student achievement and classroom practices; construct professional development activities and opportunities; and work with labor-management teams on the processes for the evaluation. They need to educate teachers about the standards and what constitutes effective performance. They also need to train the evaluators—administrators and peer reviewers—to assure they share a common standard and are consistent in their judgments of teacher quality.

Yet it is surely worth the investment, especially when considering the high costs of current obsolete processes, including the costs to children in lost opportunity from poor instruction and the costs to other teachers who have to deal with the consequences of students who are unprepared as a result of prior exposure to weak and incompetent teachers.

Endnotes

- 1 Susana Loeb and Luke Miller, "A Review of State Teacher Policies: What are They, What are their Effects, What are their Implications for School Finance," Institute for Research on Education Policy and Practice, Stanford University, December 2006.
- 2 While there is ample research to indicate that effective teaching is the single most important in school factor affecting student success in school, teachers are wary that many have ignored the other 50 percent of in-school and out-of-school variables that contribute to student academic achievement. They fear that many observers of the education scene have transmuted "the single most important factor" to "the ONLY factor" and blame teachers for poor student performance, particularly among poor children and children of color.
- 3 Ibid.
- 4 While one poor teacher in the classroom is one too many, it is not at all clear what the extent of the problem is regarding incompetent teachers. A major impediment to determining the extent of the problem is a lack of consensus on what constitutes incompetence. Nor is it evident that tenure is the sole, or most likely, culprit for the presence of inadequate teachers in schools. As Michael Long observed in his review of the literature on teacher dismissals, "... there is a widespread belief that there is some subset of teachers that do not belong in the classroom but retain their jobs year after year. There is substantial disagreement, however, on the extent of this problem—that is whether it occurs in isolated incidents or represents a more endemic crisis in American education. *Much of this debate is not based on hard data, but on anecdotes or suppositions about what is going on in schools.* ... While there are a few studies that have attempted to measure both the prevalence of incompetence among teachers and the frequency of dismissals for poor performance, research in this areas has been hampered by the difficulty in collecting reliable and comprehensive data (emphasis added)."
- 5 Ibid.
- 6 "A new look at teacher tenure. How New Yorkers really feel!" available at <http://pmct.org/perspectives/tenure2.html>
- 7 Ibid.
- 8 In 1926, John Scopes, a science teacher in Tennessee was brought to trial for teaching evolution which was prohibited by state law (the Butler Act). One of the grounds for defending his teaching of evolution was "academic freedom." The court did not believe that this was the case and ruled against the defendant declaring that "his liberty, hid privilege, his immunity to teach and proclaim the theory of evolution elsewhere than in the service of the state was in no wise touch by the [Butler Act], available at http://en.wikipedia.org/wiki/Scopes_trial.
- 9 Ibid.
- 10 Ed Notes Encyclopedia of Everyday Law. Teachers Rights, available at <http://www.enotes.com/everyday-law-encyclopedia/teachers-rights>
- 11 Albert Shanker, "Where We Stand. On Tenure: A Drumfire of Misconception," *The New York Times*, March 12, 1972; Albert Shanker, "Where We Stand. Old 'Cures' Floated for Incompetence," *The New York Times*, November 2, 1984.
- 12 It is important to note that many states grant considerable discretion to districts to develop programs for granting tenure that go beyond the usually vague requirements specified in state law. Teachers are hired by the district, but the granting of tenure, while carried out by the district, is bestowed by the state, and is portable within the state. Nonetheless, in the vast majority of cases, even at the district level, tenure is granted with little attention to high standards of teaching and learning.
- 13 State Teacher Policy Yearbook: What States Can Do to Retain Effective New Teachers (National Summary). (Washington: National Council on Teacher Quality, 2008).
- 14 Ibid, p. 3.
- 15 The research literature on teaching is unanimous in its findings—whether based on student test scores, teacher and principal observation or teacher anecdotes—that teachers improve their craft in the first few years of teaching. How long the trajectory of improvement continues and whether and to what extent there is a decline in performance after a period of time is less clear.
- 16 Generally teachers charged with incompetence must be given time and assistance to improve before formal procedures begin.
- 17 Raegen Miller and Robin Chait, "Teacher Turnover, Tenure Policies and the Distribution of Teacher Quality: Can High Poverty Schools Catch a Break?" (Washington: Center for American Progress, 2008, p. 15).
- 18 Michael Colasanti, *Teacher Tenure/Continuing Contract Laws*. State Notes: Teacher Quality—Teacher Tenure. ECS: Denver, Co. August 2007. p. 2-9
- 19 Ibid.
- 20 This number is deceptive. Many veteran teachers leave teaching "voluntarily" as situations change and they determine independently or with counseling that they are not effective. Most teachers who are being moved toward dismissal resign instead of being "officially" fired. The reason for this is simple. If you are fired as a teacher, the chances of getting another teaching job are slim. Most teacher applications have as the first question, "Have you ever been dismissed from a teaching position in another school or school district?"
- 21 Ann Duffett and others, *Waiting to be won over: teachers speak on the profession, unions and reform*. Education Sector Reports, Washington, DC, May 2008, p. 2.
- 22 Robert Rothman and Thomas Toch, "Rush to Judgment: Teacher Evaluation in Public Education," Education Sector: Washington, D.C., p. 2.
- 23 AFT Educational Issues Policy Brief, "Survey of State Policies on Teacher Evaluation," 1998.
- 24 AFT memo to Joan Baratz Snowden, February 19, 1998. A 2007 NCTQ look at teacher contract evaluation processes in the 50 largest districts confirmed the earlier AFT findings.
- 25 State Teacher Policy Yearbook: What States Can Do to Retain Effective New Teachers.
- 26 Rothman and Toch, "Rush to Judgment: Teacher Evaluation in Public Education," p. 1.
- 27 Duffett and others, *Waiting to be won over: teachers speak on the profession, unions and reform*, p.3.
- 28 The public rarely understands the problems with teacher dismissal as evidence of administrator weakness with regard to hiring and tenure decisions, nor of their failure to follow due process procedures. In their review of teacher contracts, Hess and Loup found considerable flexibility in contracts that was not used by administrators who instead "doth protest too much." Hess, F. and Loup, C. "The Leadership Limbo: Teachers Labor Agreements in America's Fifty Largest School Districts" (Washington: Fordham Institute, February 2008).

- 29 AFT, "Teacher Quality and Tenure: AFT Teachers' Views," 1997
- 30 I am indebted to Randi Weingarten for formulating this notion of building due process protections into the evaluation system itself thus focusing dismissal, when necessary, on teaching practice not administrative process.
- 31 Linda Kaboolian, *Table Talk: the Case for Collaboration*. Education Next, Summer 2008, p.14-17.
- 32 There is something circular in the reasoning that posits that using test results from students is the best way to identify outstanding teachers. The methodology arbitrarily states that excellent teachers raise test scores the most and then discovers through value-added analyses that "the best teachers raise student test scores the most," with "best" being the top decile, quintile, or quartile of teacher performance or whatever cut point policymakers wish to delineate. "Best" being relative to the competencies of whatever group is being examined rather than a fixed standard of excellence.
- 33 Daniel Koretz, *Measuring Up: What Educational Testing Really Tells Us* (Cambridge: Harvard University Press, 2008).
- 34 Rothman and Toch, "Rush to Judgment: Teacher Evaluation in Public Education," p.3
- 35 The Urban Institute and RAND, *Performance-based accountability policies: Implications for school and classroom practices*, available at http://www.urban.org/UploadedPDF/411779_accountability_policies.pdf; *Choices, Changes and Challenges: Curriculum and Instruction in the NCLB Era* (Washington: Center for Education Policy, July 2007); *Instructional Time in Elementary Schools: A Closer Look at Changes for Specific Subjects* (Washington: Center for Education Policy, February, 2008).
- 36 John J. Shaughnessy, Eugene B. Zechmeister, and Jeanne S. Zechmeister, *Research Methods in Psychology* (New York: McGraw Hill, 1990).
- 37 Dan Goldhaber and Michael Hansen, "Assessing the Potential of Using Value-Added Estimates of Teacher Job Performance for Making Tenure Decisions." Research brief CRPE, November 17, 2008; D. Harris, and T. Sass, "Value-added Models and the Measurement of Teacher Quality," Florida State University, 2006, available at http://www.teacherqualityresearch.org/value_added.pdf. Furthermore, results of value-added analyses may identify "winners" and "losers" but except for global statements—"your kids didn't learn fractions"—don't provide much assistance for improving practice.
- 38 While it is hoped that investments in better tests and more sophisticated data systems may correct this problem in the long run, it is the case that at present few states and districts have the capacity to conduct such analyses.
- 39 Teachers are suspicious of value-added analyses and are not mollified when questioning the methodology with "trust me" assurances from statisticians and/or economists that their arcane formulas controls for the factors they care about (for example, missing data, absenteeism, student background and prior educational factors, school climate, etc). They fear that the highly sophisticated statistical procedures that "smooth out the data" to address their concerns also distort and or eliminate the realities of schooling that contribute to evidence of student academic growth.
- 40 Dan Goldhaber, and Michael Hansen "Is it Just a Bad Class? Assessing the Stability of Measured Teacher Performance," Center on Reinventing Public Education, Working Paper reinventing public education working paper #2008-5, University of Washington, November 21, 2008, p. 41.
- 41 Goldhaber and Hansen, "Assessing the Potential of Using Value-Added Estimates of Teacher Job Performance for Making Tenure Decisions," Policy Brief, p. 6
- 42 Koretz, *Measuring Up: What Educational Testing Really Tells Us*; Richard Rothstein, "Holding Accountability Accountable: How Scholarship and Experience in Other Fields Inform Exploration in Education," National Center on Performance Assessment, Vanderbilt, Tennessee. February 2008.
- 43 After protracted debate, the New York legislature passed legislation recently that prohibited the use of student test scores in tenure decisions but called for examining how teachers use test score results to improve instruction. The legislation called for a commission to study the matter.
- 44 Carrie R. Leana and Fritz K. Pil, *Social capital and organizational performance: evidence from urban public schools*. Organization Science. 17 (3) (2006), 355-366, as cited in Eric Hirsch, "Key Issue: Identifying professional contexts to support highly effective teacher," National Comprehensive Center for Teacher Quality, Washington, DC, February 2008.
- 45 Ken Leithwood and Pat McAdie, *Teacher working conditions that matter: evidence for change*. Toronto: Elementary Teachers Federation of Ontario, 2006, p.88 as cited by Hirsch, op cit.
- 46 Duffett and others, *Waiting to be won over: teachers speak on the profession, unions and reform*.
- 47 Robin Henke, Susan Choy, Xianglei Chen, Sonya Geis, Martha Alt, Stephen Broughman, Project Officer. U *America's Teachers: Profile of a Profession, 1993-94*, Department of Education, National Center for Education Statistics, NCES 97-460 Washington, D.C., 1997.
- 48 In its 2009 session, the legislature rescinded the proposal for such a Commission.
- 49 Robert Worth, "The Velvet Prison—Teacher tenure offers little benefit to students in many cases," *Washington Monthly*, May, 1999.
- 50 Peter G. Hart Research Associates, Inc, *A National Survey of Attitudes Toward Teacher Quality Among Members of the AFT*. Washington, DC, April 1997, p. 10.
- 51 The Toledo Plan, available at http://www.tft250.org/the_toledo_plan.htm (last accessed March 2009).
- 52 Ibid p. 3.
- 53 Charles Taylor Kerchner, Julia E. Koppicj, and Joseph G. Weeres, *United Mind Workers: Unions and Teaching in the Knowledge Society*. Jossey-Bass: San Francisco, 1997. Susan Moore Johnson and her Harvard colleagues have studied PAR programs in a number of sites and have data demonstrating their effectiveness in removing non-performing teachers compared to more traditional methods. The Toledo results can be accessed at her website, <http://www.gse.harvard.edu~ngt/par/resources/outcome.html>
- 54 The Toledo Plan: Top 10 Questions, available at http://www.tft250.org/ten_questions.htm (last accessed March 2009).
- 55 Julia Koppich, "Addressing Teacher Quality through Induction, Professional Development and Compensation: The Effects on Labor-Management Relations," Education Policy, 19.1, 2005. The MAT standards are divided into four domains similar to the National Board for Professional Teaching Standards' Five Core Propositions. Domain 1 encompasses preparation, planning, and organization. Domain 2 revolves around classroom environment. Domain 3 is classroom instruction. This standard focuses on teachers' use of multiple instructional strategies to engage students in learning, with particular emphasis on achieving academic proficiency in the core academic subject areas. Domain 4 concerns professional responsibilities.
- 56 Louise Sundin. Personal communication , past president of the Minneapolis Federation of Teachers.
- 57 Those standards also reflect NBPTS principles. They are: 1. Engaging and supporting student learning. 2. Creating and maintaining effective environments for student learning; 3. Understanding and organizing subject matter for student learning; 4. Planning instruction and learning experiences for all students; 5. Assessing student learning; and 6. Developing as a professional educator.
- 58 Eduwonk, "Agreement Between Green Dot Public Schools, a California Not for Profit Corporation, and the Asociación de Maestros Unidos/CTA/NEA." June 30, 2006, p. 33, available at <http://www.eduwonk.com/AMUContractFinalFY20061.pdf>.

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Joan Baratz-Snowden is president of the Education Study Center, an organization devoted to helping organizations and institutions develop policies and implement practices that improve the educational opportunities of poor and minority students. Prior to directing the Education Study Center, she was the Director of the Educational Issues Department of the American Federation of Teachers, where she managed a staff of 35 and a multimillion dollar budget, and was responsible for moving professional issues in the field and helping affiliates understand the complexity of education reform and the roles that the union can play in improving schools and student achievement. Prior to her work at the AFT, Baratz-Snowden was Vice President for Assessment and Vice President for Education Policy and Reform at the National Board for Professional Teaching Standards. She has also served as Director of the Policy Information Center at the Educational Testing Service and Director of the Education Policy Research Institute program on testing.

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