

# MEANINGFUL AND FAIR

*IMPROVING DUE PROCESS AND TENURE FOR  
NEW YORK TEACHERS AND STUDENTS*

February 2015

*“Teachers need to lead the way on improving how tenure and due process are implemented. It is crucial that, as educators, we have these protections, but it's equally important that they are always used in the best interest of students.”*

**PATRICK SPRINKLE,**

*Social studies teacher, NYC Lab School for Collaborative Studies*

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# LETTER TO NEW YORK ELECTED OFFICIALS

Dear New York Elected Officials,

No doubt you have read about the recent lawsuits in New York State filed by public school parents who claim that teacher job protections are excessive and prevent their children from receiving a “sound, basic education” as guaranteed by the New York constitution.<sup>1</sup>

We imagine you feel unsure of how to respond: On the one hand, you are of course deeply concerned with the future of public education in our state; on the other, you are not sure if reducing or eliminating due process for teachers will have a positive effect on school performance. You realize that there are teachers, though relatively few, who should not be in the classroom, but you don’t want to make changes to a system that works for the vast majority of educators who are dedicated professionals. You want parents to be able to have their rights upheld in our courts, but you are skeptical of judges making legislative policy.

These competing interests are precisely why we wrote this paper. As New York City public school educators, we, like you, are committed to elevating the teaching profession and improving student outcomes. We believe in protecting and preserving reasonable job protections for educators, while recognizing that the current system can and should be improved. These positions, contrary to what you may have heard in the media, are not incompatible.

We know that teaching is one of the most challenging, rewarding, and important professions. We also know that, as teachers, we need the opportunity to earn tenure to protect us against rare but real instances of vindictive administrators, litigious parents, and false accusations. We know that due process is a hallmark of our country, and that taking it away from educators will just make it harder to recruit and retain great teachers—and we speak from experience in saying that we cannot afford to make it even harder to attract good teachers to high-poverty schools. We also know that school policy should ideally not be made by judges but by informed policymakers in collaboration with teachers, parents, and other community members.

In this paper, we lay out a set of common-sense legislative solutions to the issues raised in these lawsuits. Our vision is a simple but elusive one: a fair, efficient due process system that protects teachers and students, as well as a meaningful tenure system that evaluates and supports early-career educators. We believe that implementing these changes will allow us to focus on even more pressing concerns, like supporting teachers throughout our careers, reducing the attrition of young educators, and creating safe, supportive school environments.

We hope you will join us in rolling up your sleeves to address these issues in a way that both elevates the teaching profession and improves outcomes for students.

*The Educators 4 Excellence—New York 2015 Teacher Action Team on Tenure*

*“Tenure needs to be a meaningful milestone because it brings a sense of professionalism to teaching. This should be analogous to tenure at the university level in that it is challenging to attain, but once you have it, you are widely respected for having gone through such a rigorous process.”*

**ASHLEY WARD**, *English Teacher, J.H.S. 157 Stephen A. Halsey*

# WHY TEACHERS NEED TENURE AND DUE PROCESS

Teacher tenure is simply a guarantee of due process, an assurance to teachers that if we are accused of misconduct or incompetence, we will have the opportunity to present our side to an independent arbiter. Tenure was created because of the desire to end nepotism, favoritism, bias, and patronage in schools.<sup>2</sup> This was necessary because the history of public education is littered with examples of teachers fired for indefensible reasons: gender, race, political views, advocacy for students, sexual orientation.<sup>3</sup> In certain places, teachers are challenged for introducing topics like evolution or teaching so-called “banned books.”

Today, there continue to be stories of educators’ rights protected by due process,<sup>4</sup> demonstrating that tenure has not outlived its usefulness. Those of us who have tenure feel secure in speaking our minds to our administrators, participating in policy activism, and teaching controversial but important academic content. We must be protected from unjust dismissals, whether it is because of our identity or because of an unfair or incompetent supervisor.

Moreover, in order to recruit and retain great teachers, due process—and the sense of job security that comes with it—is an important non-monetary form of compensation. Surveys of teachers find that our tenure rights are greatly

valued, with the majority of teachers declining to trade tenure for a \$5,000 annual salary increase.<sup>5</sup> Economists have estimated that public-sector workers value job security equal to at least 10 percent of their salaries.<sup>6</sup> Good teachers value tenure because it protects us from capricious administrators and allows us to advocate for our students and our profession, without risk of politically motivated repercussions. Removing the due process protections guaranteed by tenure would function as a pay cut, and would reduce the level of professionalism great teachers desire, which in turn would discourage talented individuals from pursuing teaching.

*“Tenure is important because it's a crucial milestone in this profession. Too often teachers don't get recognized for the work that we do—but the safety of having tenure, after proving that I'm a successful teacher, makes me feel recognized as a professional.”*

*April Rose*, Fourth-grade teacher, P.S. 132 Ralph Bunche

# IMPROVING TENURE

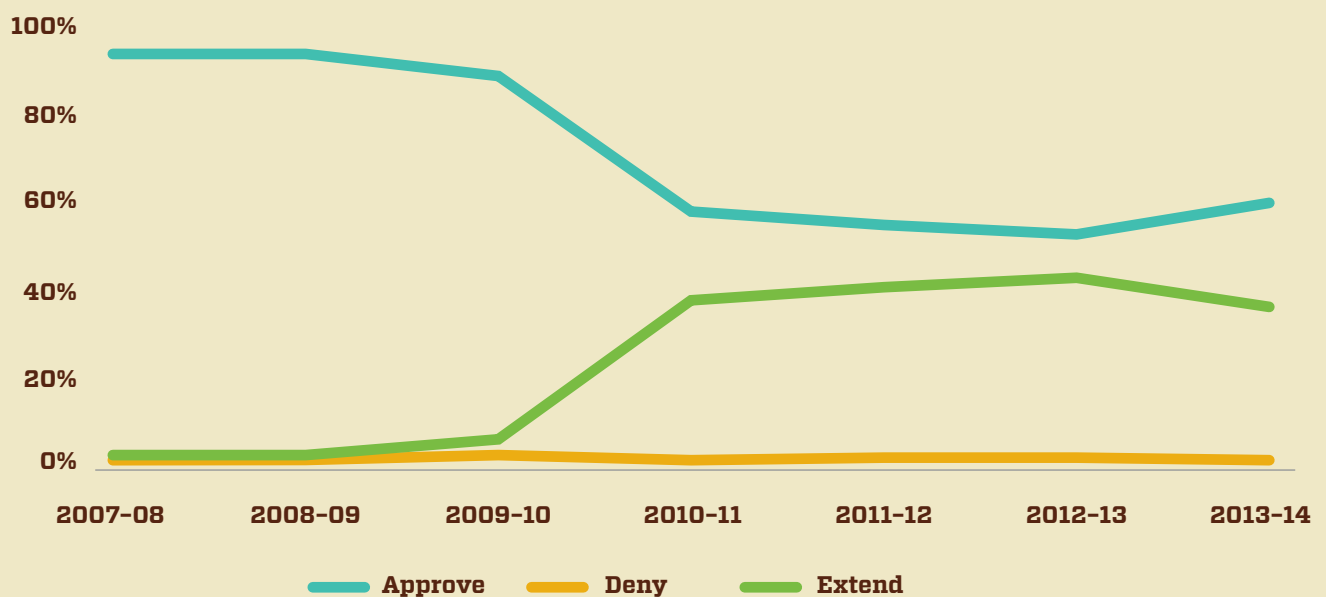
## TENURE MUST BE A MEANINGFUL MILESTONE

Since tenure is incredibly valuable to teachers, the granting of tenure should be a chance to recognize hard work and a commitment to the teaching profession. It follows then that tenure protections must be earned and only awarded to teachers who have proven to be effective in the classroom.

Until recently, that was rarely the case in most of the country. A 2011 survey of teachers found that most perceived the award of tenure as “just a formality” that had “very little to do with whether a teacher is good or not.”<sup>7</sup> New York City was no exception: The vast majority of our colleagues across the district—over 90 percent—received

tenure as a matter of course after three years.<sup>8</sup> However, New York City has revamped the system to make it more challenging for educators to receive tenure, and this in turn has led less effective teachers to voluntarily exit the school system.<sup>9</sup> We have seen the process help some teachers in our schools realize that the profession is not for them. New York City’s move to make tenure meaningful honors our work as educators by treating tenure as the valuable milestone that it is. We need to continue to build off the work New York City has started and ensure tenure can become a significant professional milestone for all teachers across New York State.

Fig. 1 Tenure Cases by Outcome



In the 2013-14 school year, 60 percent of teachers were granted tenure, 38 percent were extended, and 2 percent had tenure denied.



## THE CURRENT TENURE SYSTEM IS REDUNDANT

New York City has made significant strides in instituting a more rigorous tenure process, but the current method remains technically separate from the new teacher evaluation system. At present, teachers in New York City are eligible for tenure after three years and are evaluated with a “tenure framework” by their principal and superintendent based on a portfolio of evidence, which includes assessments of student learning and teacher practice. Ultimately, a teacher will be granted tenure, denied tenure, or have the decision “extended” an additional year.

The main problem, however, is that teachers eligible for tenure are evaluated by two separate, but largely

overlapping systems. What that means is that, in theory, a teacher could have three years of effective ratings but still be denied tenure, while a teacher with years of below-effective ratings could be granted tenure. Indeed, while early reports suggest that the vast majority of New York City teachers will be rated Effective or Highly Effective,<sup>10</sup> only 60 percent of eligible teachers were granted tenure.<sup>11</sup> This data shows an obvious disconnect and suggests that many teachers may not even realize that they are not on track to receive tenure. Teachers who will not be granted tenure should know far in advance—based on the feedback from the evaluation system—what areas they need to improve in and how to do so.

## 3012-C NY STATE TEACHER EVALUATION SYSTEM

The evaluation system, put in place by state law 3012-c,<sup>12</sup> is in its second year of implementation in New York City. The law creates four categories of teacher effectiveness: Highly Effective, Effective, Developing, and Ineffective. Forty percent of a teacher’s rating is determined by student learning data, based on assessments of student progress. The remaining 60 percent is based on “other measures of teacher effectiveness”—in New York City and many other districts in the state, that means classroom evaluations, as measured using the Danielson Framework.<sup>13</sup>

## NEW YORK CITY TENURE DECISION-MAKING FRAMEWORK

For New York City, the most recent tenure framework assesses teachers’ effectiveness on two dimensions: student learning and teacher practice. Teachers receive one of four ratings—Highly Effective, Effective, Developing, or Ineffective—on both of these categories. Principals make tenure recommendations based on this framework, generally supporting tenure awards to teachers rated Effective or Highly Effective.<sup>14</sup> The City has obviously made efforts to align the tenure system with the evaluation process, which is encouraging—while also underscoring the appropriateness of merging the two systems.



Teachers up for tenure should be able to work, grow, and develop within a single system of evaluation and support, instead of through two redundant systems. Although some of us have seen diligent efforts by our administration to use the evaluation system to inform tenure decisions, others have found that the two systems are disconnected and disjointed. We believe it is critical that evaluation and tenure are codified into one streamlined statewide system.

Moreover, in our experience, the current tenure process—particularly the creation of the tenure portfolio of evidence<sup>15</sup>—is time-consuming, and the process

for evaluating these portfolios is opaque. Many of us have had the experience of compiling extensive and sometimes unnecessary paperwork to meet our principals' requirements under the tenure system and then are left without a clear understanding of how or if these materials are being used to determine if we have earned tenure. Finally, state law now requires that a teacher's evaluation is a "significant factor" in tenure decisions,<sup>16</sup> so it is reasonable to merge the two systems. Doing so will free up time for both teachers and principals, streamline duplicative processes, and ensure coherent decisions.

## IMPROVING THE TENURE GRANTING PROCESS

We support using teacher evaluations to make teacher tenure decisions. Specifically, we recommend that teachers be granted tenure after receiving two Highly Effective or three Effective ratings within a five-year period. These ratings could be either consecutive or nonconsecutive. Teachers who do not attain two Highly Effectives or three Effectives within five years should be denied tenure. The one exception is that a teacher should never be denied tenure if his or her two most recent ratings were Effective or Highly Effective. In such rare instances, a tenure decision should be extended to a sixth year; teachers who receive an Effective or Highly Effective rating that year should attain tenure. Teachers who are denied tenure should be dismissed from their school district.

This recommendation is based on evidence that, on average, teachers make the most improvements early in their careers—particularly in their first and second years.<sup>17, 18, 19</sup> We view our recommendation as an attempt to balance competing concerns. On the one hand, we don't want schools to make tenure decisions too quickly without

giving struggling novice teachers a chance to improve. It's crucial that new teachers be given the support, tools, and feedback needed to develop, since far too many teachers leave early in their careers.<sup>20</sup> But on the other hand, we don't want struggling teachers to stay in the classroom for too long. Research suggests that it may be useful for principals to make tenure decisions sooner rather than later, as retaining an ineffective teacher for many years can harm students and schools.<sup>21</sup> All of us have seen this: a struggling teacher who a principal simply pushed through the system, without support or evaluation. We think our proposed "five plus one year" provision does a good job of balancing these competing concerns.

Our proposal also ensures that multiple years of evidence are considered when tenure decisions are made. A teacher must show multiple years of effective teaching to be awarded tenure. Furthermore, the recommendation builds flexibility into the system—an exceptional young teacher can earn tenure after just two years, whereas an educator who develops more slowly has up to six years to prove he or she is effective.

*“It is important to connect evaluation to the tenure system. Doing so will streamline the whole process of attaining tenure—making it less arduous for teachers, while ensuring that tenure remains a meaningful professional bar.”*

**Scott Wade**, English teacher, P.S./M.S. 29 Melrose School

Fig. 2 **Examples of Proposed “5 + 1” Tenure Decisions**

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	
TEACHER 1	HE	HE	>	>	>	>	<b>TENURE GRANTED</b>
TEACHER 2	I	E	D	E	HE	>	
TEACHER 3	I	D	HE	HE	>	>	
TEACHER 4	I	D	D	E	E	E	
TEACHER 5	E	D	E	D	E	>	
TEACHER 6	D	I	D	D	—	—	<b>TENURE DENIED</b>
TEACHER 7	D	E	I	D	—	—	
TEACHER 8	E	D	E	D	D	—	
TEACHER 9	I	D	D	E	E	D	

I Ineffective    
 D Developing    
 E Effective    
 HE Highly Effective

We recommend that teachers be granted tenure after receiving two Highly Effective or three Effective ratings within a five-year period. These ratings could be either consecutive or nonconsecutive. Teachers who do not attain two Highly Effectives or three Effectives within five years should be denied tenure. The one exception is that a teacher should never be denied tenure if his or her two most recent ratings were Effective or Highly Effective. In such rare instances, a tenure decision should be extended to a sixth year; teachers who receive an Effective or Highly Effective rating that year should attain tenure.

## LOOKING TO OTHER STATES

We looked at several other states<sup>22</sup> and found similar examples of rigorous tenure systems, connected to evaluation, that have been developed in recent years. These states show that tenure reform is possible to implement in practice and across a variety of political lines.



**NEW JERSEY** grants tenure to teachers who receive two Effective or Highly Effective ratings within their second through fourth years of employment.<sup>23</sup> This was the result of changes in law that were supported by the state teachers' union.<sup>24</sup>



**COLORADO** requires three consecutive years of “demonstrated effectiveness” in order to earn tenure.<sup>25</sup>



**INDIANA**'s law awards tenure to teachers who receive three Effective or Highly Effective ratings within a five-year period.<sup>26</sup>

## USING TENURE TO STRENGTHEN EVALUATION

One important concern regarding connecting evaluation and tenure is the fact that early results of the new evaluation system in New York have produced high ratings,<sup>27</sup> as well as legitimate questions about the appropriate use of testing as part of evaluation.<sup>28</sup> Although we know many teachers in New York are indeed excellent, these exceptionally high ratings detract from the goal of differentiating performance in order to support all teachers and recognize truly exemplary ones. A lack of meaningful differentiation is discouraging to us as educators: It suggests that all teachers are the same, widgets in a system with no unique value to add to our classrooms. Research<sup>29</sup> and experience, however, suggest that teachers vary widely in our performance. Ignoring this reality helps no one, failing to recognize those of us who are excelling and those of us who need extra support. All that said, we are encouraged

that Governor Andrew Cuomo has pledged to work to continuously improve the evaluation system.<sup>30</sup>

A potential problem, then, may be that tenure is not a meaningful professional milestone if the evaluation ratings remain inflated. However, our hope and view are that tying tenure to evaluation scores will incentivize principals to create meaningful differentiation in their ratings. Principals will still have discretion within our proposed tenure system, but they will have to exercise it through the evaluation framework. For novice teachers, the evaluation system will give them a good idea of how they can improve, as they work toward attaining tenure with a clear understanding of how to do so. In turn, principals will be able to use the evaluation system to give teachers coherent feedback and set clear milestones on the path toward tenure.

Fig. 3 **New York State Teacher Evaluation Distribution of Ratings**



Note: 2012-13 data does not include New York City because the new evaluation system had not yet been implemented.  
Source: [www.regents.nysed.gov/meetings/2014/December2014/Evaluation.pdf](http://www.regents.nysed.gov/meetings/2014/December2014/Evaluation.pdf)

# IMPROVING DUE PROCESS

Teachers and students deserve a fair, efficient due process system that ensures that educators have an opportunity to be genuinely heard and have our rights protected, while guaranteeing that real teacher misconduct and ineffectiveness are dealt with swiftly. Below, we lay out our vision for improving due process for teachers accused of misconduct or incompetence.

## LENGTH OF PROCESS: SPEEDY FROM START TO FINISH

As argued in the 2014 E4E-New York Teacher Policy Team paper “A Passing Grade,” allegations against teachers should be adjudicated within 100 days.<sup>31</sup>

Until recently, due process in New York City and State took far too long, with proceedings dragging out over hundreds of days and costing districts tens of thousands of dollars.<sup>32</sup> Such an extended time frame is a waste of district resources and is unfair to an accused teacher, who deserves to know the future of his or her career in a timely manner.

We are happy to report that progress has been made in this regard—with the median case taking just over 100

days to complete<sup>33</sup>—but there is still important work to be done, particularly considering that some cases continue to take over 500 days.<sup>34</sup> Our recommendation to limit all hearings to 100 days is in line with a report commissioned and endorsed by the American Federation of Teachers (AFT)<sup>35</sup> and is similar to the 90-day period supported by the education nonprofit TNTP.<sup>36</sup> It is important that this timeline is enforced. To that end, we support the past E4E-New York Teacher Policy Team’s recommendation to put in place penalties for the district, union, and hearing officer if the process extends beyond 100 days.

## NEW YORK STATE LAWS 3020-A AND 3012-C

Law 3020-a governs due process for tenured teachers accused of either misconduct or incompetence.

- Hearings are overseen by a hearing officer—jointly appointed by the union and district—who determines whether the allegations against the teacher are true and, if so, what penalty the teacher will face.<sup>37</sup>
- Hearing officers use a preponderance of evidence standard, meaning that for allegations of both incompetence and misconduct, the district must show that it is more likely than not that the teacher did in fact commit misconduct or is in fact incompetent.<sup>38</sup>
- The hearings have many of the features of court trials, including lawyers on both sides, the ability to call and subpoena witnesses, opening and closing statements, and a stenographer who transcribes the proceedings.<sup>39</sup>

Law 3012-c codifies New York’s teacher evaluation system and creates an expedited process within 3020-a to dismiss teachers who have received two consecutive Ineffective ratings.

- To reach this hearing, an independent validator must confirm the principal’s ratings of Ineffective.
- If the rating is validated, there is a hearing and the teacher could face dismissal if unable to overcome the presumption that he or she is incompetent.<sup>34</sup>

## LOOKING TO OTHER STATES



Our recommendation is similar to a new requirement in Connecticut—heralded by the AFT<sup>41</sup>—that hearings last no longer than 12 hours, with each side being allocated an equal share of time.<sup>42</sup> Our version also creates parity between the two sides, while ensuring a minimum length of time allocated to the teacher.

### LENGTH OF HEARING: EFFICIENT AND EQUITABLE

We recommend limiting the amount of time for hearings by ensuring parity between the district’s portion of the hearing and the teacher’s portion. It is important to set reasonable time limits on the length of 3020-a hearings themselves, so that they do not cost the district excessive amounts of money that could otherwise

be spent in our classrooms. Our view is that hearings should set aside equal time for each side. For example, if the district spends two days presenting its case, the accused teacher should also have two days to present his or her side. However, regardless of the length of the district’s case, a teacher should have a minimum of one day (eight hours).

### HEARING OFFICERS: INDEPENDENT AND IMPARTIAL

Arbitrators should be appointed to set terms of at least three years. In New York City, the hearing officers who oversee the 3020-a proceedings are jointly appointed by the district and union for terms of a single year.<sup>43</sup> They may be reappointed each year with the agreement of both parties. This has led to the assertion that hearing officers have incentives to produce decisions that appease both

sides if they want to continue in their paid positions.<sup>44</sup> Although it’s hard to know if that is the case, regardless, it makes sense to require longer appointments of arbitrators to ensure their independence. The one exception to the three-year term would be failing to enforce and follow the timelines recommended above, in which case the hearing officer should be removed.

### STANDARDS OF PROOF: DIFFERENTIATED BETWEEN MISCONDUCT AND INCOMPETENCE

Here we distinguish and make differing recommendations for dealing with claims of misconduct (charges of specific instances of inappropriate behavior committed by a teacher) and incompetence (charges of sustained ineffective pedagogy). We make this distinction because of the fundamental difference between the two types of charges.

In almost all instances for accusations of misconduct, the dispute turns on a relatively straightforward factual question: Did the teacher commit the alleged misconduct or not?

Allegations of incompetence are fundamentally different, however. There is still no clear, widely agreed upon definition of what it means to be an ineffective teacher. It is difficult to prove with absolute certainty that a teacher is incompetent. It is no wonder that such hearings go on so long, then, since answering this question is so difficult. Because it can often be difficult to objectively prove that a teacher is truly ineffective, such charges should have a different standard of proof that takes into account this inherent uncertainty.

- For accusations of misconduct, we support the current system, which requires the district to prove with a preponderance of evidence that the accused teacher did in fact commit an offense.<sup>45</sup>
- For accusations of incompetence, arbitrators should be examining whether a principal committed an “abuse of discretion” in deeming a teacher incompetent. If it is found that the principal abused his or her discretion, then the charge against the teacher would not be sustained and no penalty would be assessed. This standard is more appropriate since it respects principals’ professional judgment—and does not allow hearing officers who lack education experience to make judgments on what constitutes good teaching. At the same time, the system protects educators from administrators who seek to dismiss them for nonpedagogical reasons.

*“It’s only fair to teachers and students to have hearings quickly and fairly resolved. No one benefits—least of all the teacher—from proceedings that drag out over long periods of time.”*

*Paul Asjes, Math teacher, School of Performing Arts*

## **STANDARDS FOR DISMISSAL: GOOD FOR STUDENTS AND FAIR TO TEACHERS**

Even when arbitrators have substantiated allegations against teachers, whether it is for misconduct or incompetence, many choose not to dismiss the teacher but instead elect less harsh penalties, such as fines, suspensions, or written warnings. This may make sense if there is good reason to believe that a teacher will improve with additional support. However, researcher Katherine Stevens has documented that the implicit standard for dismissal is “beyond remediation,” meaning districts must essentially prove that it is impossible to help a given teacher improve.

For example, from 1997–2007, most teachers who were found to have committed either verbal abuse and/or corporal punishment were *not* fired.<sup>46</sup> A similar standard seems to prevail today.<sup>47</sup> This is not an appropriate standard, since it fails to substantially consider the needs of our students when deciding whether to return teachers to the classroom.

For this reason, we support creating different standards for dismissal based on the severity of the allegation:

- **Teachers who are found to have committed serious misconduct—specifically corporal punishment, verbal abuse, sexual misconduct or harassment, or other instances of direct harm to students—should be automatically dismissed.** We recognize that this is a harsh penalty, but as teachers we must prioritize the safety and well-being of our students. Any teacher who is a threat to our students has no place in our schools.
- **Teachers who are convicted of other forms of misconduct should be dismissed only if it is found to be in the “best interest of students.”** Basing decisions on students’ interests puts the focus where it should be. It also protects effective teachers from being fired for minor violations that cause no harm to students.

## **DUE PROCESS LEGAL TERMS**

### **PREPONDERANCE OF EVIDENCE**

This is a common legal standard that simply requires one side—in this case, a school district—to show that an allegation is more likely than not to be true. Such a standard is lower than the criminal justice standard of “beyond a reasonable doubt.”<sup>48</sup>

### **ABUSE OF DISCRETION**

This standard is based on examining whether a decision is reasonable—not whether the arbiter agrees with the decision.<sup>49</sup> In this case, an abuse of discretion would be committed if a principal’s judgment appeared to be unreasonable, arbitrary, or unsupported by a fair interpretation of the facts presented. Similarly, an abuse of discretion would be committed if a principal’s decision is based on a grudge against a teacher or any other nonpedagogical reason.

*“Changing the standard from ‘beyond remediation’ ensures that tenure and due process remain systems that allow teachers to be advocates for their students—and not systems that ignore students’ interests.”*

*Aaron Crug*, Special education teacher, The Vida Bogart School for All Children, District 75

- **Teachers who are found to be incompetent should be dismissed if they are not “likely to improve.”**

Determinations of a teacher’s likelihood to get better should be made by hearing officers based on evidence of past attempts at remediation, evidence that further attempts would be successful, and a consideration of past evaluation ratings. This should be a much higher standard than “beyond remediation,” but it should also

give teachers the opportunity to show that when given another chance, they are genuinely likely to improve. We believe this standard will also hold principals accountable for quality attempts at remediation, because we have seen some cases where efforts to help struggling colleagues are meaningful and helpful, but others where they are perfunctory and useless.

## **LICENSURE POLICIES: FAIR AND DIFFERENTIATED**

Current law revokes the New York City teaching licenses of teachers dismissed in a 3012-c hearing.<sup>50</sup> We again think it makes sense to distinguish between cases of misconduct and incompetence.

- **Teachers dismissed for incompetence should not lose their licenses**, since research suggests that educators who struggle at one school may be more effective at another.<sup>52</sup>
- **Teachers dismissed for misconduct should have their licenses—both city and state—revoked.** This

means a teacher who has engaged in misconduct that is serious enough to warrant dismissal would no longer be certified to teach in a New York public school. This distinction aligns with our experience that some teachers are not the right fit for a given school, while others simply should not be in front of children.





*“The evaluation system in NYC has made great strides from the “U” or “S” ratings that so many of us are familiar with. The next step is to make these tiered ratings a real reflection of teachers’ abilities. Until tenure decisions are tied to the evaluation system, there is no impetus for principals to use these evaluations as a catalyst for change.”*

***Darby Masland***, Social studies teacher, Urban Assembly Institute of Math and Science for Young Women

# CURRENT AND PROPOSED SYSTEMS FOR ACCUSATIONS OF MISCONDUCT AND INCOMPETENCE

	<b>CURRENT SYSTEM</b> for both accusations of misconduct and incompetence	<b>PROPOSED SYSTEM</b> for accusations of misconduct	<b>PROPOSED SYSTEM</b> for accusations of incompetence
<b>LENGTH OF PROCESS</b>	Varies <i>(median of 105 days but in some cases over 500 days)</i>	No more than 100 days	No more than 100 days
<b>LENGTH OF HEARING</b>	Varies	Equal hearing time for each side <i>(with minimum of eight hours for teacher)</i>	Equal hearing time for each side <i>(with minimum of eight hours for teacher)</i>
<b>HEARING OFFICERS</b>	Appointed for one-year terms; reappointed with agreement from union and district	Appointed for at least three-year terms	Appointed for at least three-year terms
<b>STANDARD OF PROOF</b>	Allegation is substantiated only if the “preponderance of evidence” suggests it should be	Allegation is substantiated only if the “preponderance of evidence” suggests it should be	Allegation is substantiated only if the principal is not found to have committed an “abuse of discretion”
<b>STANDARD FOR DISMISSAL</b>	Beyond remediation	For cases of serious misconduct— automatic dismissal  For cases of other forms of misconduct— “best interest of student”	Not “likely to improve”
<b>LOSS OF LICENSE IN INSTANCES OF DISMISSAL?</b>	Yes <i>(New York City license only)</i>	Yes <i>(New York City and State license)</i>	No

# CONCLUSION

It is critical that, as teachers, we own our profession. This means improving our schools of training, advocating for high standards, supporting the thoughtful use of assessment, and confronting challenging issues like tenure and due process. We need to have hard conversations and acknowledge that for the sake of our profession and our students, tenure and due process need to be improved.

That is not to say that tweaking these systems is a silver bullet for improving schools—far from it. More energy should be spent on helping teachers improve, creating career ladders for excellent educators, and designing fair compensation systems that help recruit and retain teachers.

At the same time, we cannot ignore a system that needs to change. The debate about tenure and due process is happening with or without us, and it is our obligation to ensure that teachers lead this conversation.

# METHODOLOGY

The debate on tenure and due process raised by recent lawsuits filed in New York created momentum among educators to better define protections within their profession. In the summer of 2014, Educators 4 Excellence–New York conducted focus groups of teachers to determine their views on the topic and how E4E–New York should engage on this issue.

Based on the feedback from these sessions, E4E–New York convened a Teacher Action Team of 10 educators who met regularly to review the research from across the country on tenure and due

## NOTES

<sup>1</sup> Baker, A. (2014, July 3). Lawsuit Challenges New York's Teacher Tenure Laws. *The New York Times*. Retrieved from

[www.nytimes.com/2014/07/04/nyregion/lawsuit-contests-new-yorks-teacher-tenure-laws.html](http://www.nytimes.com/2014/07/04/nyregion/lawsuit-contests-new-yorks-teacher-tenure-laws.html)

<sup>2</sup> New York State United Teachers. (2014, August 29). NYSUT Defends Tenure As A Safeguard for Students and Seachers. Retrieved from <http://www.nysut.org/news/2014/august/nysut-defends-tenure-as-safeguard-for-students-and-teachers>

<sup>3</sup> Stephey, M.J. (2008, November 17). A Brief History of Tenure. *Time*. Retrieved from <http://content.time.com/time/nation/article/0,8599,1859505,00.html>

<sup>4</sup> Jaffe, S. (2014, October 13). "Poster child for tenure": Why Teacher Agustín Morales Really Lost His Job. *Salon*. Retrieved from [http://www.salon.com/2014/10/13/poster\\_child\\_for\\_tenure\\_why\\_teacher\\_agustin\\_morales\\_really\\_lost\\_his\\_job/](http://www.salon.com/2014/10/13/poster_child_for_tenure_why_teacher_agustin_morales_really_lost_his_job/)

<sup>5</sup> Rosenberg, S., Silva, E. Trending Toward Reform: Teachers Speak on Unions and the Future of the Profession. *Education Sector*. Retrieved from <http://www.educationsector.org/sites/default/files/publications/REPORT-TeacherSurvey3f.pdf>

<sup>6</sup> Ohanian, L.E. (2011, November 26). America's Public Sector Union Dilemma. *American Enterprise Institute*. Retrieved from <http://www.aei.org/publication/americas-public-sector-union-dilemma>

<sup>7</sup> Rosenberg, S., Silva, E. Trending Toward Reform: Teachers Speak on Unions and the Future of the Profession. *Education Sector Reports*. Retrieved from <http://www.educationsector.org/sites/default/files/publications/REPORT-TeacherSurvey3f.pdf>

<sup>8</sup> Cramer, P. (2014, November 7). Tenure Approval Rate Ticks Up in First Decisions Under De Blasio. *Chalkbeat—New York*. Retrieved from [\[tenure-rate-ticks-up-in-first-decisions-under-de-blasio/\]\(http://ny.chalkbeat.org/2014/11/07/teacher-tenure-rate-ticks-up-in-first-decisions-under-de-blasio/\)](http://ny.chalkbeat.org/2014/11/07/teacher-</a></p></div><div data-bbox=)

<sup>9</sup> Loeb, S., Miller, L.C., Wyckoff, J. (2012). Performance Screens for School Improvement: The Case of Teacher Tenure Reform in New York City. *Teacher Policy Research*. Retrieved from <http://cepa.stanford.edu/tpr/performance-screens-nyc>

<sup>10</sup> Decker, G. (2014, September 3). With First Round of Evaluations in Hand, City Teachers Are Skeptical. *Chalkbeat—New York*. Retrieved from <http://ny.chalkbeat.org/2014/09/03/with-first-round-of-evaluations-in-hand-city-teachers-are-skeptical/>

<sup>11</sup> Cramer, P. (2014, November 7).

<sup>12</sup> N.Y. Education Code 3012-c. Retrieved from [http://public.leginfo.state.ny.us/LAWSSEAFcgi?QUERYTYPE=LAWS+&QUERY-DATA=\\$\\$EDN3012-C](http://public.leginfo.state.ny.us/LAWSSEAFcgi?QUERYTYPE=LAWS+&QUERY-DATA=$$EDN3012-C)

<sup>13</sup> The Danielson Group. The Framework. Retrieved from <http://danielsongroup.org/framework/>

<sup>14</sup> The United Federation of Teachers. Tenure for Newer Teachers. Retrieved from <http://www.uft.org/new-teachers/tenure>

<sup>15</sup> The United Federation of Teachers. Tenure for Newer Teachers. Retrieved from <http://www.uft.org/new-teachers/tenure>

<sup>16</sup> N.Y. Education Code 3012-c. Retrieved from [http://public.leginfo.state.ny.us/LAWSSEAFcgi?QUERYTYPE=LAWS+&QUERY-DATA=\\$\\$EDN3012-C](http://public.leginfo.state.ny.us/LAWSSEAFcgi?QUERYTYPE=LAWS+&QUERY-DATA=$$EDN3012-C)

<sup>17</sup> Chingos, M.M., Peterson, P.E. (2010, June 28). *It's Easier to Pick a Good Teacher than to Train One: Familiar and New Results on the Correlates of Teacher Effectiveness*. Retrieved from [http://www.hks.harvard.edu/pepg/MeritPayPapers/Chingos\\_Peterson\\_10-08.pdf](http://www.hks.harvard.edu/pepg/MeritPayPapers/Chingos_Peterson_10-08.pdf)

<sup>18</sup> Rice, J. K. (2010, August). The Impact of

Teacher Experience. *National Center for Analysis of Longitudinal Data in Education Research*, 11. Retrieved from <http://www.urban.org/uploaded-pdf/1001455-impact-teacherexperience.pdf>

<sup>19</sup> DiCarlo, M. (2010, November 18). The Teaching Experience. Shanker Blog. Retrieved from <http://shankerblog.org/?p=1319>

<sup>20</sup> DiCarlo, M. (2011, December 15). Do Half of New Teachers Leave the Profession Within Five Years? (Web log). Retrieved from <http://shankerblog.org/?p=4534>

<sup>21</sup> Rothstein, J. (2014, June 12). Taking On Teacher Tenure Backfires. *The New York Times*. Retrieved from <http://www.nytimes.com/2014/06/13/opinion/california-ruling-on-teacher-tenure-is-not-whole-picture.html>

<sup>22</sup> Education Commission of the States. (2014, May). Teacher Tenure—Requirements for Earning Nonprobationary Status. Retrieved from <http://ecs.force.com/mbdata/mbquestRTL?rep=TT01>

<sup>23</sup> Education Commission of the States. (2014, May). Teacher Tenure 2014—State Profile—New Jersey. Retrieved from <http://ecs.force.com/mbdata/mbstprofexcl?Rep=TTP&st=New%20Jersey>

<sup>24</sup> New Jersey Education Association. (2012, August 6). A 'Win-Win' for Students, Teachers, and the Public. Retrieved from <http://www.njea.org/news/2012/08/06/a%20win-win%20for%20students%20teachers%20and%20the%20public>

<sup>25</sup> Education Commission of the States. (2014, May). Teacher Tenure 2014—State Profile—Colorado. Retrieved from <http://ecs.force.com/mbdata/mbstprofexcl?Rep=TTP&st=Colorado>

<sup>26</sup> Education Commission of the States. (2014, May). Teacher Tenure—Requirements for Earning Nonprobationary Status. Retrieved from <http://ecs.force.com/mbdata/mbquestRTL?rep=TT01>

<sup>27</sup> Decker, G. (2014, December 16). 91 Percent

**process policies. We spoke with experts in the field and discussed differing perspectives in order to create a set of actionable, New York-specific recommendations.**

**We weighed each policy against our ultimate goals of elevating the teaching profession and improving student outcomes. These goals anchored our discussion and drove us to select the recommendations we felt most clearly accomplished these lofty aims.**

of City Teachers Rated Effective or Higher in First Round of New Evaluations. *Chalkbeat—New York*. Retrieved from <http://ny.chalkbeat.org/2014/12/16/91-percent-of-city-teachers-rated-effective-or-higher-on-first-evaluations/>

<sup>28</sup> E4E-New York addressed several of the policy issues related to testing in the recent paper “None of the Above”: <http://www.educators4excellence.org/NYtesting/report>

<sup>29</sup> Hanushek, E.A., Rivkin, S.G. (2012, March 20). The Distribution of Teacher Quality and Implications for Policy. *The Annual Review of Economics*, 4, 131–57. Retrieved from <http://hanushek.stanford.edu/sites/default/files/publications/Hanushek-%2BRivkin%202012%20AnnRevEcon%204.pdf>

<sup>30</sup> Bakeman, J. (2014, November 26). Education Leaders Explore Teacher Evaluation Changes. *Capital New York*. Retrieved from <http://www.capitalnewyork.com/article/albany/2014/11/8557389/education-leaders-explore-teacher-evaluation-changes>

<sup>31</sup> Sawchuk, S. (2014, July 30). N.Y.C. Union Strikes Back at Tenure Allegations. *Education Week*. Retrieved from [http://blogs.edweek.org/edweek/teacherbeat/2014/07/nyc\\_union\\_strikes\\_back.html](http://blogs.edweek.org/edweek/teacherbeat/2014/07/nyc_union_strikes_back.html)

<sup>32</sup> Short, A. (2014, July 30). City Drags its Feet on Teacher Discipline Cases: Union. *New York Post*. Retrieved from <http://nypost.com/2014/07/30/city-drags-its-feet-on-teacherdiscipline-cases-union/>

<sup>33</sup> American Federation of Teachers. (2011, February 7). AFT Adopts Kenneth Feinberg’s Procedures for Handling Teacher Wrongdoing Allegations. Retrieved from <http://www.aft.org/press-release/aft-adopts-kenneth-feinbergs-procedures-handling-teacher-wrongdoing#sthash.77ZnLwi0.dpuf>

<sup>34</sup> TNTP. (2014). *Rebalancing Teacher Tenure*. Retrieved from [http://tntp.org/assets/documents/TNTP\\_RebalancingTenure\\_2014.pdf](http://tntp.org/assets/documents/TNTP_RebalancingTenure_2014.pdf)

<sup>35</sup> N.Y. Code § 3020-a. Retrieved from <http://codes.lp.findlaw.com/nycode/EDN/IV/61/3020-a>

<sup>36</sup> Stevens, K.B. (2014, October 2). *Tenured teacher dismissal in New York: Education Law § 3020-a ‘Disciplinary procedures and penalties*. American Enterprise Institute. Retrieved from [https://www.aei.org/wp-content/uploads/2014/10/STEVENS\\_Teacher-Dismissal\\_Report\\_DRAFT.pdf](https://www.aei.org/wp-content/uploads/2014/10/STEVENS_Teacher-Dismissal_Report_DRAFT.pdf)

<sup>37</sup> N.Y. Education Code § 3020-a. Retrieved from <http://codes.lp.findlaw.com/nycode/EDN/IV/61/3020-a>

<sup>38</sup> N.Y. Education Code § 3012-c. Retrieved from <http://public.leginfo.state.ny.us/LAWS&EAFcgi?QUERYTYPE=LAWS+&QUERY-DATA=§§EDN3012-C>

<sup>39</sup> Cosentino, L., D’Amico, J., Fazio, C., et al. (2014, May). *A Passing Grade*. Retrieved from <http://www.educators4excellence.org/nycontract>

<sup>40</sup> New York State School Boards Association. Quality Educators in Every School. Retrieved from [http://www.nyssba.org/clientuploads/nyssba\\_pdf/gr\\_3020aQualityEducators.pdf](http://www.nyssba.org/clientuploads/nyssba_pdf/gr_3020aQualityEducators.pdf)

<sup>41</sup> New Haven Federation of Teachers. (2012, May 8). AFT Lauds Connecticut Education Reform Agreement. Retrieved from <http://www.aft.org/press-release/aft-lauds-connecticut-education-reform-agreement>

<sup>42</sup> New Haven Federation of Teachers. Tenure Revisions. Retrieved from <http://nhft.ct.aft.org/tenure-revisions>

<sup>43</sup> The United Federation of Teachers. Teachers Contract 2007–2009. Retrieved from [http://www.uft.org/files/contract\\_pdfs/teachers-contract-2007-2009.pdf](http://www.uft.org/files/contract_pdfs/teachers-contract-2007-2009.pdf)

<sup>44</sup> Brown, C. (2012, July 29). Campbell Brown: Teachers Unions Go to Bat for Sexual Predators. *The Wall Street Journal*. Retrieved from <http://online.wsj.com/articles/SB10000872396390443437504577547313612049308>

<sup>45</sup> Stevens, K.B. (2014, October 2). *Tenured teacher dismissal in New York: Education Law § 3020-a Disciplinary procedures and penalties*. American Enterprise Institute. Retrieved from <http://www.aei.org/publication/tenured-teacher-dismissal-in-new-york/>

<sup>46</sup> Stevens, K.B. (2014, October 2).

<sup>47</sup> Brody, L. (2014, July 27). Educators Fined, Not Fired. *The Wall Street Journal*. Retrieved from <http://www.wsj.com/articles/new-york-city-teachers-in-disciplinary-cases-more-often-fined-than-fired-1406510985>

<sup>48</sup> Preponderance of the Evidence. (n.d.) In *Legal Dictionary* by *The Free Dictionary online*. Retrieved from <http://legal-dictionary.thefreedictionary.com/preponderance+of+the+evidence>

<sup>49</sup> Abuse of Discretion. (n.d.) In *Legal Dictionary* by *The Free Dictionary online*. Retrieved from <http://legal-dictionary.thefreedictionary.com/Abuse+of+Discretion>

<sup>50</sup> The United Federation of Teachers. Disciplinary Actions. Retrieved from <http://www.uft.org/our-rights/know-your-rights/disciplinary-actions>

<sup>51</sup> Jackson, C.K. (2010, May). *Match Quality, Worker Productivity, and Worker Mobility: Direct Evidence From Teachers*. The National Bureau of Economic Research. Retrieved from <http://www.nber.org/papers/w15990>

# THE 2015 EDUCATORS 4 EXCELLENCE-NEW YORK TEACHER ACTION TEAM ON TENURE

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