



# Fixing Tenure

A proposal for assuring teacher effectiveness and due process

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Joan Baratz-Snowden Education Study Center

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# 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."<sup>1</sup>

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 education<sup>2</sup> and will suffer undeserved consequences at the hands of poorly developed accountability systems.<sup>3</sup>

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.

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