

Rethinking Tenure

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Abstract

An attempt to examine the historical basis of tenure. Some current thoughts on tenure and proposal for a way forward to protect the original intent of tenure while increasing accountability.

Rethinking Tenure

Nearly every day news articles proclaim that education in the United States and particularly public education is broken. Thomas Friedman in a recent op-ed piece in the New York Times reported on remarks from United States Secretary of Education, Arne Duncan. In his speech Dr. Duncan stated that, “One-quarter of U.S. high school students drop out or fail to graduate on time. Almost one million students leave our schools for the streets each year.” (2010) Later in the same article Dr. Duncan says, “Other folks have passed us by, and we’re paying a huge price for that economically,” added Duncan in an interview. “Incremental change isn’t going to get us where we need to go. We’ve got to be much more ambitious. We’ve got to be disruptive. You can’t keep doing the same stuff and expect different results.” (2010). Yong Zhao in his book, *Catching up or Leading the Way* says that, No Child Left Behind has mandated adequate yearly progress (AYP) and there are punitive consequences for schools failing to meet these standards. States and schools have developed elaborate reporting mechanisms to publish these findings for the consumption of the public. (p. 7, paragraph 3, 2009). According to Thomas Friedman in the New York Times, “Duncan, with bipartisan support, has begun several initiatives to energize reform — particularly his Race to the Top competition with federal dollars going to states with the most innovative reforms to achieve the highest standards.” (2010). In this climate there has been increasing pressure for tenure reform. A synergy created by a sluggish economy and the threat of increasing layoffs has brought teachers unions to the bargaining table. Financial incentives from Race to the top have created a climate ripe for change.

Tenure has long been a hot button item that many serious school reformers dislike but until now there have been a series of political maneuvers by teachers unions and politicians eager

to curry their favor which have maintained the status quo. New Jersey enacted the first tenure law in 1909. According to New York State United Teachers, New York teachers have had a tenure law since 1917, but it was not until the 1980's that all public school teachers and teaching assistants were covered under its provisions. School administrators are covered by these same laws in New York State. Generally new teachers and teaching assistants are on probation for the first three years. Principals have a three year probationary appointment too. According to McGuinn in Ringing the Bell for K-12 Teacher Tenure Reform, “the fair dismissal procedures that come with tenure were not originally intended to provide a guarantee of lifetime employment. But the evolution and expansion of these due process protections over time have made it so difficult and costly for districts to dismiss tenured teachers that today they rarely even attempt to do so.” (2010) According to Scott McLeod, “many Americans don’t really understand or support tenure. Instead, they see tenure as a refuge for incompetence and a platform for political lobbying that’s perceived as often being only marginally related to education. They wonder why the talented untenured teacher gets fired while the marginally-skilled veteran gets to take over her classroom just because she’s been around longer. They take the incredibly low teacher termination rates in most school districts and compare those to the number of poor teachers their children experience over the years. And they shake their head in dismay. (2010)

How can we preserve teacher and administrative quality and attract good candidates to teaching positions and offer some protections which protect academic freedom without sacrificing the integrity of the system to the status quo? Until now it was very difficult to remove a tenured and ineffective teacher or administrator once that person had been granted tenure by the local school board. Legislated and bargained contractual agreements made the dismissal of

tenured teachers nearly impossible. School districts in New York State had little recourse other than litigious and costly 3020-a cases to discipline and in some cases remove an ineffective teacher or principal. According to New York State United Teachers once a teacher had been granted tenure they could only be fired for just cause. Some examples of just cause could be one of the following: insubordination, conduct unbecoming a teacher, inefficiency, incompetence, physical or mental disability, neglect of duty, failure to maintain certification, immoral character or a 3020-a hearing. In this manner local boards of education can remove an incompetent teacher for pedagogical incompetence. In the case of pedagogical incompetence a tenured teacher can elect to have a single impartial hearing officer or a three member panel. (New York State Education Department) According to the New York State Education Department, “Disciplinary charges brought by an employing board against a tenured employee are heard by a single hearing officer except when the charges concern pedagogical incompetence or issues involving pedagogical judgement...While the term "pedagogical" is not defined in either the statute or the Commissioner's Regulations, charges that fall into that category include inability to control a class, failure to prepare required lesson plans, failure to maintain certification, and other matters that directly pertain to teaching techniques and issues of this nature.” (2010) Until this year it was extremely difficult to remove a teacher for incompetence. That has changed.

This year Governor David Patterson signed into law Chapter 103 of the Laws of 2010 (New York State Legislature, 2010) which provides a method for disciplining teachers and changes the way teachers and principals are evaluated. The driving force behind these changes was New York State's application for the federal program Race to the Top (RTTT). According to Howard Wexler, “RTT was created as part of the American Recovery and Reinvestment Act of

2009 (“ARRA”), and authorizes the United States Department of Education to award up to \$4.3 billion in grant money to encourage and reward States that create conditions for education innovation and reform.” (2010) The most publicized aspect of the new law is Section 3012c which puts in place a new Annual Professional Performance Review for both teachers and administrators. According to Wexler, “For the 2011-2012 school year, the new APPR system applies only to evaluations of teachers in the common branch subjects or English Language Arts, and Math in grades four through eight, as well as building principals. The new APPR system will apply to all teachers and principals effective in the 2012-2013 school year.” (2010) The enactment of this legislation which actually won the support of the New York State United Teachers Association dramatically changes the landscape for teachers and administrators in New York State. Will it actually result in improved schools and real reform or will it ruin our existing educational system and replace it with a merit system with a capricious system of evaluation? Will such a system of accountability actually improve the education and performance of our students or will it guarantee instead a decline of young people entering the teaching ranks? Will well intended reforms actually destroy a system which has served our country well.

According to New York State United Teacher, Sylvia Saunders, “The new process, signed into law by the governor June 1, calls for educators to be rated in one of four categories: highly effective, effective, developing or ineffective.” (2010) Teacher effectiveness will be measured by test scores. While this raises the stakes for teachers and should improve a student's likelihood of success in New York State schools it does nothing to address unfunded mandates which have increased teacher and administrator workload. The current system is thus changed to one which relies more on the merits of individual teachers and principals in determining how

they will be judged. The new law calls for a collective bargaining agreement in each school district in New York State which includes a combination of test scores and professional development as the rubric for judging teachers. The new law took effect in June of 2010 and will be operational for districts negotiating a collective bargaining agreement in 2011. All districts in the state must have a collective bargaining agreement in place by 2012-2013 school year. School districts must come up with an evaluation rubric for both teachers and principals. In addition each school district will be required to come up with a plan to improve those teachers and principals judged to be developing or ineffective.

The National Council on Teacher Quality has identified the following criteria as the hallmarks of an effective state policy for granting tenure:

1. A teacher should be eligible for tenure after a certain number of years of service, but tenure should not be granted automatically at that juncture.
2. The state should articulate a process, such as a hearing, that local districts must administer in considering the evidence and deciding whether a teacher should receive tenure.
3. Evidence of effectiveness should be the preponderant criterion in tenure decisions.
4. The minimum years of service needed to achieve tenure should allow sufficient data to be accumulated on which to base tenure decisions; five years is the ideal minimum. (McGuinn, p. 11, 2010)

While New York State's Chapter 103 does not spell out tenure requirements exactly the same it does appear to mirror the NCTQ. The NCTQ in McGuinn goes further to delineate minimum goals for getting rid of ineffective teachers. They are:

1. The state should require that all teachers who have received a single unsatisfactory

evaluation be placed on an improvement plan—whether or not they have tenure.

2. The state should require that all teachers who receive two consecutive unsatisfactory evaluations or two unsatisfactory evaluations within five years be formally eligible for dismissal—whether or not they have tenure.

These goals seem to approximate New York's recently enacted legislation and seem to meet the spirit of Race to the Top. It is incumbent for today's educators whether administrator or classroom teacher to be more accountable. A changing workplace and the absence of any workplace guarantees have become the norm in the country's workforce but it is imperative that teachers and administrators be given performance indicators for accountability. “We believe educators should be held accountable for student learning, but we also believe states and districts should be transparent about their expectations and provide a system of development and support for educators before making any high-stakes decisions.” (Council of Chief State School Officers, 2010) That directive seems to be the case in the New York Law. The changing face of society and the needs of today's learners demand an engaged professional class that hones their skill set to keep abreast of the latest changes. “Professional learning communities, which can be multilayered (content, grade level), onsite, and online, are more than a fad reform. They represent a completely different way of thinking about the organization and nature of teaching and leading.” (Council of Chief State School Officers, 2010) Today's professional educators must have ample opportunities for on-going professional development and some of that can be provided in a virtual setting. Therefore those educators who choose to keep up to date with the prevailing classroom practice and seek to network with others of like mind should be rewarded for their efforts. An entrepreneurial approach in education must become the standard and it ought to increase the value of the human capital of an organization at least that is the belief of United

States Secretary of Education, Arne Duncan. This value added approach to teacher evaluation has many bargaining units concerned that its membership might be depleted or eliminated by so called merit or value added systems. Recently Arne Duncan said, “I also think that parents and community members have the right to know how their districts, schools, principals and teachers are doing. Its up to local communities to set the context for these courageous conversations but silence is not an option,” (Phillips, 2010)

Value added analysis is here to stay for the near term. “Value-added estimates the effectiveness of a teacher by looking at the test scores of his students. Each student's past test performance is used to project his performance in the future. The difference between the child's actual and projected results is the estimated "value" that the teacher added or subtracted during the year. The teacher's rating reflects his average results after teaching a statistically reliable number of students.” (Los Angeles Times, 2010) New York City teachers narrowly avoided the publication of their names in New York papers in a recent effort by former New York City Commissioner of Education, Joel Klein to deflect criticism of under performing schools. (Phillips, 2010)

There can be no doubt that the economic downturn and the changed political climate will further shape the debate and it is likely that tenure as we have known it will either cease to exist or be radically changed. Whether that will ultimately good for American education or not remains to be seen, but there can be no doubt that change is imminent and those due process safeguards which were originally meant to protect intellectual freedom might well be swept away. In its place we are likely to find a much more politically charged climate where public education as a career choice will become much more precarious.

Is there a third way or can a middle ground be articulated that becomes a win-win for everyone concerned? Diane Ravitch in a recent interview by Liz Dwyer with GOOD said, “We have a problem in this country. We have 3.5 million teachers and about 300,000 leave the teaching profession every year. Some of them retire, some of them are fired, some of them leave voluntarily because they think it's not for them. They don't feel successful. The working conditions are miserable and they haven't had any support.” (2010). Can we support teachers and administrators while holding them accountable too? Can a middle ground be articulated that improves the system keeps tenure for what it was originally intended to protect intellectual freedom without creating lifetime employment with accountability too? The Council of Chief State School Officers offers some reasonable alternatives that they call performance review standards, “the primary purpose of a performance review system should be to provide feedback to help educators improve their instructional skills and content knowledge, while also determining whether they are increasing the knowledge and skills of their students.” (2010). Tenure per se should be kept intact as but limited only to academic freedom. Teachers and administrators should be required to demonstrate a commitment to ongoing professional development and New York State's new standard of an annual professional performance review seems appropriate. In addition there must be a system of statewide review of this process to ensure that changing local politics do not work counter to the intent of these performance reviews and the reviews themselves need to be re-visited every three to five years to ensure that what is being evaluated is still academically and professionally significant. A performance review system that helps a teacher and/or administrator grow in their profession seems like a prudent investment in our future and the future of education in general.

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