

# Earned, Not Given:

## Transforming Teacher Tenure



Tenure should be considered a significant milestone for teachers who have consistently demonstrated effectiveness and commitment. Unfortunately, in most states tenure is often awarded automatically after a teacher has been in the classroom for two or three years.

*National Council on Teacher Quality, 2011*

Tenure for public school teachers lies at the center of the current debate on education reform. Opponents believe tenure represents all that is wrong with the current education system, protecting ineffective and unprofessional teachers by giving them lifetime employment without regard for how well they perform. Supporters of the current system argue that teachers must be protected from arbitrary dismissal and undue political interference in their work.

The truth lies somewhere in the middle: tenure need not be abolished, but it must be transformed.

The majority of states and school districts grant tenure to teachers after only two or three years in the classroom and without regard for how well teachers actually perform or how much their students learn. Not surprisingly, there is growing concern that current tenure policies are shortchanging students and jeopardizing opportunities to close our nation's achievement gap. With numerous studies demonstrating that teaching quality has the greatest impact on student achievement—more than any other factor in the school—there are increasing calls to reform current policies so that only the most effective teachers receive tenure and remain in the classroom (Rivkin, et al.).

This brief examines the weaknesses of current tenure systems and discusses promising strategies for addressing these shortcomings. It also highlights some of the reforms that states and school districts are instituting to increase the quality of teachers and to ensure that all students have access to effective teaching. Tenure practices must be transformed so that they serve the best interests of students, while still supporting teachers.

#### A SYSTEM IN NEED OF MODERNIZING

The system of granting tenure to teachers in American K-12 public schools began in the early 1900s as an effort to protect teachers from unfair and discriminatory dismissal practices, which were common at the time. Before tenure laws existed, teachers had little or no protection and could be summarily dismissed for "... speaking up, questioning educational practices, or merely because an administrator wished to give the job to someone else for political reasons or nepotism" (Baratz-Snowden). Today, every state but one—Wisconsin—mandates that school districts award teachers some form of tenure.

Tenure is generally awarded to teachers after passing a brief probationary period, which then affords them due process protections that are specified in state tenure law and the local collective bargaining contract.

Many people incorrectly believe that tenure means a teacher cannot be terminated. In fact, tenure does not mean teachers cannot be fired, but because of the cumbersome, lengthy, and costly due process protections it affords, many school districts rarely attempt to fire teachers—in effect granting them permanent employment.

*A Job for Life.* Although tenure technically does not require continuing the employment of an incompetent teacher (all tenure laws provide for dismissal of incompetent or inefficient teachers), in practice very few teachers are dismissed for any reason other than egregious conduct violations. Only 2.1 percent of all teachers are dismissed for poor performance annually, meaning that tenured teachers in most states enjoy a "job for life," regardless of their performance in the classroom (McGuinn).

What was originally designed to protect the nation's school teachers during an era of partisan school boards, corruption, and cronyism has now evolved into a system that automatically secures a lifetime position for teachers, regardless of their impact on students or the broader school community. As one critic observed, "In short, most school districts grant tenure not on the presence of recognizable achievement, but on the absence of criminal behavior" (Greenwald).



## ABOUT THE TE<sup>2</sup> COMMUNITY BRIEFS

*Community: A group of people with a common characteristic or interest living together within a larger society (Merriam-Webster Dictionary).*

Communities for Teaching Excellence believes that every community and all of its members, including teachers, parents, community-based organizations, and interested citizens, benefit from inclusive and meaningful engagement on education issues.

Guided by this fundamental principle, we have created a series of documents called TE<sup>2</sup> Community Briefs. This series consists of several brief, informative, and research-based pieces on a variety of teaching effectiveness and equity (TE<sup>2</sup>)

topics, such as fair evaluation, seniority, strategic compensation, and professional development, among others.

After an extensive review of the work being done around TE<sup>2</sup>, we determined that a majority of the work tends to be either lengthy, academic research reports, or short op-eds and blogs. Few, if any documents are intended to educate and engage the community. The TE<sup>2</sup> Community Briefs fill this void by providing the reader with a comprehensive, research-supported summary of select TE<sup>2</sup> topics, including examples of states and school districts that are doing this work.

This brief discusses the shortcomings of existing tenure systems and promising approaches to fixing them, and includes an examination of two states that are leading the way in tenure reform.

**Hindering Achievement.** Current tenure practices do little to ensure that teachers are helping students achieve. Of the 49 states that mandate teacher tenure, only eleven—Colorado, Delaware, Illinois, Indiana, Massachusetts, Michigan, Nevada, New York, Oklahoma, Rhode Island, and Tennessee—require districts to incorporate minimal evidence of teaching effectiveness or general job performance into tenure decisions. The 38 remaining states permit school districts to award tenure virtually automatically (National Council on Teacher Quality, 2011a).

**Current tenure practices do little to ensure that teachers are helping students achieve.**

According to *The Widget Effect*, more than 40 percent of administrators reported they had never failed to renew a probationary teacher for performance concerns in his or her final probationary year (Weisberg, et al.). This is a missed opportunity because it is the last chance to dismiss low performing teachers before granting them tenure. A report from the Brookings Institution concluded, “Schools could substantially increase student achievement by denying tenure to the least effective teachers” (Gordon, et al.).

**Snap Judgments.** Thirty-eight states allow teachers to earn tenure in three years or less, which is not enough time for schools to accumulate the necessary evidence about a teacher’s performance (National Council on Teacher Quality, 2011a). Typically, supervisors are given only two years to assess a newly hired teacher’s instructional quality and to predict whether he or she will continue to develop. Not only are these brief probationary periods inadequate to judge who belongs in the teaching profession, they are also insufficient to grow and nurture teacher talent.

It is also important to note that in practice, the time frame during which school administrators must make decisions about granting tenure to probationary teachers is actually much shorter than the period specified by law, due to the logistics of recruitment, hiring, and staffing. For example, in California, state law mandates that teachers be granted tenure after two years of teaching, and that they must be notified by March 15th if they are to be dismissed. An analysis by the National Council on Teacher Quality (2011b) found that, “California policy results in districts using fewer than two years of information—and possibly only one formal evaluation—to assess a teacher’s candidacy for tenure.”

As a consequence, supervisors are often forced to make “snap judgments” about the quality of new teachers (Sutton).





## GETTING STARTED

Proposals to reform teacher tenure are starting to gain traction. However, tenure reform is most effective when it is paired with a comprehensive system for evaluating teaching performance, which includes defining and measuring teaching effectiveness. (For more information on teacher evaluation see: *Making it Meaningful: Building a Fair Evaluation System*, September 2011, and *Teaching Effectiveness: The Beginning of a Movement*, July 2011, Communities for Teaching Excellence.) As a report by the Center for American Progress asserts, “If tenure is to meet its twin goals of identifying and retaining an effective work force on the one hand, and weeding out weak and incompetent teaching, then it must be based on a strong, comprehensive evaluation system specifically designed to support best practice and build in due process ...” (Baratz-Snowden).

Efforts by states such as Oregon, Alabama, Idaho, Mississippi, Texas, and Utah to reform tenure without first putting in place an evaluation system have been described by some as “futile,” because even though these states have “replaced” tenure with renewable contracts (legal contracts that specify the period of work and terms, and that must be renewed in order for a teacher to work), in practice these contracts are virtually always renewed (McGuinn).

As part of the effort to reform tenure policies, states and school districts must work towards developing a comprehensive definition of teaching effectiveness and adopt unbiased, research-based methods for determining which teachers have met performance standards. These evaluation systems must provide feedback that best identifies the necessary support and training for teachers. Teachers should be supported early and often throughout their

careers. Without such a system, it is very difficult to identify ineffective teachers, let alone justify dismissing them (McGuinn).

## MORE THAN A RUBBER STAMP: CRITICAL ELEMENTS OF TENURE REFORM

Historically, elected officials have shown an overall reluctance to revise tenure laws. However, in recent years, several governors and even President Obama have called for tenure reform. An increasing number of states—Delaware, Florida, Illinois, Michigan, Ohio, Rhode Island, and Tennessee—are undertaking the challenging process of changing their tenure laws. While some states have proposed eliminating tenure altogether, others are attempting to strike a balance between holding public school teachers accountable for student outcomes, while still affording some measure of job protection and due process.

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As the National Council on Teacher Quality (2010) notes, the awarding of tenure should be “more than just a rubber stamp.” Rather, the process for determining who earns tenure should be “... a real evaluation of teacher quality and a deliberate decision about whether a probationary teacher should be granted this status—and the additional due process rights tenure brings—in a school system.”



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In general, there are two primary aspects to tenure reform: raising the bar for the receipt of tenure and revising the dismissal process once a teacher has received tenure.

The first ensures that only the most effective teachers are awarded tenure. The second ensures that tenured teachers receive a fair and adequate hearing, while removing the consuming and expensive hurdles that make the dismissal of chronically ineffective, tenured teachers almost impossible.

Researchers and policymakers agree that meaningful tenure reform, which serves both teachers and students, should incorporate the following key elements and processes.

**Lengthening Probationary Periods.** A majority of studies indicate that a teacher’s effectiveness tends to be established by the fourth year of teaching, with effective teachers remaining relatively effective and ineffective teachers remaining relatively ineffective (Boyd, et al.). Yet, more than 80% of states currently grant tenure after three years or less, and only 12 states have probationary periods longer than three years. This is not enough time to allow teachers to demonstrate their ability to be effective at helping students learn.

Based on the research, tenure should not be granted before a teacher has been in the classroom for four years. For many tenure reform advocates, the ideal probationary period would be five years (National Council on Teacher Quality, 2010)

## TENNESSEE AND MEMPHIS CITY SCHOOLS: TYING TENURE TO STUDENT SUCCESS

In April 2011, Republican Governor Bill Haslam signed groundbreaking legislation to significantly reform teacher tenure. The legislation extends the probationary period for new teachers from three years to five and ties tenure decisions—including maintaining tenure status—directly to the state’s new teacher evaluation standards, which mandate 50% of a teacher’s evaluation be based on student academic growth.

The law further requires probationary teachers to place in the top two tiers (“above expectations” or “significantly above expectations”) of a new five-tier evaluation system in both the fourth and fifth years of teaching to receive tenure. It also allows teachers who receive tenure following the enactment of the law to be returned to probationary status if they rank in the bottom two tiers (“below expectations” or “significantly below expectations”) for two consecutive years.

Teachers who received tenure prior to the enactment of the law cannot lose tenure status; however, the legislation expands the definition of “inefficiency”—a legal ground for dismissing current tenured teachers—to include being evaluated as “below expectations” or “significantly below expectations” (Locker).

Increasing the probationary period to receive tenure and connecting the decision to the state’s new

evaluation system are designed to improve student achievement statewide, since Tennessee has consistently ranked in the bottom quartile nationally (State Collaborative on Reforming Education). It also provides schools with more time to evaluate teachers and provide them with professional development before making tenure decisions.

Memphis City Schools (MCS) Superintendent Kriner Cash is a supporter of tenure reform because “it allows teachers more time in the field to perfect their skills” (Roberts). As Tennessee’s largest school district MCS is proving to be a leader in evaluating and supporting probationary teachers through its Teacher Effectiveness Initiative (TEI), launched in 2009. The initiative’s evaluation system, known as the Teacher Effectiveness Measure (TEM), is being used to inform tenure and other decisions. In June 2011, the Tennessee State Department of Education unanimously approved the use of TEM by districts throughout the state, recognizing the vital role of TEM in making tenure meaningful and increasing student achievement.

### Tying Tenure to Performance.

The granting of tenure should be tied to demonstrated teaching effectiveness and evidence of student learning. Further, once a teacher has received tenure, he or she should be required to demonstrate continued effectiveness.

Many teachers agree that the current system of awarding tenure does not ensure that teachers are competent, and that probationary teachers should be required to demonstrate effectiveness. In a 2008 national survey of more than 1,000 teachers conducted by Education Sector, 69% said that when they learn that a teacher at their school has been awarded tenure, they think that it's "... just a formality—it has little to do with whether a teacher is good or not." Nearly 80% of teachers in the survey supported strengthening the formal evaluation of probationary teachers "... so that they will get tenure only after they've proven to be very good at what they do." And a majority (57%) think that even tenured teachers should be formally evaluated on a regular basis (Duffet, et al.).

Research confirms that allowing only effective teachers to earn tenure would lead to substantial increases in student achievement (Gordon, et al.). Similarly, the critical relationship between teacher quality and student achievement is well established, and states and districts should put in place tenure and evaluation policies to ensure that all students have access to effective teaching.

## COLORADO: RAISING THE BAR FOR EARNING AND KEEPING TENURE

In 2010, Colorado passed the Great Teachers and Leaders Bill, tying tenure to student performance. The state is working to close the achievement gap and to increase academic performance, especially for low income students and students of color. While 79% of White students in 2010-11 scored proficient or above on Colorado's state reading assessment, the average for Black and Latino students was 49%. In math, 36% of Black and Latino students scored proficient or above on the state math assessment compared to 66% of White students. The achievement gap between economically disadvantaged students and their non-economically disadvantaged counterparts is similarly broad: 49% of economically disadvantaged students were proficient or above in reading, and 40% were proficient or above in math, whereas the numbers for non-economically disadvantaged students were 80% in reading and 67% in math (Colorado Department of Education).

Colorado passed its tenure reform provisions in May 2010 under the leadership of a Democratically-controlled legislature, a Democratic

governor, Bill Ritter, and with support from the American Federation of Teachers (AFT)-Colorado. Beginning in the 2013-14 school year, new teachers must complete three consecutive years of teaching with evaluation ratings of "effective" or better in order to earn tenure. The law further requires that tenured teachers demonstrate effectiveness or face losing tenure and possible dismissal. Tenured teachers who receive two consecutive "ineffective" evaluations will lose their tenure, but will be offered a remediation plan. The law also provides for a "fair and transparent" appeal process to be "developed, where applicable, through collective bargaining." In an effort to streamline the process, the law stipulates that the appeal process cannot exceed 90 days (Colorado Senate Bill 191).

Essential to the implementation of these reforms is the development of a new performance evaluation system. The new system will be piloted in 2012-13 and implemented statewide in 2013-14.





**Refining Dismissal Processes.** Nearly half of the 1,000 teachers who participated in a recent national survey said that they personally know a tenured teacher who is ineffective and should not be in the classroom; and more than half (55%) indicated that in their district it is very difficult and time consuming to remove clearly ineffective teachers (Duffet, et al.). But on a more positive note, in an earlier survey, nearly 2 to 1—57 percent to 29 percent—believed that it is possible to change tenure rules and the discipline process in a way that permits poor-quality teachers to be dismissed more easily and still protect job security rights (Henke, et al.).

So, how might states and districts put in place dismissal procedures that are less cumbersome but still ensure fairness and due process? As described above, the starting point is to develop a transparent and comprehensive evaluation system designed to support best practices and help teachers improve.

States and districts should also take measures to ensure that those who are in the position of making judgments about teacher effectiveness—and ultimately about tenure and dismissal—are trained professionals who understand teaching and learning.

A report from the

Center for American Progress argues that professional educators make decisions concerning teacher quality and competence rather than administrative law judges, and that the process be developmental rather than adversarial (Baratz-Snowden).

### Refining current dismissal policies presents an opportunity for collaboration between teachers, unions, and administrators.

While a number of policymakers believe that present day civil rights and labor laws protect teachers from unfair dismissal, many teachers strongly believe that they need additional protections from incompetent or vindictive administrators, and overzealous parents. However, legislation such as that passed in Colorado shows that it is possible to reform tenure, advance teaching effectiveness, refine dismissal processes, all while supporting teachers.

Finally, refining current dismissal policies presents an opportunity for collaboration between teachers, unions, and administrators. Some school districts, such as those in Minneapolis, Minnesota and Toledo, Ohio, have partnered with unions to develop successful systems—based on peer assistance and review models—for holding teachers to high standards in earning tenure and for protecting due process in dismissal actions.

One researcher who studied the Toledo model, which has been in place since 1981, found it to be more rigorous than traditional methods for granting tenure review and for terminating weak teachers (Kerchner, et al.).

Teachers' unions, school districts, and states alike have much to gain from modernizing present day tenure systems. By working together to develop clear standards of excellent practice, the tools and procedures to measure that practice, and rigorous, fair, and streamlined systems for removing teachers who are not meeting the standards, they can make certain that all students receive the quality education they need and deserve.

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#### WHAT CAN YOU DO?

Find out about the teacher tenure system in your state. How long is the probationary period before tenure can be granted? Is the awarding of tenure tied to performance? Get informed about local efforts to reform tenure and dismissal processes and to improve teaching effectiveness. For more information, or to get involved in the TE<sup>2</sup> movement, contact Communities for Teaching Excellence at [www.4teachingexcellence.org](http://www.4teachingexcellence.org), and be sure to check out the exciting work going on in Hillsborough County, FL; Memphis, TN; Pittsburgh, PA; and The College-Ready Promise in Los Angeles, CA. Together, we're working to ensure effective teaching for every student, in every classroom, every year.



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## OUR MISSION

Communities for Teaching Excellence works to improve students' academic achievement and their futures by empowering communities to advocate for effective teaching for every student, in every classroom, every year.

## ACKNOWLEDGEMENTS

Many thanks to Kate Tromble for her comments, edits, and feedback, and her overall willingness to improve the quality of the publication.

## Communities for Teaching Excellence

A project of Rockefeller Philanthropy Advisors  
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