



# Ringling the Bell for K-12 Teacher Tenure Reform

Patrick McGuinn, Drew University and Institute for Advanced Study February 2010



Center for American Progress



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# Introduction and summary

The seminal *A Nation at Risk* report was released in 1983, and in the 25 years since, education reforms at the state and national level have increasingly focused on improving student academic performance and reducing persistent racial and socioeconomic achievement gaps. These efforts have encompassed a wide array of different reforms, but contemporary researchers and policymakers have highlighted the importance of improving teacher quality at schools that serve poor, minority, and/or special needs students.

A number of states have instituted new policies in this area since the 1990s, and the federal No Child Left Behind Act of 2001 contained a mandate requiring that all classrooms be staffed with a “highly qualified teacher.” Yet much of the political and scholarly attention in the area of teacher quality has to date focused on the issues of teacher recruitment, preparation, compensation, and distribution. The issue of teacher tenure, or “continuing contracts,” has received less attention despite its potential importance to efforts to improve teacher quality.

Legislated and bargained contractual protections make the process of dismissing an ineffective teacher with tenure prohibitively lengthy and expensive in most states, and teacher tenure evaluation processes remain largely disconnected from teachers’ performance in the classroom or student achievement.<sup>1</sup> Yet a number of proposals to reform teacher tenure at the state level have emerged during the past 20 years. These proposals have generally sought to do one or more of the following: lengthen the probation period for new teachers, strengthen the teacher evaluation process, streamline the teacher dismissal process, or “end tenure” by moving to renewable contracts.

Unfortunately, existing research in the area of teacher quality has devoted very little attention to the enactment and implementation of tenure reforms. In the few instances when researchers have focused on the issue of teacher tenure specifically, they have generally sought to document the costs and benefits of tenure, make normative arguments about whether tenure should or should not be abolished, or propose specific ways in which tenure policies could be improved. Little analysis has been conducted on actual past state efforts to bring about such changes or the political dynamics around the issue.

This report seeks to begin to fill the void in the scholarly literature and direct researchers to fruitful lines of future investigation. It will provide an overview and history of teacher

tenure; analyze the nature of current and past teacher tenure reform proposals and their variation across states; offer a brief assessment of the reforms where they have been enacted; and highlight recommendations for policymakers going forward.

The political opposition and technical challenges around tenure reform have historically prevented these efforts from advancing very far in state legislatures, but both have decreased in recent years. The establishment of annual systematic student testing and data collection systems at the school, district, and state levels has created an opportunity for policymakers to link teacher evaluations and tenure to student performance in a way that was heretofore impossible. At the same time, increased public and elite concern about the effect of underperforming schools on national equity and economic competitiveness has created new political incentives for policymakers to embrace innovative approaches to teacher quality and school reform generally. As a result the time appears ripe for a more sustained and efficacious effort to improve the process by which new teachers are granted continuing contract status.

The paper makes a number of recommendations for federal and state policy that would reform state tenure laws and district tenure processes:

- The federal government should continue to leverage education funding to push states to develop and deploy more meaningful teacher evaluation systems based on a clear definition of teacher effectiveness. Such evaluation systems are an essential precondition for effective tenure reform, but have been missing from most past state tenure reform proposals.
- The U.S. Department of Education should fund research and pilot demonstration programs that will provide empirical evidence of how effective different kinds of teacher tenure policies are on raising teacher quality and student achievement.
- Empirical evidence should be the basis for a serious—and unprecedented—conversation among policymakers as well as the general public about the costs and benefits of teacher tenure and the circumstances under which it should be granted and revoked.
- States should change their tenure statutes to explicitly mandate that teacher retention and dismissal decisions incorporate teacher effectiveness data. Alternatively, states with a preference for local control should loosen prescriptive state tenure policies and give districts the flexibility to experiment with new approaches to teacher evaluation and tenure. Federal grant-in-aid conditions should be used to prod states in one of these directions.
- Legislators should ensure that state-level tenure reforms are not overridden by local collective bargaining agreements by articulating explicit statutory language to this effect.

- States should improve their teacher licensing processes to ensure that the effectiveness of all teachers is assessed on a regular basis as a condition for the granting and renewal of a state teaching license—regardless of the particular criteria for evaluation and tenure laid out in state tenure laws and collective bargaining contracts.
- Think tanks and organizations such as the National Governor’s Association, National Conference of State Legislatures, and Education Commission of the States should provide more informational resources and policy guidance to states interested in pursuing teacher tenure reform.
- Creative reform-minded school administrators operating within existing statutes and collective bargaining agreements can and should bring about significant improvements in the teacher tenure process.
- Teachers unions should embrace efforts to streamline the removal process for ineffective teachers and only contest those dismissals that clearly violated due process or were unsubstantiated by the teacher evaluation process.<sup>2</sup>

This report provides an overview of state teacher tenure reform in the United States as well as case studies of reform efforts in a sample of six states—Georgia, California, Florida, Wisconsin, New York, and Ohio—and the District of Columbia. These areas were selected for study because they each represent a different approach or result in terms of tenure reform.

This study hoped to identify and explain the variance in tenure policies across states. But further investigation has revealed that very little variation in tenure policies exists; states have done remarkably little experimentation in this area. Kate Walsh, the President of the National Council on Teacher Quality, for example, observed that, “states really haven’t done anything interesting on tenure. To date, tenure reform is all talk and hasn’t made it to the mainstream.” She noted, however, that, “a huge paradigm shift is underway that recognizes that tenure shouldn’t be automatic, but the discussion is really just starting.”<sup>3</sup> In sum, the chorus calling for tenure reform is loud and growing, but the enactment and sustenance of tenure reform on the ground is still quite rare.

# Understanding teacher tenure

Part of the challenge in understanding the debate over teacher tenure reform today is that the concept of “tenure” itself is ambiguous and means different things in different contexts and to different people. Though widely misunderstood, tenure essentially amounts to a system in which teachers who have successfully completed a probationary period—typically three years—can only be fired through a lengthy and complicated process that is laid out in the state tenure law and the local collective bargaining contract.<sup>4</sup> Confusion abounds because states use different terms to describe the job protections given to teachers: some states use the term “tenure,” some use “continuing contracts,” and still others refer to the protections as “permanent employment status.” Some states have also passed laws explicitly “ending” tenure, but have created evaluation and/or dismissal processes that nonetheless effectively guarantee permanent employment for the vast majority of experienced teachers.

Tenure was created during the early part of the 20th century to establish a set of guidelines to protect teachers from the arbitrary, unfair, and often discriminatory dismissal practices that were common in local schools at that point. The basic policies governing teacher tenure in the United States are set at the state level, and states have three broad options in this regard—they can require tenure, preclude tenure, or permit local school districts to make their own determinations. New Jersey enacted the first U.S. K-12 tenure law in 1909, and by the 1940s about 70 percent of public school teachers enjoyed some form of job protection. Today, every state except Wisconsin requires that teachers receive some form of “tenure.”<sup>5</sup> State tenure statutes also typically define specific criteria that teachers have to meet in order to be granted tenure and by which they can be dismissed after earning it. These vary somewhat from state to state, but are more similar than one would expect given states’ vastly different political and educational contexts.

The fair dismissal procedures that come with tenure were not originally intended to provide a guarantee of lifetime employment. But the evolution and expansion of these due process protections over time have made it so difficult and costly for districts to dismiss tenured teachers that today they rarely even attempt to do so.<sup>6</sup> Data from the U.S. Department of Education’s 2007-2008 Schools and Staffing Survey (See appendix) reveal that on average, school districts dismiss or decline to renew only 2.1 percent of teachers for poor performance each year.<sup>7</sup> The extremely low rates of dismissal for teachers, and the fact that dismissal is generally pursued for egregious conduct violations rather than performance, means that tenured teachers in most states enjoy the functional equivalence of employment for life.



Both the tenure granting and tenure revocation processes ultimately depend on the underlying district teacher evaluation systems to function effectively in weeding out poorly performing teachers, but these are also deeply flawed. The New Teacher Project produced the most thorough investigation into such systems in 2009. “The Widget Effect” lamented “our pervasive and longstanding failure to recognize and respond to variations in the effectiveness of our teachers.” Its in-depth analysis of 12 urban school districts across four states demonstrates unequivocally that existing teacher evaluation systems are woefully inadequate and offer little useful information for administrators making tenure or dismissal decisions. The majority of probationary teachers in those districts, for example, reported being observed only two or fewer times for an average total of 81 minutes in the preceding year.<sup>8</sup>

Yet even if regular and detailed teacher performance information were readily available, existing norms and policies discourage—and in some cases explicitly prohibit—its use in tenure decisions. Only one of the 12 districts examined in “The Widget Effect”—Toledo—opted to use performance in the classroom as a factor in determining whether or not a teacher should be granted tenure. Nationwide, only two state tenure laws currently require districts to incorporate even minimal teacher effectiveness information into tenure decisions. “The Widget Effect” concludes that, “though the awarding of tenure status has the potential to recognize effective teaching and to transition out teachers who are unable to reach a reasonable performance standard, in practice there is no observable rigor applied to the tenure decision.”<sup>9</sup>

More than 40 percent of administrators in the districts studied by “The Widget Effect” reported never having denied tenure on performance grounds, and less than 1 percent of all probationary teachers overall were nonrenewed. In addition to the political and policy constraints, Dan Goldhaber of the Center on Reinventing Education at the University of Washington has noted that most school districts simply lack the capacity to do rigorous teacher evaluation, as many of the staff in the central office are former teachers who lack the inclination and training necessary to differentiate teacher effectiveness in the classroom.<sup>10</sup>

Once tenured, teachers appear to receive even less frequent and meaningful evaluation. Tenured teachers in the four states studied by The New Teacher Project were required to be evaluated only once every few years, if at all. Virtually every single tenured teacher was rated satisfactory (or higher), and less than 1 percent received a negative evaluation. This pattern persisted even in schools identified as poor performing, as only 10 percent of these schools issued even a single unsatisfactory rating to a tenured teacher.

High teacher performance ratings do not appear to reflect universal excellence in the teaching force. Majorities of teachers, or 58 percent, and administrators, or 81 percent, surveyed in “The Widget Effect” acknowledged that there were tenured teachers who delivered poor instruction, and 43 percent of teachers believed there is a tenured teacher whose poor performance should have resulted in their dismissal. And teachers and administrators believe the situation is even worse in high poverty schools. But the report notes

that “experienced teachers are almost never actually dismissed for poor performance.” The vast majority, or 86 percent, of administrators admitted that they do not always pursue dismissal even when it is warranted due to the costly, time consuming, and cumbersome nature of the dismissal process. And half of the districts had not dismissed a single teacher for performance over the preceding several years.<sup>11</sup>

A variety of other studies in recent years have reiterated these findings. Robert Gordon, Thomas Kane, and Douglas Staiger concluded in a 2006 Brookings Institution report that, “given the evidence on the wide variability in teacher performance, it seems clear that schools regularly award tenure to teachers who are quite ineffective in the classroom compared with other teachers who have similarly situated students. Schools could substantially increase student achievement by denying tenure to the least effective teachers.”<sup>12</sup> Hartford Superintendent Steven Adamowski argued in the 2007 study “The Autonomy Gap” that principals are most constrained in teacher hiring, evaluation, and dismissal when it comes to their efforts to boost student achievement.<sup>13</sup> And Joan Baratz-Snowden recently produced an examination of tenure policies at the district level, as well as three promising reform approaches in Minneapolis, Los Angeles, and Toledo. She concluded that “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 and expensive, and adversarial process in place when a tenured teacher’s competence is challenged.”<sup>14</sup>

Efforts to reform these policies have to date been sporadic and brought only incremental change, despite the growing awareness that existing tenure policies may be a major obstacle to the improvement of teacher quality in the United States. As Carol Furtwengler has noted, even when states have reformed their teacher personnel policies, they have “generally avoided the issue of teacher tenure.”<sup>15</sup>

# What would effective state tenure reform look like?

Despite some high profile arguments about whether or not teacher tenure should be eliminated completely, efforts to do so at the state level have not generally gotten very far and today such an approach continues to be a non-starter in most states. As a result, most of the debate about reforming tenure today centers on how to improve the process by which teachers are granted tenure and make it easier for states to remove ineffective tenured teachers. The National Council on Teacher Quality has identified the following criteria as the hallmarks of an effective state policy for granting tenure:<sup>16</sup>

1. A teacher should be eligible for tenure after a certain number of years of service, but tenure should not be granted automatically at that juncture.
2. The state should articulate a process, such as a hearing, that local districts must administer in considering the evidence and deciding whether a teacher should receive tenure.
3. Evidence of effectiveness should be the preponderant criterion in tenure decisions.
4. The minimum years of service needed to achieve tenure should allow sufficient data to be accumulated on which to base tenure decisions; five years is the ideal minimum.

Not a single state in the country has met these criteria, according to NCTQ, and in fact no state has even “partly” met the goal of developing a “meaningful” tenure decision-making process by their definition. They conclude that, “tenure should be a significant and consequential milestone in a teacher’s career. Unfortunately, the awarding of tenure occurs virtually automatically in just about all states, with little deliberation or consideration of evidence of teacher performance.”<sup>17</sup> Forty-eight states were found to grant tenure without any assessment of teacher effectiveness. As a result there was not a single state that the NCTQ could point to as an example of best practice in this area. Forty-one states and the District of Columbia received failing grades for their tenure policies, while nine states were given a grade of “D.”

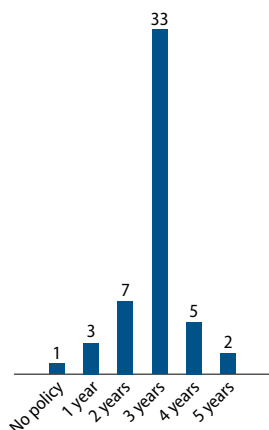
NCTQ Vice President for Policy Sandi Jacobs reports that, “no state has really done anything to ensure that tenure is meaningful. A handful of states have longer than average probationary periods before tenure is awarded, but none of those has any sort of meaningful criteria—just a longer timeline. We’ve found two states—Iowa and New Mexico—that have some rudimentary requirements, but these are just first steps toward connecting tenure to effectiveness.”<sup>18</sup> Barbara Thompson, the Project Leader for Teaching Quality at the

**FIGURE 1**  
**How states are faring on tenure**



Source: NCTQ, "2008 State Teacher Policy Yearbook."

**FIGURE 2**  
**How long before a teacher earns tenure?**



Source: NCTQ, "2008 State Teacher Policy Yearbook."

Education Commission of the States, agreed with this assessment, noting that there is serious disagreement within and across states over how to define and assess teacher effectiveness, and that this problem is compounded by the fact that states are at very different stages in the development of their data systems. "The challenge," she said, "is to identify things that are observable, measurable, and fair" and that the teachers unions will agree to. As a result, she sees efforts to link tenure to teaching effectiveness "getting shot down all the time."<sup>19</sup>

NCTQ has also identified minimum goals for state policies on the other side of the tenure equation—getting rid of ineffective teachers:<sup>20</sup>

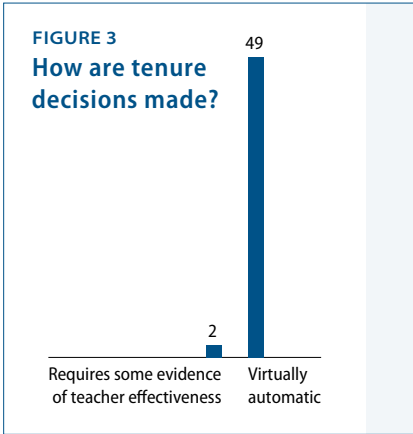
1. The state should require that all teachers who have received a single unsatisfactory evaluation be placed on an improvement plan—whether or not they have tenure.
2. The state should require that all teachers who receive two consecutive unsatisfactory evaluations or two unsatisfactory evaluations within five years be formally eligible for dismissal—whether or not they have tenure.

Nine states met these goals, but once again, the NCTQ did not find a single state whose policies were worthy of being called "best practice" and worthy of emulation elsewhere. They conclude that, "many states regard teacher evaluations as a formality without significance or consequences. Only half of the states articulate any consequences for teachers with unsatisfactory evaluations."<sup>21</sup> Of these, 26 states mandate that any teacher who receives an unsatisfactory evaluation be placed on an improvement plan, with the rest not specifying any action that districts should take. Only 13 states specify that teachers with multiple unsatisfactory evaluations should be eligible for dismissal.

Local principals and school district officials operating inside of their particular collective bargaining agreement heavily influence the precise nature of these improvement plans and the frequency with which continued poor performance evaluations lead to teacher dismissals. But no research has been conducted to date that attempts to analyze how different tenure policies—enacted or proposed—affect teacher quality or on student learning. This research is essential in order to better understand the costs and benefits of current tenure policies and craft effective changes.

The 2007-2008 National Center for Education Statistics' Schools and Staffing Survey shows that on average, districts dismissed or non-renewed 2.1 percent of teachers for poor performance during the 2007-2008 school year. The survey does, interestingly, reveal some significant variation in state teacher dismissal rates across the country despite little variation in tenure laws. This data is limited as a means of assessing the effectiveness of a state's tenure policies, but it may be suggestive of the kinds of policies that do or do not affect teacher dismissal rates (See Appendix).<sup>22</sup>

These differences in dismissal-nonrenewal rates do not appear to be due to variations in state tenure laws, since there is in fact little variation, but rather due to differences across states in the content of their local collective bargaining agreements and/or the actions of local principals and superintendents. What might account for such differences at the local level is not known, though it is a promising area for future research.



Source: NCTQ, "2008 State Teacher Policy Yearbook."

# Recent attempts to reform tenure laws

The standards, testing, and accountability movement that gained momentum in the 1990s and was enshrined in federal policy in 1994, put new pressure on states to improve school performance, and many initiated efforts to reform or repeal teacher tenure laws. A number of states—including Connecticut, Michigan, North Carolina, and South Dakota—enacted minor changes to their tenure policies by increasing the probationary period for untenured teachers or streamlining the due-process procedures for removing underperforming tenured teachers. But attempts to bring about more significant changes to tenure policies have generally suffered from two failings: they have sought to change tenure without first addressing the underlying teacher evaluation system, or they have tried to eliminate major due process rights rather than reform them. Teachers unions have vigorously opposed the direct assault on due process rights, and these legislative efforts have been contentious, lengthy, and generally unsuccessful.

The futility of attempting to bring about tenure reform without comprehensive teacher evaluation reform was made readily apparent in states such as Oregon, Alabama, Florida, Idaho, Mississippi, Texas, and Utah, which have “replaced” tenure with renewable contracts. At first glance, the premise of renewable contracts seems to imply a lack of permanent employment. But if these contracts are virtually always renewed—as appears to be the case—then the policy change does not have a significant impact on the number of dismissals or the quality of the teaching force.

States must articulate a definition of effectiveness in order to create a system for dismissing “ineffective” teachers, and pair that with an assessment system that documents the extent to which teachers have or have not met performance standards. Absent such a system, it is very difficult for school officials to identify ineffective teachers, let alone justify dismissing them. It should not be surprising, given this context, that most tenure reforms to date have had little effect on teacher dismissal rates.

## Case study states: teacher policy and dismissals

State	Length of probationary period	Teacher effectiveness part of tenure	NCTQ teacher policy grade
U.S average	3	No	
California	2	No	D+
Georgia	3	No	D+
Florida	3	No	C-
Wisconsin	Up to district	No	D
New York	3	Blocked	D-
Ohio	7*	Blocked	C*
D.C.	2	Proposed	F

Note: Data compiled by author from NCTQ 2008 Teacher Quality Yearbook and NCES 2007-08 Schools and Staffing Survey (see appendix).

\*Ohio changed from 3 to 7 years in 2009. NCTQ grade was from 2008 before 2009 teacher policy changes were made.

## Case study states: collective bargaining and accountability, teacher policy, and dismissal

State	Collective bargaining	Accountability grade	NCTQ teacher policy grade
U.S average	Yes	B	
California	Yes	A	D+
Georgia	No	A-	D+
Florida	Yes	A	C-
Wisconsin	Yes	B-	D
New York	Yes	A	D-
Ohio	Yes	A	C*
D.C.	Yes	D-	F

Note: Grades for state accountability systems were taken from Education Week's 2009 Quality Counts study at <http://www.edweek.org/ew/qc/2009/17src.h28.html>. Information on state collective bargaining laws came from the Education Commission of the States at <http://mb2.ecs.org/reports/Report.aspx?id=173>. Dismissal data taken from NCES 2007-08 Schools and Staffing Survey (see appendix). \*Ohio grade was from 2008 before 2009 teacher policy changes were made.

The following case studies analyze in greater detail several state attempts to reform teacher tenure in more significant ways in an effort to better understand the political context within which such efforts occur, why they have generally been unsuccessful, and what has enabled a few states to make some significant changes.

### California

California was one of the first states in the country to pass a teacher tenure law in 1921, and today the state has the shortest probationary period before tenure—two years. The

state is notable for its multiple failed attempts to adopt tenure reform, as well as advocates' use of both the legislative and ballot initiative processes in the pursuit of reform.

Republican Governor Pete Wilson led a major push in 1996 to replace tenure with renewable five-year contracts, but three separate bills to do so were defeated in the legislature, even though it was controlled by his own party. Republican Governor Arnold Schwarzenegger picked up the cause in January 2005 and endorsed the Excellence in Teaching Act to establish performance pay for teachers, as well as the Put the Kids First Act, which sought to change tenure for the state's teachers. The Put the Kids First Act would have extended the probationary period for new teachers to five years and allowed a school district to dismiss a tenured teacher after two unsatisfactory performance evaluations without the traditional 90-day improvement and appeals process. The California Teachers Association strenuously opposed this provision, arguing that it would eliminate teachers' essential due process rights and create a punitive evaluation system that would summarily dismiss teachers rather than give them an opportunity to improve.

Schwarzenegger nonetheless threatened to take his proposals directly to the people through ballot initiatives if they were not enacted by the legislature. *BusinessWeek* noted at the time that the governor's proposals "triggered an all-out war that's pulling in national and California players alike."<sup>24</sup> The CTA enacted a \$60 increase in teacher member fees to raise \$50 million to fight the initiatives. When the legislature failed to act, Schwarzenegger called a special election—for only the fourth time in state history—to take up his tenure proposal. Yet California voters defeated the teacher tenure proposal, Proposition 74, by a 55-to-45 percent vote in November 2005.

The poor performance of the state's public schools and the inadequacy of its teacher evaluation policies continue to garner attention. NCTQ gave the state a failing grade for its tenure rules in 2008, and a grade of "D+" for its teacher policies overall. A special report on teacher tenure by the *Los Angeles Times* in May 2009 renewed calls for reform. The report analyzed teacher dismissal cases and found that "it's remarkably difficult to fire a tenured public school teacher in California... The path can be laborious and labyrinthine, in some cases involving years of investigation, union grievances, administrative appeals, court challenges, and re-hearings."<sup>25</sup> The study noted that building a case for dismissal is so costly and time-consuming that school officials generally don't attempt it except in the most egregious cases, often preferring to push the teacher off on another school instead.

Los Angeles spends \$10 million annually to "house" teachers who are not teaching because their cases are stuck at some point in the lengthy disciplinary process. Immoral—and often illegal—behavior was the basis of 80 percent of the dismissal claims that the *Los Angeles Times* studied, and these rarely were based on teachers' actual performance in the classroom. Los Angeles is the state's largest district, yet it doesn't pursue as many cases as other districts and tends to lose them more often than other districts. The district has 30,000 teachers and fires about 21 a year, well under 0.1 percent, and significantly less than



Long Beach (six firings per 1,000) and San Diego (two per 1,000). The report also noted that part of the problem in Los Angeles stems from the district's inadequate teacher evaluation system, which in 2003-2004 found 99 percent of teachers to have "met standards."

The *Los Angeles Times* report received a great deal of publicity and led the Los Angeles Superintendent to acknowledge that the state's tenure system is "a sacred cow, and I do think it should be overhauled."<sup>26</sup> The Los Angeles school board brought up a resolution calling for the state to revise its statute governing the teacher dismissal process, but the legislature agreed only to form a task force to look at the issue after intense opposition from union leaders. The chair of the state's Senate Education Committee, Gloria Romero (D-East Los Angeles), declared that the state tenure law only needed "tweaks" rather than wholesale reform, and said that Los Angeles district officials were to blame for not getting rid of poor teachers. "At the end of the day, you can't legislate backbone," Romero stated.<sup>27</sup> After the Los Angeles board passed a weak resolution in June calling on the state to make it easier to dismiss teachers who commit serious crimes, the *Los Angeles Times* editorialized that, "They put it off. They debated it at length and watered it down."<sup>28</sup>

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## Florida

Florida's state Education Commissioner Frank Brogan and Republican-controlled legislature supported a major push to eliminate tenure and enable school districts to fire teachers at will in 1997. Yet the teachers unions were able to successfully lobby for amendments to the original bill that restored and even enhanced some job protections, including inserting a measure saying that teachers with at least three years of experience could be removed only for one of several specified reasons. The compromise bill was dubbed "tenure lite" by the media; it reduced the probationary period for new teachers from one year to 97 days and enabled them to be fired without cause, thus permitting ineffective new teachers to be removed earlier than previously was the case. It also streamlined and shortened the process for firing tenured teachers, reducing the time that poor-performing teachers had to improve from two years to 90 days, though it preserved their right to an administrative hearing to contest the dismissal.

Commissioner Brogan remarked at the conclusion of the legislative process that "Tenure is alive and well in the state of Florida. This bill not only does not eliminate tenure, our concern is that it may have become more onerous to remove an incompetent teacher." The Chairman of the Ways and Means Committee, Don Sullivan (R-St. Petersburg) agreed, noting that, "I think it leaves us back where we started."<sup>29</sup> The final legislation was so different from the original that many of the bill's initial sponsors voted against it.

The Florida case is often cited as an example of successful tenure reform, though it has not led to a significant increase in teacher dismissals and actually brought about an increase in litigation.<sup>30</sup> The new law led to early exits in 1998 for only 303 of the state's 10,689

new teachers—202 of whom resigned with the rest dismissed by the districts.<sup>31</sup> The 1997 changes appear to have increased somewhat the rate at which probationary teachers in the state are dismissed prior to tenure, but they do not appear to have affected tenured teachers very much.

NCTQ gave Florida an overall grade of C- for its teacher policies in 2008, noting that the state has developed a student- and teacher-level longitudinal data system and has directed districts to incorporate student performance in their teacher evaluations. However, NCTQ concluded that of all its teacher policies, “the state has the most work to do in making tenure decisions meaningful.”<sup>32</sup>

A plan to end tenure was once again introduced in the Florida legislature during its 2009 session with great fanfare. The proposal called for an end to permanent “professional service contracts” for all future teachers, who instead would get renewable annual contracts for their first 10 years and then contracts of no longer than five years after that. The House Education Committee chairman predicted that the opposition “is going to be intense, if not ferocious” and in the end observers noted that “a much watered down version of the proposal cleared the House but got nowhere in the Senate.”<sup>33</sup> Supporters have promised to bring up the legislation again next session, but its future is uncertain at best. The Florida case demonstrates that even “successful” tenure reform proposals may have little meaningful impact on teacher evaluation and dismissal processes on the ground due to legislative compromises that tend to whittle away the most significant changes to the status quo.

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## Georgia

Georgia eliminated tenure for new hires in 2000 as part of the “A+ Education Reform Act” pushed by Democratic Governor Roy Barnes. Barnes declared at the time that, “tenure is an outdated concept born of a time when we treasured process over performance.”<sup>34</sup> The reform act contained a wide array of measures intended to improve student academic performance including annual student testing, school choice, and bonus pay for teachers in high performing schools. Subpar test results could also lead to the disciplining or dismissal of teachers and administrators. Dismissed teachers were to be given a written reason for their termination but did not have the right to a hearing to contest it. This provision—like the ones proposed in Florida and California—was criticized by some observers for removing, rather than reforming, longstanding due process protections and professional development procedures that were seen as essential to the recruitment, retention, and training of a high-quality teaching force.

Barnes’ effort to repeal tenure angered the 38,000-member Georgia Association of Educators. The group declined to endorse him during his 2002 re-election campaign despite GAE’s history of endorsing Democratic candidates and its endorsement that year of all of the other Democratic candidates for statewide office.<sup>35</sup> Barnes was ulti-

mately defeated by Sonny Perdue, who became Georgia's first Republican governor since Reconstruction and quickly restored teacher tenure and other job protections in 2003. The Georgia code now specifies that teachers in the state can *only* be non-renewed for specific reasons listed in state law, which has removed discretion in this area from local school districts. NCTQ gave Georgia a grade of "F" in 2008 for its rules on tenure and an overall grade of "D+" for its teacher policies.

An interview with teacher quality administrators in the Georgia Department of Education revealed that today there is little discussion around reforming the state's tenure policies. The department has not done any research on the impact of state tenure policies and is not undertaking any policy advocacy in this area. They report that, "Tenure is not on anybody's radar screen. It is not a focus of the department at the moment, nor is it something that state legislators are talking about... We haven't had much pushback on tenure—there is a sense of 'if it ain't broke don't fix it.'"<sup>36</sup> They noted that their focus and that of the legislature has been on teacher recruitment, training, retention, and working conditions, and on the development of a new teacher evaluation system, which they do not currently intend to connect to the tenure process.

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## Wisconsin

Wisconsin has a unique history regarding teacher tenure. The state eliminated its statutory language on tenure in the late 1930s, restored it for Milwaukee area teachers a few years later, and then eliminated it for them as well in 1995. So unlike in other states, whether or not to grant tenure in Wisconsin's school districts is up to local officials, offering the possibility of significant intrastate variation. However, an interview with Barry Forbes, the Employee and Labor Law Director of the Wisconsin School Boards Association, revealed that despite the discretion given to school districts all of them have chosen to establish tenure for their teachers and there is little variation in teacher tenure policies.<sup>37</sup> None of the districts appear to formally incorporate evidence of teacher effectiveness into tenure decisions; rather it is an "automatic" process by which all teachers who have had their contracts renewed during the probationary period are granted tenure.

*Forbes* reports that all of the districts have adopted the same standard of "just cause protections" to determine the process by which teachers may be dismissed beyond the probationary period. There is only slight variation in the length of the probationary period, with half of the districts setting it at two years and the other half setting it at three years. *Forbes* estimates that no more than 50 nonprobationary teachers are dismissed in a typical year out of a statewide teaching force of 65,000. The lack of state guidance led NCTQ to give Wisconsin a failing grade for its tenure policies and a grade of "D" for its teacher policies overall.<sup>38</sup> The Wisconsin case indicates that state mandates are not the only standardizing force in U.S. tenure policies, and that school districts seem inclined to grant teachers tenure—and to do so in similar ways—even when given the flexibility to develop alternative policies. Why this is the case would be a useful question for future research to explore.

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## New York

States have the power both to promote and retard innovation at the district level; they can give and take away discretion in education generally and on tenure specifically. Most recently, for example, New York City's high profile effort to improve the city's teacher evaluation and tenure process was vetoed by the state. Mayor Michael Bloomberg acknowledged in 2007 that while the district has long had the ability to dismiss teachers during their three-year probationary period before tenure, it in fact rarely did so. He announced that his administration would henceforth more rigorously scrutinize teachers during the probationary period, require principals to justify their tenure decisions, and deny tenure to ineffective teachers.

The City Department of Education created a Principals Portal in February 2008, which gave principals access to toolkits on teacher development and tenure to guide their mentoring and assessment processes. The city also established new criteria for granting tenure, which included "significant professional skill," and "a meaningful, positive impact on student learning." These changes appear to have significantly and immediately strengthened the tenure process, as the number of teachers denied tenure—as well as the number of teachers placed on an extended probationary period—doubled in the first year after the creation of the portal and toolkits.

The centerpiece of Bloomberg's tenure reform plan was a proposal to incorporate student test score data into measures of teacher effectiveness and tenure decisions. The state legislature—under intense lobbying by the United Federation of Teachers—responded by passing legislation in 2008 prohibiting school districts from denying tenure to a teacher based on test scores or other "student performance data." Bloomberg called the state's action a "disgrace" and an "outrage," noting that "it is the most nonsensical, damaging thing that this legislature has done in an awful long time." A spokesperson for the UFT, meanwhile, declared that, "we forcefully advocated for the tenure language, and we make no apologies for this."<sup>39</sup> As part of a compromise, the legislature announced plans to form a commission to study the issue of tenure reform, but this summer shelved the commission idea indefinitely. In the meantime, a scathing *The New Yorker* article appeared on the city's "Rubber Room," where teachers are sent with pay to await—often for years—the outcome of administrative hearings concerning their alleged misconduct or incompetence, received considerable attention in the city and nationwide.<sup>40</sup>

Yet Mayor Bloomberg announced in November that the city would move forward with its plan to use student test scores as a factor in its tenure decisions for the group of teachers hired in 2007, since the state prohibition applied only to teachers hired after July 1, 2008. The mayor also called on the legislature to allow the law to expire as scheduled in 2010, and replace the prohibition with a mandate that all districts in the state evaluate teachers with "data-driven systems." Banning the use of student achievement data in teacher tenure decisions, he said, "is like saying to hospitals, 'You can evaluate heart surgeons on any criteria you want, just not patient survival rates.'"<sup>41</sup>

Bloomberg also called on the state to pass legislation that would make it easier for districts to fire bad teachers, including those with tenure, and place a one-year limit for underperforming or disciplined teachers to be in the reserve pool, which he called “an absurd and outrageous abuse of tenure” and estimated is costing the city \$100 million annually. In an era of reform-minded urban school superintendents, the New York example underscores the importance of increasing our understanding of the intrastate dynamics of tenure reform, given that states have the ultimate power not only to facilitate or mandate such reform, but also to block efforts that originate at the district level.

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## Ohio

Ohio’s Democratic Governor Ted Strickland called for a major overhaul of the state’s education system in 2007, placing particular emphasis on the need to improve the quality of its teaching force. A number of regional public forums were held around the state, and the ideas from these forums were brought together with a set of recommendations produced by the influential Ohio Grantmakers Association in a report entitled “Beyond Tinkering.”<sup>42</sup> The governor’s comprehensive education reform plan called for four major changes to state law in the area of teacher quality: a teacher residency program for new teachers, a longer probationary period for teachers before tenure, a lower standard for dismissal of tenured teachers, and the incorporation of value-added student data into the state teacher licensure process. As Wesley Williams, the director of the Ohio Office of Educator Equity, observed, “Drawing on national research and especially the work of the National Council on Teacher Quality, we recognized that the whole process of evaluating teachers and making tenure decisions needed to be more meaningful and purposive.”<sup>43</sup>

The Ohio teachers unions opposed all of Governor’s Strickland’s proposed reforms except for the new teacher residency and licensure program. In the end, all but the value-added data proposal survived the legislative process, albeit in modified form.<sup>44</sup> Interestingly, Republicans in the legislature were much more supportive of the Democratic governor’s proposals than members of his own party.

The governor’s initial proposal called for extending the pretenure probationary period from three years to nine. It was reduced to five years in the Democratic-controlled House, then restored to nine years in the Republican-controlled Senate before the chambers compromised at seven years in the conference committee. The longer probationary period allows for more professional development and is intended to enable districts to gather a greater body of evidence of teaching effectiveness for use in tenure decisions. The proposal to use student achievement test data as a measure of teacher effectiveness in state licensing decisions for both initial licenses and renewals, however, was dropped in the Democratic House, then restored in the Senate before being dropped for good in conference. The final legislation was a compromise that instructed the State Educators Standards Board to develop a model teacher evaluation system that *may* incorporate value-added data and which districts *may* voluntarily choose to adopt.

It became clear during the legislative debate that Ohio does not have a state assessment system capable of providing the kind of student test score data required for a value-added teacher evaluation system. This is because Ohio does not currently conduct standardized testing in grades or subjects beyond those required by the federal No Child Left Behind Act, which mandates primarily annual tests in math and reading in grades 3-8. Even if such data were available, however, the teachers unions opposed a reliance on standardized tests and called for teacher evaluations to incorporate multiple measures. Governor Strickland's chief education advisor indicated that the plan is to wait for the State Standards Board to come back with their model teacher evaluation system—which is supposed to incorporate student performance measures—and then to introduce a bill in the legislature to make this “model” evaluation a mandatory component of the state licensing process.

One of the most significant features of the legislation as enacted is a new multi-tiered teacher licensure process. New teachers receive a resident educator license and participate in a four-year teacher residency program—one of the first such statewide programs in the country—with performance monitoring and mentoring by veteran teachers. The statute contains few details on the program, except that it is to be developed by the state Department of Education in cooperation with the state's colleges of education and must be in place by January 1, 2011. After successful completion of the residency program, teachers receive a professional license, typically in their fifth year.

The new law also creates a career ladder for veteran teachers by establishing senior professional and lead licenses; the latter last for three years and are intended to rotate experienced teachers from the classroom into coaching new teachers in the residency program.

Finally, the law made it easier to dismiss ineffective tenured teachers by moving to a “good and just cause” standard while preserving basic due process protections. As Governor Strickland's chief education advisor John Stanford noted, “Ohio had a very high standard for the removal of a tenured teacher. They could only be removed for “gross immorality” or “gross inefficiency” and this was a higher standard than for any other public official in the state.”<sup>45</sup> One of the biggest fights in the legislature was over whether district collective bargaining agreements could override the changes in state law that set a new longer probationary period before tenure and a lower standard of due process protections for tenured teachers. It is the norm in most states to allow such provisions to be overridden, but Ohio's new law contains explicit statutory language forbidding it.

Ohio's reforms represent significant changes to traditional teacher evaluation and tenure processes in the United States, even though—significantly—they not did modify the criteria necessary to earn tenure itself. As Williams remarked, “this legislation equips Ohio with extraordinary opportunities to create a coherent, aligned, and integrated human capital system that makes adults in the system accountable for high quality learning for all students.”<sup>46</sup> Nonetheless, there is some concern inside the state that the political support for these reforms is tenuous and that they may be undone in the wake of the upcoming

gubernatorial election in 2010. The Ohio case demonstrates the importance of better understanding the relationship between state teacher licensing and district tenure processes. It also reaffirms the importance of standardized student assessment and data-driven teacher evaluation systems to tenure reform; absent such systems in the state, lawmakers were limited in their ability to push tenure reforms as far as they wanted to go.

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## Washington, D.C.

The nation's capital is arguably the front line of the national debate over teacher tenure reform. The city is a particularly visible and ripe location for tenure reform for several reasons. Existing rules stipulate that city teachers are granted tenure after only two years in the classroom—among the shortest probationary periods in the country—and with only a few short principal observations to assess their effectiveness.

NCTQ gave the city a failing grade for its teacher policies, noting that, “The District of Columbia does not require any process to ensure that tenure decisions are meaningful. The district does not have a policy concerning the length of the probationary period before teachers can attain permanent status or indicate any other additional process evaluating cumulative evidence of teacher effectiveness that is required to receive tenure.”<sup>47</sup> D.C. has among the highest per-pupil spending in the country, but also among the lowest test scores, with 75 percent of all schools failing to make Adequate Yearly Progress under NCLB—more than any state. D.C. Mayor Adrian Fenty appointed Michelle Rhee to take over the troubled school system in 2007.

Rhee proposed a two-tier system for compensating teachers in the 2008 Washington Teacher's Union contract negotiations. New teachers—and existing teachers who voluntarily opt in—would give up tenure protections in exchange for significantly higher, but performance-based, pay. Rhee's proposed contract would establish two different pay tiers—red and green—for D.C. teachers.

The red tier would set teachers' base pay by their years of experience and education attained, as is the norm in most districts today. Teachers in this tier would have to agree to relinquish the traditional seniority rights for the hiring, transfer, and excessing of teachers in exchange for a raise of 28 percent over five years and two “reform stipends” of \$5,000 each. Teachers under the new plan would essentially have to apply for a new job and gain the principal's approval to be hired at another school. Teachers unable to find a new school that wanted them could opt for early retirement, a \$25,000 buyout, or a year's grace period—with full pay—to continue their search. If a teacher in that situation could not find a new school to hire them, however, they would be fired from the district. It is worth noting that a large number of teachers could potentially lose tenure through this process since D.C. is a district that is reorganizing and closing or merging a large numbers of schools. This is quite a contrast with NYC's notorious rubber room filled with unwanted teachers collecting full pay indefinitely.



All new hires to the district—along with those veteran teachers who choose to opt in—would be paid under a different system known as the “green” tier. They would be eligible for performance bonuses that could produce much higher salaries—potentially as high as \$130,000 for senior teachers, which is \$43,000 more than the maximum under the existing salary scale. In exchange, new hires would have to relinquish tenure and seniority rights and have their teaching effectiveness measured by student academic growth. Veteran teachers who choose this route would have to give up tenure protection for a year and serve a year of probation after which only those teachers who performed well and were recommended by their principal would receive permanent, “continuing contract” status with no right to appeal dismissal.<sup>48</sup>

Rhee’s proposals are an important development in the history of tenure reform because they go further than most reforms introduced elsewhere in the country and because she intends for them to be a national model for linking teacher pay to student achievement. The significance of Rhee’s proposed reforms was not lost on the American Federation of Teachers—the D.C. union’s parent organization—and they entered the negotiations over the proposals early on.

One of the unique features of Rhee’s tenure reform proposal is that it relies on an opt-in approach for existing teachers—though not, significantly, for new hires. Rhee hoped to bypass the intense political opposition that usually greets such reforms by offering teachers significant raises in exchange for agreeing to major changes in job protections and seniority rights. Ultimately, as Rhee herself noted, “I could not have been more wrong. This thing went down like a lead balloon.” *The Washington Post* added that, “her assumption that cash trumped other issues for teachers was mistaken. After serving under five superintendents in the past decade and enduring waves of abortive attempts at reform, they were wary of the latest Big Idea. And they were especially wary of Rhee after reading and hearing her comments about teachers ... They simply didn’t trust her.”<sup>49</sup> A 2008 survey of WTU members revealed that a majority opposed Rhee’s proposal.<sup>50</sup> The WTU declined to bring Rhee’s plan up for a vote with its membership and instead issued a counterproposal that did not address the major tenure reforms contained in Rhee’s original proposal. As a result, negotiations with the WTU over the new contract were ongoing as of January 2010, and the initial thrust of Rhee’s reforms remained in limbo.

Rhee shifted gears in the interim and tried to implement her reforms through alternative means. She proposed a voluntary buyout plan in 2008 in which 700 teachers could have earned up to \$20,000 in severance; almost 300 teachers ultimately applied for the program. Rhee also fired 250 teachers later that year—70 of whom were recent hires—who didn’t meet NCLB highly qualified mandates. She moved to develop a more robust, data-driven teacher evaluation system for the district that could provide more comprehensive and reliable information for tenure, dismissal, and performance pay decisions. Congress had given the D.C. school system unilateral control of the evaluation system in the mid-1990s, and



as a result, the district could legally modify it without union consent. Rhee declared that, “we are going to impose the new evaluation tools regardless [of the outcome of the contract negotiations]. We are going to be moving out people who are not performing.”<sup>51</sup>

Rhee also utilized an obscure and rarely used provision in the existing teacher contract that permitted her to place ineffective teachers on “90-day plans,” which gave them three months to improve with the aid of a “helping teacher” or face termination. Though this provision had seldom been used in the past, Rhee used it to fire 80 tenured teachers in June 2009 who had been placed on 90-day plans for ineffectiveness. In total, Rhee dismissed 140 teachers for poor performance in 2009, but about 60 were first or second-year teachers on probation. *The Washington Post* observed that, “The dismissal of 80 tenured teachers is a landmark of sorts for the school system, which historically has fired only a handful of instructors each year for poor performance.”<sup>52</sup> The WTU filed suit against the DCPS over the teacher dismissals claiming the district had not demonstrated “cause,” but the court dismissed the suit.

Rhee launched a new multipronged “value-added” teacher evaluation system called IMPACT in October 2009, which has been hailed as a potential model for the nation. IMPACT was developed by a team led by Jason Kamras, the 2005 national teacher of the year with the input of 500 D.C. educators. It is one of the first evaluation systems in the country to incorporate student test scores as part of the teacher rating and connect them to job security. The D.C. website declares that “Through IMPACT, DCPS seeks to create a culture in which all school-based personnel have a clear understanding of what defines excellence in their work, are provided with constructive and data-based feedback about their performance, and receive support to increase their effectiveness.”<sup>53</sup>

Under IMPACT, teachers in subjects with standardized tests such as English and math in grades 4-8 have 50 percent of their evaluation based on student score growth. An additional 40 percent of the evaluation for these teachers is derived from a “Teaching and Learning Framework,” a set of five observational measures—three by a building administrator and two by an outside “master evaluator” who is a subject-matter expert—that score teachers in 22 areas across nine different categories. The evaluations for teachers in subjects that lack standardized tests will rely much more heavily on the observational measures. After the initial classroom observation, all teachers receive a growth plan that outlines their strengths and weaknesses and a targeted professional development plan. At the end of the school year, each teacher’s performance is converted into a score on a 400-point scale and those falling below 175 will be subject to dismissal.

Kate Walsh of the NCTQ has hailed IMPACT as, “light years ahead of what’s available in most school districts in the United States,” but the AFT and the WTU have voiced their displeasure with the system because it holds the teacher solely responsible for student progress.<sup>54</sup> The tenure reform movement in D.C. has not yet run its course, but the city’s experience thus far emphasizes that major change is more likely to be initiated when the

school system is under the leadership of people who are less wedded to traditional evaluation and compensation systems. The D.C. experience emphasizes that reformers should pursue change along multiple routes simultaneously by developing new teacher evaluation systems and exploring existing flexibility for dismissing poorly performing teachers even as they negotiate broader changes in the collective bargaining contract.

# Recommendations

**The federal government should continue to leverage education funding to push states to develop and deploy more meaningful teacher evaluation systems based on a clear definition of teacher effectiveness. Such evaluation systems are an essential precondition for effective tenure reform, but have been missing from most past state tenure reform proposals.**

A major reason why tenure reform has not received more attention to date is that most existing state teacher evaluation systems provide little useful information with which to measure teacher effectiveness. As Bridget Curran of the National Governors Association observed, “there is tremendous interest at the state level today in improving teacher quality and compensation, but efforts to address tenure will not gain traction until better metrics for teacher evaluation are developed.”<sup>55</sup> It is also crucial for the federal government to support state and district education agencies’ technical capacity to collect and analyze teacher effectiveness data and integrate it into a more rigorous teacher evaluation and tenure process.<sup>56</sup>

**The U.S. Department of Education should fund research and pilot demonstration programs that will provide empirical evidence of how effective different kinds of teacher tenure policies are on raising teacher quality and student achievement.**

Recent studies by the General Accounting Office and the Center for American Progress have highlighted the ineffectiveness of the 23 existing federal teacher quality programs—including \$3 billion annually in ESEA’s Title II program alone—and recommended that these funds be repurposed or converted into competitive grants, which would allow the federal government to use them to reward states and districts that develop innovative teacher evaluation and tenure approaches.<sup>57</sup>

**Empirical evidence should be the basis for a serious—and unprecedented—conversation among policymakers as well as the general public about the costs and benefits of teacher tenure and the circumstances under which it should be granted and revoked.**

Tenure emerged as a response to abusive and discriminatory hiring, firing, and promotion practices that were common early in the 20th century, and some form of continued due process protections remain necessary. There is mounting evidence, however, that the

current tenure system prevents school leaders from removing ineffective teachers and has forestalled the creation of a robust system of teacher evaluation and professional development. As Andrew Rotherham from Education Sector has observed, “it is important for advocates of tenure reform to reframe the debate from ‘firing lousy teachers’ to developing a more effective 21st century teaching force.”<sup>58</sup>

**States should change their tenure statutes to explicitly mandate that teacher retention and dismissal decisions incorporate teacher effectiveness data. Alternatively, states with a preference for local control should loosen prescriptive state tenure policies and give districts the flexibility to experiment with new approaches to teacher evaluation and tenure. Federal grant-in-aid conditions should be used to prod states in one of these directions.**

Every state except Wisconsin currently mandates that school districts grant tenure to teachers, yet only two states—Iowa and New Mexico—require districts to consider any evidence of teacher effectiveness as part of the tenure decision. This situation is simply untenable. States may reasonably differ in how they define and measure teaching effectiveness; in particular, they may place different emphasis on the importance of student scores on standardized achievement tests. But states that refuse to include any measure of teacher effectiveness in their tenure process—or block districts from doing so—should be ineligible for discretionary federal education funding. The Obama administration has indicated that it intends to use the Race to the Top Fund and existing ESEA programs in this manner. The National Council of State Legislatures’ Michelle Exstrom remarked that, “States have heard very directly from President Obama and Secretary Duncan that they would like to see tenure reform.”

**Legislators should ensure that state-level tenure reforms are not overridden by local collective bargaining agreements by articulating explicit statutory language to this effect.**

Information on this issue is murky, but it is apparently the norm in many states to permit local collective bargaining agreements to supersede state statute in many areas of teacher policy. State level reformers should ensure that hard-won teacher policy improvements cannot be undone at the district level.

**States should improve their teacher licensing processes to ensure that the effectiveness of all teachers is assessed on a regular basis as a condition for the granting and renewal of a state teaching license—regardless of the particular criteria for evaluation and tenure laid out in state tenure laws and collective bargaining contracts.**

In most states today, teacher licensure is a state-level decision while tenure is a local decision, in accordance with broad state guidelines. States may be able to incorporate data-driven assessment into teacher evaluation through the licensure process, which in most states is controlled by an appointed board, even as they push for tenure reform in the leg-

islature and through the collective bargaining process. Requiring teachers to demonstrate effectiveness for licensure—and periodically be relicensed—would help identify ineffective teachers, assist them in improvement, and if necessary deny them a license. Since a license is necessary to teach, this would effectively remove ineffective teachers from the classroom even if tenured. Such a reform-oriented licensure process could substitute for tenure reform in states where the political environment is inhospitable to legislative or collective bargaining changes.

**Think tanks and organizations such as the National Governors Association, National Conference of State Legislatures, and Education Commission of the States should provide more informational resources and policy guidance to states interested in pursuing teacher tenure reform.**

State policymakers and local school board members need clearer information about the way in which state tenure and licensing statutes intersect with teacher collective bargaining contracts, what policy options are available to them, and different reform models that have been tried elsewhere. One expert on state teacher policy observed, on the condition of anonymity, that, “There is a lot of confusion among state policymakers around what role the state plays in tenure, especially with respect to labor laws and collective bargaining, and what the state can and can’t do to reform tenure. Legislators really don’t have a clear sense of this. Those who oppose tenure reform have done a great job of confusing the issue.”

**Creative reform-minded school administrators operating within existing statutes and collective bargaining agreements can and should bring about significant improvements in the teacher tenure process.**

Recent research has demonstrated that there is more ambiguity and flexibility in these agreements than is often presumed to be the case.<sup>59</sup> As Joel Klein’s work in New York City and Michelle Rhee’s efforts in D.C. reveal, existing tenure guidelines—while constraining—can nonetheless be more creatively and effectively utilized by school leaders to remove both probationary and tenured ineffective teachers. The same result could also be furthered by the development of more robust teacher evaluation systems that incorporate student achievement data.

**Teachers unions should embrace efforts to streamline the removal process for ineffective teachers and only contest those dismissals that clearly violated due process or were unsubstantiated by the teacher evaluation process.<sup>60</sup>**

Recent developments indicate a shift in union thinking on tenure that may make these changes more likely in the future. A reduction in the cost and duration of the teacher dismissal process—even absent other changes—would make school leaders much more willing to utilize it than is currently the case.

# Conclusion

Absent meaningful accountability for student achievement, there has been little or no political or economic cost to the adult actors who have permitted dysfunctional teacher evaluation and tenure systems to persist. This has made teacher tenure reform for the most part a nonstarter in the United States until quite recently. Yet the educational cost to children stuck with ineffective teachers has been enormous.

The debate over reforming teacher tenure in the United States has gained traction in the wake of NCLB and Race to the Top and appears likely to pick up additional momentum in the years ahead. The creation of state accountability systems has created greater transparency about school performance and held politicians and school leaders responsible for the academic achievement of students as never before. This dynamic is beginning to alter the political calculus of school reform and is making proposals that were political anathema only a few years ago—such as those to reform teacher tenure—more politically palatable.<sup>61</sup>

National union leaders increasingly appear to recognize that fundamental reforms to teacher compensation, evaluation, and tenure policies are inevitable in the accountability era, and they are eager to have a seat at the table when changes are made. In a 1997 speech, then-NEA president Bob Chase acknowledged that, “there are indeed some bad teachers in America’s schools and it is our job as a union to improve those teachers or—that failing—get them out of the classroom.” Similarly, then-AFT president Sandra Feldman declared in her keynote address to the AFT convention in 1998 that, “Even one incompetent teacher is too much for the children she teaches, the parents she faces, the members who get her students in subsequent grades ... and, frankly, for the good of our union.”<sup>62</sup>

In an important January 2010 speech, AFT President Randi Weingarten acknowledged that, “our system of evaluating teachers has never been adequate.” She called for replacing brief teacher observations by principals, which she called a “perfunctory waste of time,” with “constructive and robust teacher evaluation,” and “the creation of a system that would inform tenure, employment decisions and due process proceedings.” “We recognize,” she added, “that too often due process can become a glacial process. We intend to change that.”<sup>63</sup> Weingarten hailed the contract negotiated by the New Haven chapter of the AFT in October 2009, which limits job protections for teachers in failing schools and includes provisions for performance pay and teacher evaluation based in part on student growth. Important details of the plan still need to be hammered out, but both Weingarten and Secretary Duncan have hailed it as a reform model for the nation.<sup>64</sup>

Demographic shifts will also play an important role as the composition of the national teaching force—and thus union membership—undergoes a dramatic transformation in coming years when large numbers of baby boomers retire and are replaced with new, younger teachers. Studies by Susan Moore Johnson, and Farkas, Johnson, and Duffett have found that a “new generation” of teachers hired in the past decade or so has different views on the role of unions, collective bargaining, and tenure than their older colleagues.

A May 2008 survey by Education Sector found that half of teachers acknowledge that the unions had protected teachers who shouldn’t be in the classroom. Newly hired teachers reported being more willing to embrace reforms to their evaluation and compensation, with 60 percent willing to give up tenure in exchange for higher pay and only 17 percent indicating that they would rather keep tenure.<sup>65</sup> Koppich and Callahan have similarly observed a shift by teachers unions over the past decade from “traditional” to “reform” bargaining, that is more willing to embrace changes to the status quo.<sup>66</sup> It is important to remember, however, that union receptivity to tenure reform at the district level must be accompanied by statutory changes at the state level that permit—or mandate—local changes in tenure policy.<sup>67</sup>

Recent remarks by President Obama and the Secretary of Education Arne Duncan make it clear that they are not satisfied with the current system of tenure in K-12 education and the protections it provides to low-performing teachers. Obama told the Hispanic Chamber of Commerce that, “If a teacher is given a chance or two chances or three chances but still does not improve, there is no excuse for that person to continue teaching. I reject a system that rewards failure and protects a person from its consequences.”<sup>68</sup> Secretary Duncan, meanwhile, recently declared that on tenure, “what you need is a really clear bar as to what it takes to achieve. And what it should be is not automatic. It shouldn’t be one year, two years, and you get tenure. What have you done to demonstrate that you’ve done a great job in increasing student achievement?”<sup>69</sup> Duncan declared in a July 2009 speech to the NEA convention that, “These policies were created over the past century to protect the rights of teachers but they have produced an industrial factory model of education that treats all teachers like interchangeable widgets...When great teachers are unrecognized and unrewarded—when struggling teachers are unsupported—and when failing teachers are unaddressed—the teaching profession is damaged. We need to work together to fix this.”<sup>70</sup>

Obama and Duncan have supported their tough talk on teacher evaluation and compensation with some important steps to tie federal funds to significant reform. They successfully pushed Congress to significantly expand—from \$97 million to \$400 million—the federal Teacher Incentive Fund, which distributes resources to experiment with alternative evaluation systems and performance pay systems. There was considerable debate over the role that teacher representatives and collective bargaining should play in designing these systems, and the final legislation stipulates that, “recipients of such grants shall demonstrate that such performance-based systems are developed with the input of teachers and school leaders in the schools and local educational agencies to be served by the grant.” So far, 34 states, districts, and nonprofit groups have received money under the program to develop approaches that use “objective measures” of student performance to compensate the most effective teach-

ers. The Bill and Melinda Gates Foundation also recently announced that it is distributing \$335 million of its own money to fund experiments in tenure, evaluation, compensation, training, and mentoring in three large school systems and some charter school groups.

The Obama administration is, most significantly, leveraging the \$4.4 billion “Race to the Top” Fund to spur improvements in state teacher data collection and evaluation systems. Teacher effectiveness policies constitute the single biggest category of possible points, or 28 percent, in the competitive grant process. In order to even be eligible to apply for the grants, states must not have any law that creates a “firewall” which prohibits student achievement data from being used in teacher evaluations. California, Indiana, and Wisconsin have already removed their firewalls in response to the RTT guidelines, and other states are debating similar measures. As Andrew Rotherham from Education Sector has observed, the creation of longitudinal value-added student achievement data systems and the ability to link individual student data to their particular teachers represents an enormously important shift and has the potential to be a transformative moment in American education.<sup>71</sup>

Yet the ultimate result of these changes will depend on what states actually do with this new information and, in particular, whether they use it to improve their teacher evaluation, compensation, and tenure systems. There are early indications that the Obama administration intends to push states in this area, as well. As Stephen Sawchuck has observed, states receiving Race to the Top funds “must commit to using their teacher effectiveness data for everything from evaluating teachers to determining the type of professional development they get, to making decisions about granting tenure and pursuing dismissals.”<sup>72</sup> RTT also contains a significant shift in focus from “highly qualified” to “highly effective” teachers in federal education policy and proposes the first-ever federal definition of teacher effectiveness.

The initial RTT guidelines defined an effective teacher as “one whose students achieve acceptable rates (e.g., at least one grade level in an academic year) of student growth.” And it required such growth to be measured through state test scores when applicable.<sup>73</sup> However, the NEA and AFT vigorously opposed the emphasis on student test scores in the initial formulation, and successfully lobbied for the final regulations to incorporate multiple measures in teacher evaluations with only an unspecified but “significant part” of the evaluation to be determined by test scores or other measures of student growth.

Nonetheless, these changes may well push states to embrace the kinds of teacher evaluation, compensation, and tenure reforms that they have long resisted, particularly if the new mandates are included in the forthcoming reauthorization of the Elementary and Secondary Education Act. Intensifying public and federal pressure around educational accountability and the development of new systems for measuring student achievement and teacher effectiveness have created a ripe moment for K-12 teacher tenure reform in the United States. State policymakers must seize this moment as part of a broader push to improve teacher quality; absent such changes, the tremendous energy currently being invested in school reform is likely to yield only limited gains in educational achievement.



# Appendix

**Average number of public school teachers and average number of public school teachers who were dismissed in the previous year or did not have their contracts renewed based on poor performance, by tenure status of teachers and state, 2007-2008**

State	Average number of teachers	Average number of teachers in public school districts who were dismissed or did not have their contracts renewed	Standardized rate	Average number of teachers in public schools who were dismissed or did not have their contracts renewed, by tenure status	
				Teachers without tenure <sup>1</sup>	Teachers with tenure <sup>2</sup>
United States	211.4	4.4	2.1%	1.4	3.0
Alabama	384.7	14.0	3.6%	7.9	6.2
Alaska	166.1	9.7	5.8%	1.0	8.6
Arizona	99.6	2.5	2.5%	0.5	2.0
Arkansas	123.0	0.2 !	0.2%	0.1	0.2 !
California	285.4	8.6	3.0%	2.8	5.8
Colorado	244.5	7.2	2.9%	3.3	4.0
Connecticut	239.5	4.6	1.9%	1.3	3.3 !
Delaware	227.5	1.2	0.5%	1.2	0.0 *
District of Columbia	110.0	1.9 !	1.7%	1.8 !	0.1
Florida	2,070.1	26.9	1.3%	19.5	7.4
Georgia	631.4	10.2	1.6%	1.6	8.6
Hawaii	11,120.0	127.0	1.1%	127.0	0.0 *
Idaho	131.0	4.6	3.5%	1.0	3.6
Illinois	167.6	4.1	2.4%	2.1	2.0 !
Indiana	190.3	3.8 !	2.0%	0.4	3.4 !
Iowa	103.9	1.5	1.4%	0.1	1.4
Kansas	137.0	2.7	2.0%	0.6	2.1
Kentucky	194.2	6.6	3.4%	2.7	3.8
Louisiana	552.4	19.6	3.5%	6.4	13.2
Maine	90.6	3.1	3.4%	0.3	2.8
Maryland	2,602.6	62.8	2.4%	30.1	32.7
Massachusetts	228.0	7.8	3.4%	4.3	3.6 !
Michigan	115.9	3.3	2.8%	0.2	3.0
Minnesota	128.8	4.8	3.7%	1.0	3.8
Mississippi	213.9	6.5	3.0%	4.7	1.8 !
Missouri	128.3	2.9	2.3%	0.6	2.3

**Average number of public school teachers and average number of public school teachers who were dismissed in the previous year or did not have their contracts renewed based on poor performance, by tenure status of teachers and state, 2007-2008 (continued)**

State	Average number of teachers	Average number of teachers in public school districts who were dismissed or did not have their contracts renewed	Standardized rate	Average number of teachers in public schools who were dismissed or did not have their contracts renewed, by tenure status	
				Teachers without tenure <sup>1</sup>	Teachers with tenure <sup>2</sup>
Montana	42.0	1.1	2.6%	0.3	0.8 †
Nebraska	95.1	2.7 †	2.8%	0.1	2.6 †
Nevada	1,527.4	8.6	0.6%	3.3	5.3
New Hampshire	147.4	4.3	2.9%	0.8	3.5
New Jersey	181.5	4.0	2.2%	1.9	2.1
New Mexico	193.3	4.2	2.2%	0.5	3.6
New York	305.9	3.8	1.2%	1.6	2.2
North Carolina	496.1	4.5	0.9%	1.5	3.0
North Dakota	46.2	0.3 †	0.6%	0.0 *	0.2 †
Ohio	125.2	3.0	2.4%	0.5	2.4
Oklahoma	75.7	2.8	3.7%	0.5	2.2
Oregon	163.2	1.9	1.2%	0.5	1.4
Pennsylvania	180.9	1.0	0.6%	0.3	0.6
Rhode Island	237.3	1.7	0.7%	0.8	0.9
South Carolina	434.3	7.2	1.7%	1.4	5.7
South Dakota	59.8	7.1	11.9%	0.3	6.8
Tennessee	530.4	5.6	1.1%	4.0	1.5 †
Texas	254.0	4.2	1.7%	0.9	3.3
Utah	279.7	2.9	1.0%	2.6	0.2
Vermont	123.2	1.1	0.9%	0.4	0.7
Virginia	507.7	6.7	1.3%	1.8	4.9
Washington	205.0	2.3	1.1%	0.6	1.7
West Virginia	344.2	10.3	3.0%	1.5	8.8
Wisconsin	153.9	3.6	2.3%	0.3	3.3
Wyoming	147.1	2.6	1.8%	0.6	2.0

\* Rounds to zero.

† Interpret data with caution. The standard error for this estimate is equal to 30 percent or more of the estimate's value.

<sup>1</sup> Teachers who are often relatively inexperienced or novices. This includes teachers in their initial induction year, teachers who are on year-to-year contracts, and those teachers who have not entered a more permanent status, traditionally referred to as tenure.

<sup>2</sup> Teachers who have satisfactorily completed a probationary period and were given a contract as a career or permanent employee.

NOTE: The 2007-2008 SASS sampled all districts in Florida, Hawaii, and Maryland. As a result of sampling, variance estimates for these states are always equal to zero and noted with a dagger (†).

Source: National Center for Education Statistics, Schools and Staffing Survey (SASS), Public School District Data File (U.S. Department of Education: 2007-2008).

# Endnotes

- 1 See for example, Morgaen L. Donaldson, "So Long Lake Wobegon? Using Teacher Evaluation and tenure Systems to Strengthen the Teaching Force" (Washington: Center for American Progress, June 2009), available at [http://www.americanprogress.org/issues/2009/06/teacher\\_evaluation.html](http://www.americanprogress.org/issues/2009/06/teacher_evaluation.html); and Daniel Weisberg, Susan Sexton, Jennifer Mulhern, and David Keeling, "The Widget Effect: Our National Failure to Acknowledge and Act on Differences in Teacher Effectiveness" (New York: The New Teacher Project, 2009).
- 2 Unions are not obligated to contest every teacher dismissal case, but in practice they generally do in most school districts. An attorney for Rhode Island school districts observed that "legally, the union doesn't need to take every case we make against a teacher. But they do. They'll defend even the worst offenders." Peter Schweizer, "The Dance of the Lemons," *Education Next*, 1999, No.1.
- 3 Telephone interview with the author, August 10, 2009.
- 4 Raegen Miller and Robin Chait, "Teacher Turnover, Tenure Policies, and the Distribution of Teacher Quality" (Washington: Center for American Progress, December 2008); see also Julia Koppich and Mary Alice Callahan, "Teacher Collective Bargaining: What We Know and What We Need to Know," in *Handbook of Education Policy Research* (New York: Routledge Publishers, 2009); and Frederick Hess and Coby Loup, "The Leadership Limbo: Teacher Labor Agreements in America's Fifty Largest School Districts" (New York: Thomas Fordham Foundation, 2008). Hess and Loup used the NCTQ database to assess the flexibility of the labor agreements in the nation's 50 largest school districts. By their estimation, not a single district has a "highly flexible" labor agreement—which afford school leaders significant latitude over personnel decisions—and 15 of the 50 districts had restrictive or highly restrictive labor agreements which make it extraordinarily difficult for principals to hire and fire employees as they see fit.
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- 7 National Center for Education Statistics, Schools and Staffing Survey, or SASS, "Public School District Data File" (U.S. Department of Education, 2007-2008), Table 8.
- 8 Weisberg, Sexton, Mulhern, and Keeling, "The Widget Effect," p. 20.
- 9 Ibid 15.
- 10 Telephone interview with the author, September 1, 2009.
- 11 Weisberg, Sexton, Mulhern, and Keeling, "The Widget Effect," p.16.
- 12 Robert Gordon, Thomas Kane, and Douglas Staiger, "Identifying Effective Teachers Using Performance on the Job" (Washington: The Brookings Institution, 2006), p. 13.
- 13 Steven Adamowski, "The Autonomy Gap: Barriers to Effective School Leadership" (New York: Fordham Foundation, 2007).
- 14 Joan Baratz-Snowden, "Fixing Tenure: A Proposal for Assuring Teacher Effectiveness and Due Process" (Washington: Center for American Progress, June 2009), p. 10.
- 15 Carol Furtwengler, "State Actions for Personnel Evaluation: Analysis of Reform Policies, 1983-1992," *Education Policy Analysis Archives*, Vol. 3, No. 4 (February 15, 1995).
- 16 National Center for Teaching Quality, "2008 State Teacher Policy Yearbook: National Summary," (2008), p. 69.
- 17 Ibid, p. 69.
- 18 Personal correspondence with the author, August 12, 2009.
- 19 Telephone interview with the author, August 12, 2009.
- 20 National Center for Teaching Quality, "2008 State Teacher Policy Yearbook: National Summary," p. 104. It should be noted that the NCTQ analysis does not distinguish between the dismissal of tenure and nontenured teachers.
- 21 Ibid, p. 104.
- 22 Table 8 of the 2007-2008 Schools and Staffing Survey (reprinted in the appendix) provides data on the average number of teachers in public school districts who were dismissed or did not have their contracts renewed disaggregated by tenure status. However, this data should be not be viewed as an effective measure of the effectiveness of state teacher tenure policies both because it looks at district averages—and the number and size of districts varies considerably across states—and because low dismissal rates may indicate effective teacher hiring, training, and mentoring programs rather than weak dismissal policies.
- 23 See appendix. National Center for Education Statistics, Schools and Staffing Survey, or SASS, "Public School District Data File," table 8.
- 24 Ronald Grover, "Arnold Gets Strict With the Teachers," *Business Week*, May 2, 2005, p. 84.
- 25 Jason Song, "Firing Tenured Teachers Can Be a Costly and Tortuous Task," *Los Angeles Times*, May 3, 2009.
- 26 Jason Song, "Camps Spar on Teacher Firing Issue," *Los Angeles Times*, May 4, 2009.
- 27 Jason Song, "School Board Member Acknowledge Swifter Firings Are Needed," *Los Angeles Times*, May 13, 2009.
- 28 *Los Angeles Times*, "Paying for Bad Teachers," June 15, 2009.
- 29 Diane Rado, "Teacher Tenure' Bill Splits Senate," *St. Petersburg Times*, March 6, 1997, p. 1-B.
- 30 Rebecca Jones, "States Tackle Teacher Tenure," *The American School Board Journal* (May 1999).
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- 42 Ohio Grantmakers Forum, "Beyond Tinkering: Creating Real Opportunities for Today's Learners and for Generations of Ohioans to Come" (January 2009), available at <http://www.ohiograntmakers.org/>.
- 43 Telephone interview with the author, December 8, 2009.
- 44 Note: Requests for comment sent to both the Ohio Federation of Teachers and the Ohio Education Association were met with no response.
- 45 Telephone interview with the author, December 15, 2009.
- 46 Telephone interview with the author, December 8, 2009.
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- 49 Bill Turque, "Two Years of Hard Lessons for D.C. Schools' Agent of Change," *The Washington Post*, June 14, 2009.
- 50 A survey conducted of WTU members in August 2008 found that while almost a quarter of D.C. teachers supported the green system, overall union members disapproved of the Rhee contract proposal by an almost two-to-one margin. The study's authors concluded that "Concerns about seniority and tenure protections and tying teacher compensation to test scores trump other concerns, and most members are not willing to sacrifice these protections for the chance to receive large increases in salaries, bonuses, and benefits." More specifically, union members overwhelmingly rejected the view that tenure was part of the problem in the school system—with only 16 percent supporting this view—and 76 percent of them overwhelmingly felt that the WTU should not sacrifice tenure protections and seniority rights. Interestingly, the survey found that support for tenure protections was held by teachers across the seniority spectrum. Peter Hart Research Associates, "WTU Members Oppose Contract Proposal: Findings from a survey of WTU members" (August 15, 2008), available at <http://www.dcpswatch.com/wtu/080815.htm>.
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- 58 Telephone interview with the author, September 8, 2009.
- 59 See Mitch Price, "Teacher Union Contracts and High School Reform" (Seattle: Center on Reinventing Public Education, University of Washington, Bothell, January 2009) as well as Hess and Loup, "The Leadership Limbo: Teacher Labor Agreements in America's Fifty Largest School Districts."
- 60 Unions are not obligated to contest every teacher dismissal case, but in practice they generally do in most school districts. An attorney for Rhode Island school districts observed that "legally, the union doesn't need to take every case we make against a teacher. But they do. They'll defend even the worst offenders." Peter Schweizer, "The Dance of the Lemons," *Education Next* (1999), No.1.
- 61 For more on the recent political developments around education reform see: Elizabeth DeBray-Pelot and Patrick McGuinn, "The New Politics of Education: Analyzing the Federal Education Policy Landscape in the Post-NCLB Era," *Educational Policy* (23) (2009): 15-42.
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- 65 Ann Duffett and others, "Waiting to Be Won Over: Teachers Speak on the Profession, Unions, and Reform" (Washington: Education Sector, May 2008).
- 66 "Reform contracts," they write, "begin to acknowledge that teachers are different, that they have different levels of skill and knowledge...They maintain teachers' due process protections, but also focus much more fundamentally than do traditional contracts on protecting and enhancing the quality of teaching," Koppich and Callahan (2009), p. 301.
- 67 Earlier this summer, for example, Rhode Island's Board of Regents approved new guidelines for tougher and more frequent teacher evaluations that will require all educators to be evaluated annually under a rigorous set of state standards. In announcing the change, State Education Commissioner Deborah Gist noted that few districts in the state currently have substantive teacher evaluations and even fewer administer them routinely. The new rules, she said, will recognize and reward good teachers, offer support to struggling teachers and establish guidelines for the removal of ineffective teachers.
- 68 Remarks by President Obama to the U.S. Hispanic Chamber of Commerce, March 10, 2009.
- 69 *Time* April 27, 2009, p. 37.
- 70 Remarks of Arne Duncan to the National Education Association—Partners in Reform, July 2, 2009. Duncan added that "we created tenure rules to make sure that a struggling teacher gets a fair opportunity to improve—and that's a good goal. But when an ineffective teacher gets a chance to improve and doesn't—and when the tenure system keeps that teacher in the classroom anyway—then the system is protecting jobs rather than children. That's not a good thing. We need to work together to change that...when inflexible seniority and rigid tenure rules that we designed put adults ahead of children—then we are not only putting kids at risk, we are putting the entire education system at risk."
- 71 Telephone interview with author, September 8, 2009.
- 72 Stephen Sawchuk, "Teachers and the Race to the Top Fund," *Teacher Beat*, July 24, 2009.
- 73 Ibid.

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