



Removing Chronically Ineffective Teachers

Barriers and Opportunities

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Center for American Progress



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Introduction and summary

The importance of effective teaching in the nation's public schools is receiving unprecedented attention. As President Barack Obama so aptly stated in his remarks to the Hispanic Chamber of Commerce last year, “From the moment students enter a school, the most important factor in their success is not the color of their skin or the income of their parents, it’s the person standing at the front of the classroom.”¹ The president expresses what a great deal of research has documented—that teachers have a tremendous impact on student achievement and that teachers vary greatly in their effectiveness.²

Experts argue that promoting better teaching requires comprehensive, aligned, and integrated human capital systems for recruiting, training, evaluating, and compensating teachers.³ These systems must also be aligned with a district’s strategic goals.⁴ The Center for American Progress has focused in prior publications on many of these key components of human capital systems. Yet one critical piece of the system has not received as much attention—the dismissal of chronically ineffective teachers.

This report focuses on the challenges in dismissing chronically ineffective teachers, those who are persistently ineffective and don’t improve with additional professional development or other types of supports. These teachers may be identified by more than one year of poor performance when using so-called “value-added estimates” of their effectiveness and/or several poor observations of their teaching practice when they are assessed against state and district rubrics of effective teaching practice.

Chronically ineffective teachers may have been effective in the past and lost their motivation to teach, or they may have always lacked the skills or talent needed. Teachers who are chronically ineffective should be identified for assessment, assistance, and supports, and then dismissed if they don’t improve. This paper will not focus on those teachers who have committed criminal or misconduct offenses.

It is well documented that teachers are rarely dismissed. National estimates from the 2007-08 Schools and Staffing Survey conducted by the U.S. Department of Education find that school districts dismiss on average only 2.1 percent of teachers each year for poor performance.⁵

A number of indicators suggest that the percent of teachers dismissed is relatively low compared to the percent who should be dismissed. Teachers and principals report in several national surveys that they believe there are ineffective teachers teaching in their schools.⁶ In a recent survey of a nationally representative sample of teachers conducted by Public Agenda and Learning Point Associates, 59 percent of teachers reported that there were a few teachers in their building who “fail to do a good job and are simply going through the motions” and 18 percent of teachers reported there were more than a few.⁷

Similarly, the New Teacher Project conducted a recent study of evaluation practices in 12 districts entitled “The Widget Effect” and found that 81 percent of administrators and 58 percent of teachers reported there was a tenured teacher in their school who delivers poor instruction.⁸ Finally, a Public Agenda survey found that while overall, principals and superintendents were very satisfied with their teaching staff, more than 7 in 10 reported that making it easier to fire bad teachers, even those with tenure, would be a very effective method of improving teaching quality.⁹

Moreover, many school districts that have very low levels of student achievement still dismiss few teachers or rate them as unsatisfactory.¹⁰ While there are other factors that contribute to student achievement besides effective instruction, it is hard to reconcile the stark disconnect in many districts.

If most teachers are effective, does it matter that a small percentage of teachers are chronically ineffective and it is difficult to dismiss them? It matters a lot for three key reasons. One, chronically ineffective teachers inhibit the learning of large numbers of students over time. Teachers are responsible for anywhere from 20 students to 200 students each year depending on the school size, class size, and school level (whether elementary or secondary). Therefore, incompetent teachers can depress the achievement and inhibit the learning of many students during the course of their career or during the time period when they are performing poorly.

There are a number of rough estimates of what this actually means for student achievement. For example, researchers from the Brookings Institution conducted an analysis of data from the Los Angeles public schools and projected that dismissing the bottom quartile of novice teachers in the district after their first year based on value-added estimates would result in a net increase in student test scores gains of 1.2 percentage points annually across the district.¹¹ This gain would be significant over time.

Researcher Eric Hanushek from Stanford University finds that removing the bottom 6 to 10 percent of teachers would lead to a gain in student achievement that is the equivalent of improving the performance of students in the United States to the level of Canada’s students (from 29th to 7th) on the Organisation for Economic Cooperation and Development’s Program for International Student Assessment in mathematics test over a

13-year period.¹² While we don't recommend dismissing teachers based solely on value-added estimates of their effectiveness, these analyses give some approximation of the impact of chronically ineffective teachers on student achievement.

Second, teachers and administrators are unlikely to take evaluation systems seriously if teachers can't be dismissed. The inability to dismiss incompetent teachers encourages principals to give all teachers satisfactory marks on their evaluations, rather than taking the evaluation process seriously. If principals believe they will be unable to dismiss their lowest-performing teachers, they have little incentive to go to the trouble of documenting their poor performance. And when principals give low-performing teachers satisfactory marks, they are not only giving teachers incorrect information about their performance, but they are missing an opportunity to provide feedback on their weaknesses and how they might improve.

Third, incompetent teachers diminish the school culture and learning environment for all teachers and students in a school. Erick Hirsch of the New Teacher Center studied teachers' working conditions in a number of states and found that an atmosphere of trust and mutual respect is important to both student achievement and teacher retention.¹³ "Teachers want to work in schools where they can thrive, and they're not going to thrive and extend themselves if they don't feel comfortable with their colleagues and the school leadership."¹⁴ It is difficult to create an atmosphere of mutual respect and trust when several faculty members are not meeting state and district standards.

Further, dismissing chronically ineffective teachers may be even more important in some schools, such as high-poverty schools. A recent analysis of longitudinal student data in Florida and North Carolina suggests that the least effective teachers in high-poverty schools are significantly lower performing than the least effective teachers in low-poverty schools.¹⁵ And national data indicate that teacher dismissal rates for poor performance were higher in the highest poverty districts than in the lowest-poverty districts (2.9 percent for tenured teachers and 1 percent for probationary teachers in the highest poverty quartile compared to 2.2 percent for tenured teachers and .6 percent of probationary teachers in the lowest-poverty quartile).¹⁶ This may indicate that the highest-poverty districts were more motivated to dismiss ineffective teachers, or that in low-poverty schools, low-performing teachers are more likely to be encouraged to leave rather than dismissed. However, it also might indicate that high-poverty schools have greater proportions of chronically ineffective teachers.

It's also likely that chronically ineffective teachers depress the learning of their peers and therefore the achievement of other students in the school. In a recent study using longitudinal data from North Carolina, C. Kirabo Jackson and Elias Bruegmann, researchers from Cornell and Harvard, respectively, found that students have greater increases on test scores when their teachers have colleagues with higher qualifications.¹⁷ They also found that a teacher's students have greater test score gains in reading and math when the teacher has more effective colleagues based on value-added estimates.

There is no question that most teachers are committed to their students and their profession, and are trying hard to meet their students' needs every day. A recent, nationally representative survey of teachers found that 68 percent of teachers reported, "The idea of putting underprivileged kids on the path to success" was either one of the most important factors or a major factor in their decision to go into teaching.¹⁸ Moreover, 75 percent reported, "Good teachers can lead all students to learn, even those from poor families or who have uninvolved parents."¹⁹ Some of these teachers might need additional support to be highly effective, but most are doing great work with students, many under difficult circumstances.

Moreover, it is dispiriting to talented teachers to teach next to those who aren't providing high-quality instruction. According to Randi Weingarten, president of the American Federation of Teachers, "no teacher—myself included—wants ineffective teachers in the classroom."²⁰

Rigorous evaluation systems should arguably create a higher performance bar for teachers remaining in the profession. Right now, many districts are either using poorly designed evaluation systems or are implementing those systems poorly. Yet they are still identifying chronically ineffective teachers who should be removed from the classroom and current state and district policies present many barriers to removing these teachers even if they do not improve. So rather than dismiss ineffective teachers, many administrators come up with other ways to re-assign them. They may transfer teachers to other schools or reassign them to nonteaching positions.

This report explores the reasons that teacher dismissal is rarely pursued—including weak teacher evaluation practices or systems, the time and cost of dismissal cases, the difficulty of winning cases, a school culture that is uncomfortable differentiating among teachers, and the difficulty of hiring replacements in some districts. It explains reasons for these barriers that exist in law and policy and describes what a better performance management system might look like. It then offers recommendations for changes to state law, district policy, and school-level practice to support this better system. Key recommendations are as follows:

Federal

The federal government should continue to provide incentives to states and districts to improve their evaluation practices and should also use incentives to encourage reforms of the tenure and dismissal processes.

Federal policy should require states and districts receiving Title II funds to have meaningful requirements for awarding tenure. The Obama administration has proposed making formula funding from Title II of the Elementary and Secondary Education Act contingent on states having strong teacher evaluation systems, as part of its 2011 budget request. The

administration could go a step further by requiring states receiving Title II funds to have meaningful requirements for awarding tenure and for districts receiving Title II funds to have a rigorous process in place for awarding tenure.

Federal policy should require grantees of the proposed Teacher and Leader Innovation Fund to either have a rigorous evaluation system in place or to include the development of a more rigorous evaluation system and the staffing and other elements needed to make it successful as part of their grant. The proposed Teacher and Leader Innovation Fund is a logical vehicle for encouraging innovative and rigorous teacher evaluation practices, since they are the foundation of so many other reforms of teacher-related policies.

State

State laws can help to ensure that evaluation practices are rigorous, that the tenure decision is based upon meaningful information about teacher performance, and that the dismissal process for chronically ineffective teachers is fair but efficient.

State law should provide guidance to districts to ensure their evaluation systems are rigorous. State guidelines should require that district evaluation systems draw from multiple sources of information and that objective measures of student learning, measures of teacher effectiveness derived from achievement test data, and classroom observations be significant components of evaluation systems. States should also require that evaluation systems differentiate among teachers, and should encourage the use of information from the evaluation system to inform teacher-related policies.

State law should require that the tenure decision is based upon meaningful evidence of performance and should therefore increase the probationary period to somewhere between three and seven years. Evidence should include teacher evaluations, student growth on standardized tests, and other measures of student learning.

State law should tie the evaluation process to the dismissal process. Dismissal should really be the end result of ongoing, poor performance according to a high-quality evaluation system. A state statute should make that link between evaluation and dismissal explicit and give deference to results from the evaluation process in the dismissal hearing.

States should include poor performance as a cause for dismissal in their tenure statutes. The definition of poor performance should clearly indicate that poor performance means both ineffective instructional practice and failure to promote student achievement and not total incompetence or egregious conduct.

State laws should require that district-level dismissal hearings are completed within a reasonable time period—perhaps 30 days to 60 days—and include only five hearing days.

It is costly and time consuming to a principal and school district to allow cases to drag on for a year or more and does not benefit anyone in the process.

State laws should allow only one appeal for tenured teachers who are dismissed based on poor performance. It is extremely costly for districts to have to litigate multiple appeals, and if a teacher has been dismissed and then lost an appeal it is likely that he or she is a chronically ineffective teacher.

District

Districts should ensure that their evaluation systems are of high quality and are implemented with fidelity, that the tenure decision is meaningful and rigorous, and should work with teachers and their representatives to create streamlined processes for supporting struggling teachers and dismissing those who are chronically ineffective.

Districts should ensure that they have high-quality evaluation systems and that schools are implementing them as they are intended. District staff should review school-level teacher evaluation data to ensure that schools are differentiating among teachers. They should also train school leaders in conducting evaluations and in performance management.

Districts should ensure the tenure decision is meaningful, rigorous, and based on data about teacher performance. In most districts today, tenure indicates the passage of time, rather than that some benchmark of performance has been met. Evidence should include observations of teacher practice, student growth on standardized tests, and other evidence of student learning.

Districts, in collaboration with teachers and their representatives, should work together to create streamlined processes or systems for removing chronically ineffective teachers. One option is to create peer assistance and review programs in which master teachers are assigned to support and evaluate teachers who are struggling. Teachers who don't improve in the opinion of the master teachers should be recommended for dismissal and the dismissal process should be expedited for those teachers.

School

Finally, school leaders should invest significant time in managing teachers' performance—conducting evaluations and providing appropriate feedback and support.

Principals and school leaders must invest time in conducting evaluations, providing meaningful feedback to teachers, and providing support to teachers who are struggling. They also must be willing to have difficult conversations with low-performing teachers.

Defining and identifying chronically ineffective teachers

It is difficult to talk about dismissing chronically ineffective teachers without defining the term. Currently, there is no widely used definition of a chronically ineffective teacher, although school districts will likely develop their own definitions once they have rigorous evaluation systems in place.

Many state statutes, courts, and school districts have not defined ineffective teachers per se, but have defined incompetence or a teacher's inability to do their jobs in a variety of ways. For instance, Pennsylvania statute describes incompetence as "a continuing or persistent mental or intellectual inability or incapacity to perform the services expected of a professional educator or a charter school staff member."²¹

Tennessee statute defines incompetency as "being incapable, lacking adequate power, capacity or ability to carry out the duties and responsibilities of the position. This may apply to physical, mental, educational, emotional, or other personal conditions. It may include lack of training or experience, evident unfitness for service, a physical, mental or emotional condition making the teacher unfit to instruct or associate with children or the inability to command respect from subordinates or to secure cooperation of those with whom the teacher must work."²² These are only two examples, but they both focus on the teachers' capacity to perform their duties, rather than whether their students are learning.

This paper defines chronically ineffective teachers as those teachers who perform poorly over a sustained period of time and don't improve when provided with support. A district evaluation system would aid in identifying ineffective teachers, using information from several observations as well as student growth data, where available. An evaluator would assess the problem using a detailed evaluation rubric and provide formative feedback and differentiated support in the teacher's areas of weakness. Then after providing the appropriate feedback and support for a set period of time, the teacher would be observed.

The evaluation system would indicate what ratings in each area of performance are expected of an effective teacher. If teachers then met these ratings, this would indicate they are improving. The evaluator would also follow up by reviewing the teacher's student growth data if and when they are available to complete the assessment. If the teacher does not demonstrate improvement according to the evaluation rubric, they would be dismissed after being afforded fair but efficient due process.

In districts that don't yet have rigorous evaluation systems, district staff could assist principals in identifying teachers for a more in-depth evaluation by reviewing value-added estimates of teacher effectiveness where they are available. Two years of poor performance would indicate a need for an in-depth evaluation and potential intervention that would lead to improvement or dismissal.

In a recent paper for the National Center for Analysis of Longitudinal Data in Education Research, Dan Goldhaber and Michael Hansen found that if districts denied tenure to teachers who perform in the bottom quintile in both reading and mathematics for two years in a row (about 11 percent of their teachers), almost 60 percent of these teachers would be in the lowest two performance quintiles in reading after being granted tenure, and almost 70 percent would be in one of the two lowest quintiles of post-tenure performance in mathematics.²³ These analyses indicate that teachers who perform in the bottom quintile in the district for two years in a row are likely to be the district's lowest performers in the future and should be identified for an intervention that could lead to improvement or dismissal. While these estimates are not perfect, they are likely more predictive than most other measures of teachers' effectiveness.

Barriers to teacher dismissal in school and district practice

Weak evaluation systems that fail to define or identify low teacher performance present a critical barrier to dismissing chronically ineffective teachers. Other important barriers include the time and cost of teacher dismissal processes, the difficulty of winning cases, and a school culture that resists differentiating among teachers. Finally, in schools that have difficulty attracting good teachers, principals may be reluctant to dismiss weak teachers out of concern that they won't be able to replace them.

Inadequate evaluation systems

Most districts' teacher evaluation practices lack rigor and depth, and do not adequately differentiate among teachers, as a number of recent reports have documented.²⁴ Evaluation practices fail to drive instructional improvement in most districts as most teachers receive outstanding or satisfactory ratings and receive little or no feedback about how to improve, either because the systems themselves are poorly designed or they are poorly implemented. Evaluation systems rarely define low performance in a meaningful way, or give explicit indicators of what it looks like. While most principals would likely say they know it when they see it, clear guidance within the evaluation system would help them in documenting weak performance. It is very difficult for principals to document the instructional weaknesses of poor-performing teachers, given the superficiality of most teacher evaluation systems today.

Many schools currently lack the staff capacity—both in terms of expertise and staff hours—to observe all of their staff and write up their findings throughout a year. Principals don't have the time to evaluate all of their staff several times each year. They also frequently don't receive enough training on how to conduct evaluations. The New Teacher Project conducted a recent study of evaluation practices in 12 districts entitled “The Widget Effect” and found that only about half of school administrators surveyed said they had received “extensive” or “very extensive” training on how to conduct an effective evaluation.²⁵ This lack of capacity to conduct evaluations is fixable, but it is a problem that will likely take an investment of time, resources, and rethinking to solve.

Time and cost

Recent reports have documented the time and cost of dismissing a tenured teacher. The U.S. Department of Education conducted a nationally representative principal survey as part of its Schools and Staffing Survey and queried principals about “the barriers to the dismissal of poor-performing or incompetent teachers” in their schools.²⁶ The greatest proportions of principals reported the following barriers: “length of time required for termination process” (59.5 percent); “effort required for documentation” (64.6 percent); tenure (71.8 percent); and teacher associations or unions (61.2 percent).²⁷ Similarly, in a study of staffing rules in five districts, Jessica Levin and colleagues from The New Teacher Project found in one district they studied it could take 10 percent to 15 percent of a principal’s time over several months to bring one dismissal case to a hearing.²⁸

State and local examples illustrate a similar point. Illinois school districts that hired outside lawyers in cases of teacher dismissal “spent an average of \$219,504.21 in legal fees for dismissal cases and related litigation from the beginning of 2001 until the end of 2005,” according to an analysis conducted by Scott Reeder of the Small Newspaper Group.²⁹ This estimate included cases that were still pending, and therefore likely underestimates the costs per case.

In New York state, dismissal cases can take from 6 months to 18 months.³⁰ It costs about \$250,000 to fire an incompetent tenured teacher in New York City,³¹ and dismissal cases can take between two and five years just to be heard.³² The hearings themselves can take between 40 and 45 hearing days over a period of nine months or more.³³

An investigation of dismissal cases in California conducted by *The Los Angeles Times* found that “as a case winds its way through the system, legal costs can soar into the six figures.”³⁴ *Los Angeles Weekly* conducted a recent analysis of the costs of dismissing teachers for poor performance in the Los Angeles Unified School District and found “in the past decade, LAUSD officials spent \$3.5 million trying to fire just seven of the district’s 33,000 teachers for poor classroom performance.”³⁵ These costs include the costs of paying teachers a full salary and benefits throughout the trial period.

Superintendents and principals find teacher dismissal so time consuming and burdensome that many don’t pursue dismissals even when they believe they should. Eighty-six percent of administrators in “The Widget Effect” study stated that they did not always pursue dismissal when it was warranted.³⁶

The dismissal process is lengthy and therefore costly for a number of reasons. First, in most states, school districts need substantial documentation before bringing a case to a hearing. Districts must generally present several observations that clearly show the teacher has failed to improve in order to bring an incompetence case to trial.³⁷ The documentation process can take one to two years in many districts, because districts frequently have

to document the teacher's low performance and then also help the teacher improve and document that process as well. These requirements can take an inordinate amount of time, especially for districts that are not already conducting regular evaluations. According to Dan Weisberg of the New Teacher Project, "None of it happens organically, as part of a standard evaluation system, so what you have is a fire drill to do the documentation."³⁸

If a teacher is ineffective for two years and then the documentation and assistance process takes an additional year, this teacher affects the learning of students over three years. Then the district must begin the hearing process. In one of the districts studied by The New Teacher Project in their study of staffing rules in five districts, the evaluation process to dismiss a teacher would take a year and about 100 hours of observation and documentation.³⁹ While it is reasonable and fair to try to remediate a low-performing teacher, a one-year process on top of a year or two of low performance seems excessive.

The hearing process itself is usually very lengthy because of the standard of review used in cases of teacher dismissal.⁴⁰ The arbitrator, school board, or administrative law judge's role in cases of teacher dismissal at the district level is to do what lawyers call "de novo review," or looking at the district's decision completely anew.⁴¹ The arbitrator or judges are not just testing for whether there's a good faith effort to bring a case and whether the case is biased, but is the district's decision the best judgment or the wisest judgment in this situation.⁴² The "de novo review" presents a much higher burden and leads to longer hearings than other standards such as the substantial evidence or abuse of discretion standards, which are common for courts that review other school board decisions that are appealed such as decisions about student discipline or curriculum.⁴³

This standard of review is only necessary because most districts do not have the evaluation and documentation systems in place that ensure and demonstrate that every teacher is treated fairly. It would be easier for the arbitrator or judge to presume a fair process had been followed if districts had rigorous, annual evaluations and required that outside, expert evaluators conduct some of the evaluations. Peer assistance and review programs also make *de novo* review less necessary since they provide for an outside review and check on the principal's perspective, and give the teacher an opportunity to improve.

The hearing process is also lengthy because the person serving as fact finder usually does not have a background in the field of education. Arbitrators and hearing officers who are appointed by the school board to preside over dismissal cases in many districts are retired lawyers or judges with expertise in law but not instructional practice.⁴⁴ School board members hearing dismissal cases are often elected officials who may or may not have educational expertise.⁴⁵ So it takes a long time to explain the content of the cases to the hearing officers and why they represent poor educational practice.⁴⁶

Difficulty of winning cases

Districts and principals are likely to lose a significant proportion of their dismissal cases even when they invest the requisite time and money. Two studies by The New Teacher Project reported success rates for dismissals in select districts. The success rate for dismissal cases ranged from 5 percent to 35 percent between 2000 and 2003 in one district they examined.⁴⁷ Half of administrators in the more recent “Widget Effect” study reported that their dismissal case yielded an outcome other than dismissal.⁴⁸ The *Los Angeles Times* investigation found that “although districts generally press ahead with only the strongest cases, even these get knocked down more than a third of the time by the specially convened review panels, which have the discretion to restore teachers’ jobs even when grounds for dismissal are proved.”⁴⁹

The difficulty of winning cases has to do with a number of features of the dismissal process in most districts. First, the standard of “*de novo* review” makes cases more difficult to win. In districts in which arbitrators are involved, they are generally not experts in education, so it is difficult for them to evaluate cases of educational incompetence.⁵⁰ In districts in which school board members decide cases, they may also lack expertise evaluating instruction.

Second, in districts that use arbitrators, they are employed by both the teacher union or representative body and the district and therefore have an interest in pleasing both sides.⁵¹ According to Mary Jo McGrath, an attorney specializing in employee performance issues, “arbitrators tend to want to split the baby.”⁵² Their tendency is to try to negotiate between the parties to find a compromise.

Finally, in many of these cases a teacher’s license can be revoked.⁵³ The standard of review is much higher because of the high stakes involved.⁵⁴ The success rate would likely be much higher if cases for chronically ineffective teachers just involved dismissing teachers from a district, rather than revoking licenses. Revoking licenses may be more appropriate for inappropriate conduct and criminal offense cases.

School culture

Many principals aren’t used to managing the performance of their teaching staff and don’t have a good understanding of what ongoing supervision and monitoring entails, partly because of weak evaluation systems.⁵⁵ They also aren’t used to differentiating between teachers in terms of their performance because they traditionally haven’t done so.⁵⁶ This lack of differentiation has become embedded in the culture of schools and is a major barrier to principals initiating teacher dismissal proceedings, even when they are warranted. Probationary teachers are even less likely to be fired for poor performance than tenured teachers according to national estimates, even though probationary teachers have fewer

legal protections than tenured ones. This inability to dismiss ineffective probationary teachers is likely a result of cultural norms that encourage school leaders to treat all teachers as if their performance is the same.

Other researchers acknowledge the presence of conflict avoidance among principals. Dismissing an employee is a difficult and unpleasant task in all fields. “Individuals are predisposed to avoid unpleasantness in social encounters. They prefer to be spared the emotional ordeal entailed in criticizing and finding fault with the behavior of others.”⁵⁷ A culture of fear pervades schools and prevents principals from taking action against ineffective teachers, according to McGrath, who has more than 30 years experience specializing in employee performance issues and legal mandates in the school and workplace.⁵⁸ Principals are afraid of having tough conversations with teachers, don’t know how to deliver feedback to adults, and are afraid that if they elect to dismiss someone, they will put themselves through public scrutiny. They may also worry about a teacher’s feelings, or how he or she would find another job. Some principals may worry that other teachers would feel threatened by their decision to dismiss a teacher and that it would harm teacher morale.⁵⁹

Lack of effective replacements

Finally, in school districts that have difficulty recruiting teachers, or recruiting teachers for certain subjects, principals may be reluctant to dismiss weak teachers. For example, a principal in a very rural district or other district that has a small supply of potential teachers may be unlikely to dismiss a weak algebra or biology teacher because he or she is unlikely to find another in the near future. This barrier to teacher dismissals is likely one of the most difficult ones to overcome.

Other strategies for removing ineffective teachers

Many administrators come up with other ways to remove ineffective teachers from their positions because of the barriers to dismissing them, for example, transferring teachers within a school or to another school or reassigning them to a nonteaching position.⁶⁰ Many principals in a study of staffing rules in five districts conducted by The New Teacher Project in 2005 reported they didn’t want to hire the teachers who were forcibly transferred into their schools, because they may be teachers who other principals wanted to remove from their buildings. “Almost two-thirds (64 percent) of Western district principals and more than half (55 percent) of Eastern district principals who took voluntary transfers or excessed teachers during a hiring season said that they did not wish to have one or more of them.”⁶¹

Barriers to teacher dismissal in statute and code

The time and cost of teacher dismissal cases and the difficulty of winning them are sometimes related to state statutes and sometimes to contractual terms that unions and school districts have agreed to in collective bargaining agreements.

Tenure and dismissal statutes

State tenure statutes generally fail to define a rigorous standard for awarding tenure and define incompetence vaguely. Many specify due process rights and dismissal procedures that are time consuming and costly. Moreover, tenure statutes rarely connect teacher evaluation and dismissal processes to make it easier to remove teachers for poor performance. “Just 13 states specify that teachers who have been rated unsatisfactory on multiple evaluations should be eligible for dismissal.”⁶² These attributes of state statutes contribute to making teacher dismissal a rare event.

Tenure is “a term denoting the contractual or statutory job protections conferred on teachers who have completed a provisional phase of employment” or what is commonly referred to as the probationary period.⁶³ Almost all states have tenure laws and require that school districts award tenure.⁶⁴ Once a teacher has been awarded tenure, he or she may only be dismissed for cause and only after prescribed due process procedures have been followed.⁶⁵ The probationary period ranges from one year to five years, but in most states (43), teachers are awarded tenure after three years or less.⁶⁶ Tenure is not supposed to be a guarantee of permanent employment, but rather a guarantee that due process procedures will be followed when a teacher is dismissed. But in effect, it is often a guarantee of permanent employment.

Districts in most states have the right to fire teachers without offering any notice or cause during the probationary period. Unfortunately, almost all probationary teachers in most districts receive tenure with little consideration for their performance. Only four states require that some evidence of teacher performance be considered in awarding tenure—Iowa, New Mexico, North Carolina, and Minnesota.⁶⁷ Probationary teachers who don’t seem to be suited for the profession would be dismissed if tenure were a meaningful decision point and would not become ineffective tenured teachers. So strengthening the tenure decision point would likely reduce some percentage of ineffective teachers.

Once teachers receive tenure, they can only be dismissed for “just cause” as specified in state statute, and through prescribed due process procedures, as mentioned earlier. Due process procedures specify who presides over the case for dismissal and outline the appeals process.⁶⁸ Teachers in most states receive an administrative hearing, usually before the school board, a hearing officer chosen by the school board, an arbitrator, or an administrative law judge.⁶⁹ “In all cases, however, minimum due process protects a teacher’s right to appear with counsel at the hearing, to examine and cross-examine witnesses, and to present a defense to the charges.”⁷⁰

Teachers in some states may appeal decisions directly to a superior, circuit, or district court, while in others they may appeal to the state board of education, superintendent, or a specific state-level commission or body.⁷¹ Decisions about appeals have implications for the time and cost of teacher dismissal procedures. In fact, 38 states allow multiple appeals of dismissals.⁷² In addition, most states do not specify a time period within which dismissal cases, including the entire appeals process, must be completed.

The causes in state statutes for dismissing tenured teachers vary, but most are vague and must be interpreted by case law. Most states identify incompetence or poor performance as a cause for termination, but several states do not.⁷³ However, incompetence is not always defined as being ineffective in helping students learn. It is sometimes defined as failure to manage the class or follow classroom procedures and usually includes a variety of instances of incompetence.⁷⁴

Only one state outlines a separate process for dismissing teachers for poor performance—New York.⁷⁵ In all other states, the dismissal processes for teachers who have committed criminal offenses or who have behaved unprofessionally are the same as for those who have performed poorly.

Collective bargaining agreements

Sometimes collective bargaining agreements between districts and teachers unions specify dismissal procedures. Staff from the National Council on Teacher Quality conducted an analysis of collective bargaining provisions related to teacher dismissal and found that “a third of the nation’s 50 largest districts prescribe the procedures that must be followed in order to dismiss a weak teacher.”⁷⁶ Provisions in collective bargaining agreements include where the hearing is held, the documentation and assistance process that must be followed to pursue a dismissal, and the appeals process⁷⁷—all of which have implications for the time, cost, and nature of the dismissal process.

FIGURE 1
How long before a teacher earns tenure?

	No policy	1 yr	2 yrs	3 yrs	4 yrs	5 yrs	6 yrs	7 yrs
Alabama				●				
Alaska				●				
Arizona				●				
Arkansas				●				
California			●					
Colorado				●				
Connecticut					●			
Delaware				●				
D.C.	●							
Florida				●				
Georgia				●				
Hawaii		●						
Idaho				●				
Illinois					●			
Indiana						●		
Iowa				●				
Kansas				●				
Kentucky					●			
Louisiana				●				
Maine ¹			●					
Maryland			●					
Massachusetts				●				
Michigan					●			
Minnesota				●				
Mississippi		●						
Missouri						●		
Montana				●				
Nebraska				●				
Nevada ²			●					
New Hampshire				●				
New Jersey				●				
New Mexico				●				
New York				●				
North Carolina					●			
North Dakota			●					
Ohio								●
Oklahoma				●				
Oregon				●				
Pennsylvania				●				
Rhode Island				●				
South Carolina			●					
South Dakota				●				
Tennessee				●				
Texas				●				
Utah				●				
Vermont			●					
Virginia				●				
Washington			●					
West Virginia				●				
Wisconsin				●				
Wyoming				●				

National Council on Teacher Quality, 2009 State Teacher Policy Yearbook, p. 175, Figure 70

A better system

This paper has described the obstacles to dismissing chronically ineffective teachers presented by current systems. A more promising system would provide meaningful information to teachers and principals about a teacher’s performance, helpful support and opportunities to grow, and a streamlined system for dismissing chronically ineffective teachers when necessary.

A meaningful tenure decision

Districts would have high-quality induction and mentoring programs to improve new teachers’ instructional practice. All new teachers would be given an experienced mentor, who has expertise in her subject and grade level and sufficient time to support new teachers. All districts would have meaningful evaluation systems focused on professional growth that provide teachers with continuous feedback, identify areas of strength, and highlight areas for improvement. Professional development would be tied to these areas of improvement.

The probationary period would be at least three years, during which teachers would be observed at least twice annually. Evaluation systems would consider student achievement as a preponderant criterion. Probationary teachers with more than one poor observation would be given limited support and then terminated if they do not improve. Currently, districts are not taking advantage of this time period to weed out ineffective teachers.

Ongoing performance management

Tenured teachers would continue to be evaluated at least annually and the evaluation would consist of at least two observations. Each observation would be followed by written and verbal feedback, and therefore teachers would receive continued feedback on their strengths and weaknesses. Currently, most teachers are not given this kind of feedback. For example, in “The Widget Effect” study, only 26 percent of teachers were given areas to work on in their most recent evaluation.⁷⁸ It is likely that providing honest feedback to teachers would increase the rates of low-performing teachers who leave of their own accord.

Every teacher would be observed by more than one evaluator. Evaluators might include principals, assistant principals, department heads or chairs, and teacher leaders. This process would ensure teachers are evaluated fairly and that their evaluations provide an objective and comprehensive assessment of their performance. The ideal system would include an evaluator outside the locus of control of the principal to ensure objectivity.

Professional development would be tied to teachers' identified areas of weakness. One poor evaluation would signal a need for assistance and support. Districts would need to define a score on their evaluation system that would trigger the need for remediation, although the principal would have some discretion in determining whether the teacher needs additional support or there were extenuating circumstances that led to the poor rating.

Help for chronically ineffective teachers

It is important to give teachers feedback on their weaknesses and an opportunity to improve their practice before making a decision about dismissal. Tenured teachers also have a legal right to this notification and sometimes remediation as well. It is possible that there are teachers who are chronically ineffective because they weren't given effective training or models of effective instructional practice early in their career.

A number of districts have developed peer assistance and review programs—programs that hire expert teachers to mentor, assist, and evaluate either new or struggling teachers, or both, and also to recommend teachers for dismissal who are unable to improve.⁷⁹ A recent study led by Susan Moore Johnson at Harvard University's Project on the Next Generation of Teachers analyzed the features of programs in seven districts.⁸⁰ Superintendents and union leaders interviewed for the study were very positive about the programs and felt they “improve instruction, increase teacher professionalism, change the culture of teaching, and improve labor-management relations.”⁸¹

The PAR programs in existence, however, dismiss very few teachers.⁸² It's possible that the programs are providing sufficient support to teachers to improve and therefore many dismissals aren't necessary. It's also possible that the existence of these programs creates an atmosphere of support coupled with accountability that leads teachers to exit voluntarily when they realize they aren't effective.

It's also possible that many of the current PAR programs aren't designed in ways that allow them to meet their potential. The peer review process should serve all of the teachers who need the support, should be fair to teachers, should be efficient, and should serve the students' best interests. The districts and unions jointly select the consulting teachers in PAR programs currently in existence. These consulting teachers should probably not be based in the same school as the teacher needing remediation so they are an impartial person involved in assessing the teacher's performance other than the building principal. They should also be expert teachers.

The period of assistance should provide enough time for the teacher to improve, but should not be overly lengthy because it is important to keep in mind that the interests of students are at stake. An intervention period of three months to six months might be appropriate.

It is also important to ensure that teachers who need help are identified for participation in PAR programs. Very few teachers participate in many of the peer assistance programs across the country.⁸³ Generally, principals must identify the teachers for participation or support the referral, and some principals are reluctant to be involved with PAR for a variety of reasons. They may want to avoid conflict, may not be taking sufficient time to conduct the kinds of in-depth evaluations that are needed to identify teachers, or they may want to be the sole instructional leader in the school.⁸⁴ In any case, PAR programs can't be successful if principals aren't on board.

School districts and unions might also want to consider having consulting teachers conduct periodic evaluations of all tenured teachers in a district as an outside check on the principal evaluation. For example, in the District of Columbia's new evaluation system, two of the five annual evaluations of all teachers are conducted by expert educators who are employed by the district, but not a particular school. Having an evaluator outside the school might be an effective way to identify more teachers who should participate in peer assistance and review, as principals may be reluctant to identify teachers in their own buildings.

Finally, if peer assistance programs are collaboratively implemented with the local union and dismissal is warranted, the union should agree not to contest the dismissal. In many of the PAR programs in operation union representatives do not contest dismissals for teachers who have participated because the teacher has no procedural grounds for appeal.⁸⁵ In the few cases where a teacher requests a hearing, it should be very short, perhaps a day. The appeal process should not have to rehash the entire case of whether the teacher is ineffective, given the documentation and support process provided by the peer review program.

Conclusion and policy recommendations

It is clear that there is much room for reforming teacher dismissal processes in ways that protect teachers against arbitrary decisions and meet the best interests of students. The more promising system described above could be supported by changes to policy at the state and local level, including changes to legislation, policy, and collective bargaining contracts. Following are some potential reforms that might result in changes to all or some of these vehicles.

Federal

The Obama administration has adopted a number of policies and offered a number of proposals that emphasize teacher effectiveness and encourage states and districts to improve the quality of teacher evaluation systems. As discussed earlier, the quality of evaluation systems is one of the primary barriers to providing support for teachers who are struggling and to dismissing chronically ineffective teachers. A number of the reporting requirements for receipt of State Fiscal Stabilization Funds will shed light on the quality of teacher evaluation systems and how information about teachers' performance is being used to inform policy. For example, the SFSF requires states to report on the systems used to evaluate teachers, how teachers are rated on the systems, whether the information is reported publicly, whether the information is used to inform teacher policies, and whether they include student achievement outcomes or growth data.

In addition, within the Race to the Top competition, states will be evaluated based on a number of criteria related to the quality of teacher evaluation systems, how the information from evaluation systems is used to make decisions about teachers, and how tenure is awarded. There is also a criterion focused on teacher dismissal: "removing ineffective tenured and untenured teachers and principals after they have had ample opportunities to improve, and ensuring that such decisions are made using rigorous standards and streamlined, transparent, and fair procedures."

The federal government should continue to provide incentives to states and districts to improve their evaluation practices and should also use incentives to encourage reforms of the tenure and dismissal processes. In addition, federal policy should:

Require states receiving Title II funds to have meaningful requirements for awarding tenure. The administration has proposed making formula funding from Title II of the Elementary and Secondary Education Act, federal funds intended to improve teacher and principal quality, contingent on states having strong teacher evaluation systems, as part of its 2011 budget request. This proposal would use formula funds to leverage important changes in teacher evaluation practices throughout the country. The administration could go a step further by requiring states receiving Title II funds to have meaningful requirements for awarding tenure and for districts receiving Title II funds to have a rigorous process in place for awarding tenure.

Require grantees of the proposed Teacher and Leader Innovation Fund to either have a rigorous evaluation system in place or to include the development of a more rigorous evaluation system and the staffing and other elements needed to make it successful as part of their grant. The Obama administration has proposed a Teacher and Leader Innovation Fund, modeled after the existing Teacher Incentive Fund, which would support competitive grants to states and districts to reform their human capital systems for teachers. This program is a logical vehicle for encouraging innovative and rigorous teacher evaluation practices, since they are the foundation of so many other reforms of teacher-related policies.

State

State laws can help to ensure that evaluation practices are rigorous, that the tenure decision is based upon meaningful information about teacher performance, and that the dismissal process for chronically ineffective teachers is fair but efficient.

State law should provide guidance to districts to ensure their evaluation systems are rigorous. State guidelines should require that district evaluation systems draw from multiple sources of information and that objective measures of student learning, measures of teacher effectiveness derived from achievement test data, and classroom observations be significant components of evaluation systems. States should also require that all teachers be evaluated annually and that new teachers are evaluated biannually or are observed several times during the school year as part of an evaluation process. Finally, they should require that evaluation systems differentiate among teachers, and should encourage the use of information from the evaluation system to inform teacher-related policies.

State law should require that the tenure decision is based upon meaningful evidence of performance. While state statutes specify a number of requirements related to the tenure process, they rarely specify that the tenure decision should be based upon a teacher's performance. This requirement would go a long way toward ensuring that only effective teachers receive tenure. Evidence should include teacher evaluations, student growth on standardized tests, and other measures of student learning.

State law should tie the evaluation process to the dismissal process. Dismissal should really be the end result of ongoing, poor performance according to a high-quality evaluation system. State statute should make the link between evaluation and dismissal explicit and give deference to results from the evaluation process in the dismissal hearing.

States should increase the probationary period to somewhere between three and seven years so that school districts have sufficient time to make an informed decision about awarding tenure to a teacher. School districts rarely have enough evidence about a teacher's practice to make a decision about tenure in two years. Tenure should be an indication that teachers have reached a benchmark of effectiveness that few first- or second-year teachers are able to reach.

State statutes should include poor performance as a cause for dismissal in their tenure statute. The definition of poor performance should clearly indicate that poor performance means both ineffective instructional practice and failure to promote student achievement and not total incompetence or egregious conduct.

State statutes may want to define three distinct processes for dismissing 1) chronically ineffective teachers, 2) teachers that have inappropriate conduct or behavior, and 3) teachers that have committed criminal acts. These groups of teachers are grouped together in most state statutes, yet it makes little sense to treat them similarly. State statutes should define processes that make sense for each type of offense. The process for inappropriate conduct or behavior should be much shorter and should require a shorter time period for documentation. Performance-related hearings should be built upon a rigorous evaluation process and therefore should only involve a review of the dismissal process itself, rather than a review of the merits of the case.

State laws should require that district-level dismissal hearings are completed within a reasonable time period—perhaps 30 days to 60 days would be appropriate. It is costly and time consuming to a principal and school district to allow cases to drag on for a year or more and does not benefit anyone in the process. Moreover, this time period needs to be enforced by the state, otherwise it is meaningless. States that incur the cost of arbitrators should refuse to pay for their services beyond 60 days for one case.

State laws should allow only one appeal for tenured teachers who are dismissed based on poor performance. It is extremely costly for districts to have to litigate multiple appeals, and if a teacher has been dismissed and then lost an appeal it is likely that he or she is a chronically ineffective teacher.

States should require that districts report the percent of teachers they dismiss based on performance annually. This requirement would draw attention to the percent of teachers dismissed based on performance, and encourage districts to examine these numbers.

District

Finally, school leaders should invest significant time in managing teachers' performance—conducting evaluations and providing appropriate feedback and support.

Districts should ensure that they have high-quality evaluation systems and that schools are implementing them as they are intended. District staff should review school-level teacher evaluation data to ensure that schools are differentiating among teachers. They should also train school leaders in conducting evaluations and in performance management. School staff involved in teacher evaluations need to be trained to understand the evaluation instrument they are using, to conduct objective and meaningful evaluations, and to provide useful feedback and support to teachers to help them improve their practice.

Districts should ensure the tenure decision is meaningful, rigorous, and based on data about teacher performance. In most districts today, tenure indicates the passage of time, rather than that some benchmark of performance has been met. Evidence should include teacher evaluations, student growth on standardized tests, and other evidence of student learning.

Districts, in collaboration with teachers and their representatives, should work together to create streamlined processes or systems for removing chronically ineffective teachers. One option is to create peer assistance and review programs in which master teachers are assigned to support and evaluate teachers who are struggling. Teachers who don't improve should be recommended for dismissal. The dismissal process should then be expedited for those teachers who have been through the process and haven't improved. "Because PAR helps to ensure that teachers' due process rights are met, unions can satisfy their duty of fair representation without facing legal challenges."⁸⁶ Therefore, the union should agree not to challenge dismissal decisions of teachers who have gone through the PAR process.

Districts should have a separate process for dealing with unprofessional conduct and inappropriate behavior. Districts should not invest scarce resources in a remediation plan for teachers who have been excessively late or absent, for example. These teachers should be given a warning and then terminated if they don't improve.

Districts, in collaboration with teachers and their representatives, should work together to remove teachers who have been excessed or laid off from the payroll after one year. If teachers don't get new jobs within a year, it is likely either that no school wants to hire them and that they are not effective or that there isn't an appropriate position for them in the district. In either case, the district should not have to face the burden of paying them for more than a year when they are not teaching students, as is currently the case. Districts should work with unions to negotiate removing these teachers from the payroll after one year as part of their collective bargaining agreement.

Districts should continue to expand effective recruitment and hiring practices. While this recommendation could be and has been the subject of whole reports,⁸⁷ the point is that districts and schools should have intentional strategies for recruiting high-quality candidates that meet the needs of their schools. Without pools of promising teaching candidates available, principals will be reluctant to dismiss ineffective teachers.

Districts should provide school leaders with training and assistance in the district's dismissal process. District staff should help school leaders understand their district's process for dismissing chronically ineffective teachers and what resources are available to them to help them in the process. In many cases, school districts lose their cases because principals did not follow the correct procedures.⁸⁸

Principals and other evaluators also need training and support in having tough conversations with teachers. Not every chronically low-performing teacher needs to be dismissed. Some can be counseled to choose another career or another position within the district (that does not involve teaching).

School

Finally, school leaders should invest significant time in managing teachers' performance—conducting evaluations and providing appropriate feedback and support.

Principals and school leaders must invest time in conducting evaluations, providing meaningful feedback to teachers, and providing support to teachers who are struggling. They also must be willing to have difficult conversations with low-performing teachers. A high-quality evaluation and performance management system is dependent for its success on a strong and engaged principal and school leadership team.

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