

# Tenure

## How Due Process Protects Teachers and Students



BY RICHARD D. KAHLBERG

**T**eacher tenure rights, first established more than a century ago, are under unprecedented attack. Tenure—which was enacted to protect students’ education and those who provide it—is under assault from coast to coast, in state legislatures, in state courtrooms, and in the media.

In June 2014, in the case of *Vergara v. California*, a state court judge struck down teacher tenure and seniority laws as a violation of the state’s constitution.\* Former CNN and NBC journalist Campbell Brown has championed a copycat case, *Wright v. New York*, challenging the Empire State’s tenure law (which was consolidated with another New York case challenging tenure, *Daivids v. New York*). Similar cases are reportedly in the works in several other states.<sup>1</sup>

Meanwhile, with incentives from the federal Race to the Top

program, 18 states have recently weakened tenure laws, and Florida and North Carolina sought to eliminate tenure entirely.<sup>2</sup> According to the Education Commission of the States, in order to give greater weight to so-called performance metrics, 10 states prohibited using tenure or seniority as a primary factor in layoff decisions in 2014, up from five in 2012.<sup>3</sup>

Leading media outlets have joined in the drumbeat against tenure. A 2010 *Newsweek* cover story suggested that “the key to saving American education” is: “We must fire bad teachers.”<sup>4</sup> In 2014, the cover of *Time* magazine showed a judge’s mallet crushing an apple. The headline, referencing the *Vergara* case, read, “Rotten Apples: It’s Nearly Impossible to Fire a Bad Teacher; Some Tech Millionaires May Have Found a Way to Change That.”<sup>5</sup>

Amidst this sea of negative publicity for educators, journalist Dana Goldstein wrote that “the ineffective tenured teacher has emerged as a feared character,” like “crack babies or welfare queens” from earlier eras.<sup>6</sup> Labor attorney Thomas Geoghegan quipped that the “bad teacher” meme is so strong that one can imagine a young Marlon Brando, altering his famous line from *On the Waterfront* to say: “I ... I could have been a contender—but I got that old Miss Grundy in the fourth grade!”<sup>7</sup>

Of course, conservatives have long attacked policies such as

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\*California is appealing the decision.

tenure that constrain the ability of managers to fire whomever they want, but the latest assaults on tenure have invoked liberal egalitarian ideals. In the *Vergara* case, Judge Rolf Treu, a Republican appointee, claimed that the case, funded by a Silicon Valley millionaire, was about championing the rights of poor and minority students. Treu made a big show of comparing his decision weakening teacher tenure rights to the landmark cases of *Brown v. Board of Education* (which promoted school desegregation) and *Serrano v. Priest* (which required equity in education spending).<sup>8</sup> Treu used a serious and pressing problem—that low-income students often have the weakest and least experienced teachers—not as an argument for addressing segregation or inadequate financial resources but instead as the rationale for weakening tenure rights.



Curiously, Secretary of Education Arne Duncan endorsed the decision, as did leading liberal lawyers like Laurence Tribe and David Boies. Broad Foundation President Bruce Reed, a former staffer to Vice President Joe Biden, suggested that the ruling was “another big victory” for students of color, in the tradition of *Brown*.<sup>9</sup> (Other liberals had a more sober response. Erwin Chemerinsky, a constitutional law scholar and dean of the University of California, Irvine, School of Law, for example, has criticized Treu’s reasoning, arguing that attacking tenure will do little to improve school quality.<sup>10</sup>)

All the attention to tenure—especially from progressives—raises an important question: What is it exactly? The legal definition is simple: tenure provides those teachers who have demonstrated competence after a probationary period with due process rights before being fired. It is not, as critics contend, a guaranteed job for life. As I explain in this article, historically, tenure laws developed to protect teachers from favoritism and nepotism and to ensure that students received an education subject to neither political whims nor arbitrary administrative decisions. Tenure protections are still necessary today, especially given the current fixation on high-stakes testing and the linking of students’ test scores to teacher evaluations. I believe that rather than doing away with tenure, dismissal procedures could be mended to strike the right balance between providing fairness to good teachers and facilitating the removal of incompetent ones. I also believe there are innovative ways to connect low-income students with great teachers. Yet, it continues to

amaze me that with all the problems in education, we are so fixated on the issue of teacher tenure. What is really going on?

## What Is Tenure?

American public school teachers are typically awarded tenure after a probationary period of about three years.<sup>11</sup> Once a teacher has earned tenure, also known as due process, he or she has a right to know why a discharge is being sought by the employer and a right to have the issue decided by an impartial body. In the words of the University of Pennsylvania’s Richard Ingersoll, “Typically, tenure guarantees that teachers must be given reason, documentation, and a hearing prior to being fired.”<sup>12</sup> The practice recognizes that in a mass profession like public school teaching, there will be some poor performers among the ranks of tenured teach-

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ers. Tenure does not prevent their termination, but it does require that employers show “just cause” (a reasonable ground for action) for termination.

Critics claim that due process has, in practice, turned into “uber due process,” as Judge Treu suggested.<sup>13</sup> In *Wright v. New York*, plaintiffs’ attorney Jay Lefkowitz cited a study from 2004–2008, which claimed that legal proceedings to remove tenure from teachers for pedagogical incompetence dragged on for an average of 830 days, at an average cost of \$313,000.<sup>14</sup> The length and cost of proceedings means very few principals will pursue termination cases, the argument runs. Hoover Institution critic Terry Moe claims that having tenure means teachers who “don’t murder someone or molest a child or stop showing up for work” are “assured of being able to continue in their job for as long as they want. ... America’s private sector workers can only dream of such a thing: a guaranteed, totally secure job.”<sup>15</sup>

In places like Chicago, the idea that tenure provides a “totally secure job”<sup>†</sup> would presumably surprise tenured teachers who were fired under the federally funded “turnaround schools” program, in which at least 50 percent of teachers, including those with tenure, were replaced.<sup>16</sup> Overall, Goldstein reports that in 2007, 2.1 percent of American public school teachers, including tenured teachers, were fired for cause.<sup>17</sup> She notes there are no comparable data for the pri-

<sup>†</sup>In other cities, such as New York City, tenured teachers can be transferred to other schools or placed into a reserve pool, but they don’t lose employment.

vate sector,<sup>18</sup> but in 2012, private sector companies lost less than 2 percent of their workforce through firings and layoffs combined.<sup>19</sup>

Some of the misunderstanding about the meaning of teacher tenure in the K–12 setting may stem from the fact that the term “tenure” is also applied to university professors. But as David Cohen, a veteran teacher, noted in the *Washington Post*, tenure for K–12 educators is “not tenure, in the sense that university professors have tenure,” which is typically won after seven or eight years and comes with stronger protections.<sup>20</sup>

While it is certainly true that some K–12 termination proceedings drag on too long at too great an expense, in many places, significant reforms have been enacted in recent years. Although Lefkowitz cited an average of 830 days for proceedings in the New York tenure case,

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a more recent analysis using New York State Education Department data found that in 2013, disciplinary cases took, on average, 177 days statewide.<sup>21</sup> In New York City, United Federation of Teachers data show that the median length of proceedings is 105 days.<sup>22</sup> For cases of alleged misconduct and wrongdoing (as opposed to incompetence), the AFT in 2011 adopted expert Kenneth Feinberg’s recommendations for an expedited 100-day process.<sup>23</sup> In 2012, Connecticut adopted an 85-day policy for terminations, unless there is agreement from both sides to extend the process.<sup>24</sup>

### Why Was Tenure Developed?

Teacher tenure began in New Jersey in 1909.<sup>25</sup> Why was it first adopted? From the critics of tenure, one might imagine teacher tenure being dreamed up by union “hacks” figuring out a way to protect incompetent members. But in fact, tenure rights came out of the progressive good-government movement as a way to improve the quality of teaching and education for children. New Jersey’s law drew on the well-regarded Prussian education system and was backed by Harvard President Charles William Eliot in New York City, Dana Goldstein writes, “as a clean government reform after decades of politically influenced teacher appointments, in which schools were part of the patronage machine.”<sup>26</sup> Education historian Diane Ravitch notes that before tenure was adopted in New York City, ward officers could dismiss an entire staff of qualified teachers and replace them with their own choices.<sup>27</sup> With tenure, as former AFT President Albert Shanker noted, “An elected politician can’t say, ‘I’m going to fire you because you didn’t support me in the last election.’”<sup>28</sup>

But patronage hiring (and firing) was not the only abuse tenure sought to prevent. Tenure rights also were designed to shield teachers from improper political influence over their activities both outside and inside the classroom. Some politicians, for example, punished teachers for membership in a union. In 1917, after the Chicago Board of Education president, Jacob Loeb, fired teachers for union activism, good-government reformers allied with unionists to pass tenure protections for teachers.<sup>29</sup>

During World War I, a teacher who failed to buy enough Liberty Bonds in support of the war was placed under scrutiny in certain districts, Swarthmore College historian Marjorie Murphy writes. “If she failed to express enthusiasm for the war, or intimated that war was anything but glorious, she stood a good chance of dismissal.”<sup>30</sup>



Jewish socialist teachers in New York City who opposed the war were fired under the broad rubric of “conduct unbecoming a teacher.”<sup>31</sup> Quaker teachers were also fired because of their pacifist objections to the war.<sup>32</sup> Later, during the civil rights movement, half of southern states voted to revoke teacher licenses for membership in organizations like the NAACP that supported school integration.<sup>33</sup>

Tenure was also designed to protect academic freedom inside the classroom. The Scopes trial in the 1920s, for example, highlighted the need to protect the ability of teachers to educate students about evolution in the face of opposition from religious fundamentalists.

In addition, tenure provided a bulwark against sex and race discrimination. During the Great Depression, when jobs were scarce, women teachers were often fired once they were married. According to Murphy, one-third of large cities in 1930 actually had laws prohibiting marriage for female teachers.<sup>34</sup> In states with tenure, female teachers were protected.

Tenure also provided a way to shield black teachers from racist principals. Indeed, Dana Goldstein notes that in 1955, in reaction to *Brown v. Board of Education*, several southern states—Alabama, Florida, Kentucky, North Carolina, South Carolina, Tennessee, and Virginia—repealed tenure laws in order to allow white officials to easily fire black teachers in newly integrated schools.<sup>35</sup>

### Why Tenure Is Still Necessary Today

Some critics of tenure argue that while such policies were once necessary, the passage of civil service laws to protect against patron-

age hiring, civil rights laws that prohibit discrimination based on race and sex, and labor laws to protect union organizing, adequately address the abuses against which tenure was meant to shield teachers. But tenure laws supplement civil service, civil rights, and labor laws in two important respects.

First, tenure significantly strengthens legal protections embodied in civil service, civil rights, and labor laws by shifting to the employer the burden to prove the termination is justified. Moshe Marvit, a labor and civil rights attorney as well as a Century Foundation fellow, notes, “Civil rights laws may protect teachers from being fired because of race or sex, but under a civil rights frame it is still incumbent upon the teacher to prove that the employer acted the way it did because of race or sex. Under a tenure model, the employer must prove it has cause to fire the teacher. Flipping that burden is huge, both in terms of expenditure of resources and possibilities of success.”<sup>36</sup>

Second, tenure protects a range of discriminatory firings not covered under race and gender antidiscrimination laws. As Leo Casey, executive director of the Albert Shanker Institute, notes, tenure, by requiring a just cause for termination, guards against an employer’s discrimination based on a teacher’s “political views, her friends, or the fact that she is an experienced teacher, earning a higher salary, in times of austerity and budget cuts.”<sup>37</sup>

Most Americans think this type of discrimination is already illegal. Pauline Kim, of Washington University School of Law, conducted polls of workers in California, Missouri, and New York and found that approximately 90 percent of employees thought it was unlawful to fire someone based on personal dislike, and more than 80 percent thought it was illegal to fire an employee and replace him or her with someone willing to work for less.<sup>38</sup>

In fact, with the exception of certain categories of discrimination—such as race, gender, and national origin—employers are generally free to fire nontenured employees for any reason. As Cynthia Estlund, of New York University School of Law, writes, “Absent a contractual provision for job security or a prohibited discriminatory or retaliatory motive, it remains true in every American jurisdiction, except Montana, that employees are subject to discharge without justification.”<sup>39</sup>

While most American workers are “at will” employees by custom, there is a strong case to be made that they should have due process rights of the type that Montana citizens, and most union members, have. As Casey writes in *Education Week*, due process is “the foundation of all other rights, because, without it, individuals can be penalized for exercising such rights as freedom of expression, assembly, press, and association.”<sup>40</sup> If you can be fired for exercising your free speech rights, most people will stay quiet. And it’s fundamentally unfair when experienced employees are laid off to make room for new, cheaper ones.

But the argument for tenure—and the requirement of “just cause” firing—is especially compelling in the case of educators. Teachers feel enormous pressure from parents, principals, and school board members to take actions that may not be in the best interests of students. Teacher and blogger Peter Greene notes that because teachers “answer to a hundred different bosses,” they “need their own special set of protections.”<sup>41</sup> Because all adults, from parents to school board members, have themselves attended school, they feel qualified to weigh in on how educators should teach, while they would never tell a surgeon or an auto mechanic what to

do. Richard Casagrande, a lawyer for the New York State United Teachers, made a profound point when he said during recent litigation that tenure laws are “not a gift to teachers. These laws empower teachers to teach well.”<sup>42</sup>

To begin with, teachers need tenure to stand up to outsiders who would instruct them on how to teach politically sensitive topics. A science teacher in a fundamentalist community who wants to teach evolution, not pseudoscientific creationism or intelligent design, needs tenure protection. So does a sex-ed teacher who doesn’t want to be fired for giving students practical information about how to

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avoid getting HIV. So does an English teacher who wants to assign a controversial and thought-provoking novel.<sup>43</sup>

These concerns are hardly theoretical. In 2005, the Kansas Board of Education adopted science standards that challenged mainstream evolutionary theory and was cheered by proponents of intelligent design.<sup>44</sup> (The standard was later repealed.<sup>45</sup>) In 2010, conservatives on the Texas Board of Education proposed renaming the slave trade the “Atlantic triangular trade,” an effort that was later dropped.<sup>46</sup> And in 2012, the Utah legislature passed (and the governor vetoed) a bill to ban instruction on homosexuality and contraception.<sup>47</sup>

The importance of academic freedom for K–12 teachers is sometimes underestimated. In 2012, the editors of the *New Republic* said they supported tenure for college faculty because universities are “our country’s idea factories.” They continued, “But this rationale doesn’t apply at the K–12 level.” Really? While university professors “explore ideas,” so do teachers. Every day, they seek to spark ideas, sometimes controversial ones, in the tender minds of young students, and they need protection from school board members who may overreach. Indeed, shouldn’t we prize elementary and secondary teachers who encourage students to think for themselves or come up with solutions not found in any textbook?

Tenure also protects teachers from well-connected parents who may push their own children’s interests to the detriment of others. Tenure protects teachers with high standards from the wrath of parents angry that their children received poor grades or were disciplined for misbehavior. Without tenure, will a teacher give a failing grade to the son of an influential parent who might shorten that teacher’s career?<sup>48</sup> Without tenure, will the teacher be able to resist the powerful parent who wants his or her mediocre daughter to get the lead part in the play?<sup>49</sup> Without tenure, what happens when uninformed but powerful parents demand that a highly trained

special education teacher exclude students with special needs from the classroom?

Tenure also allows teachers to stand up and openly disagree with a boss pushing a faddish but unproven educational practice, without the fear of being fired. In Holyoke, Massachusetts, for example, administrators asked teachers to post student test scores on the walls of classrooms. When an untenured English teacher (who was also a union official) objected publicly in 2014 that this was an unsound tactic and was humiliating to students, he was fired, despite having previously received excellent ratings.<sup>50</sup> Tenure would have ensured a fair process.

More generally, tenure empowers teachers to become more involved in school decisions. Research finds that when teachers have a say in how schools are run, they are more likely to be invested in the school and to stay longer, and are more engaged with colleagues in cooperative work.<sup>51</sup> Having this sort of strong culture, furthermore, is linked to increased academic achievement for students.<sup>52</sup> By contrast, schools that lack teacher voice have higher turnover, which is wasteful and disruptive to student learning.<sup>53</sup> As Leo Casey notes, due process allows a teacher “to speak up for her students, to advocate for a different educational approach or a different school policy, to report administrative wrongdoing, to criticize the actions of the district or school leadership, and to be involved with her union.”<sup>54</sup> An attack on tenure is really an attack on any semblance of workplace democracy.

Eliminating tenure reduces teacher voice in a very direct way. Peter Greene argues in the *Huffington Post*: “It’s not the firing. It’s the threat of firing” that shifts the power balance between teachers and administrators. “The threat of firing allows other people to control every day of that teacher’s career. ... It takes all the powerful people a teacher must deal with and arms each one with a nuclear device.” Greene concludes, “The biggest problem with the destruction of tenure is not that a handful of teachers will lose their jobs, but that entire buildings full of teachers will lose the freedom to do their jobs well.”<sup>55</sup>

Teacher tenure is an important feature of American public education for yet another reason: it is a significant carrot for attracting qualified candidates to the teaching profession. Teacher recruitment and retention is difficult, in part because of relatively low pay for college-educated professionals (\$57,000 a year was the mean salary in 2012<sup>56</sup>). In the 1940s, female teachers earned more than 70 percent of all female college-educated workers, while male teachers earned slightly more than the typical male graduate. Today, teacher pay is in the 30th percentile for male college graduates and the 40th percentile for female college graduates.<sup>57</sup> Overall, American teachers make 68 percent of what other college-educated Americans make, on average, whereas in Organization for Economic Cooperation and Development countries, the average is 88 percent.<sup>58</sup> South Korean teachers have 250 percent of the local buying power of American teachers.<sup>59</sup>

Part of what offsets low American salaries—and allows American schools to continue to attract talent—is tenure. The polling of teachers by the Hoover Institution’s Terry Moe suggests that “tenure is a highly valuable form of compensation.” In a 2003 survey, Moe found that a majority of teachers would need to be paid 50 percent more to give up tenure. Writing in 2011, Moe concluded that with average teacher salaries above \$50,000, “most teachers see the security of tenure as being worth *tens of thousands of dollars a*

*year*.”<sup>60</sup> Polling by Public Agenda and Education Sector came to similar conclusions.<sup>61</sup> This is not to suggest that the existence of tenure excuses low teacher pay; other countries provide higher pay and tenure to attract the very best talent. But the basic law of supply and demand suggests that if you take away tenure, school districts would be faced with one of two choices: accept a diminished pool of applicants, or significantly increase salaries in order to keep quality at its current levels.

Because the latter option is not in the cards, Ken Futernick, of California State University, Sacramento, notes that “administrators’ power to fire teachers without real due process will only exacerbate the teacher recruitment problem.”<sup>62</sup> University of California, Berkeley, economist Jesse Rothstein’s research found that “firing bad teachers actually makes it harder to recruit new ones” because new teachers don’t know whether, once on the job, they will turn out to be strong or weak educators.<sup>63</sup>

Abolishing tenure would make it especially hard to recruit in schools with lots of low-income students—the purported beneficiaries of the *Vergara* litigation. Under current accountability standards, teaching in a high-poverty school is risky because low-income students face extra obstacles and so, on average, perform less well academically than middle-class students. Strong tenure laws allow dedicated, high-quality teachers to know they are unlikely to be fired. But as Alyssa Hadley Dunn writes in the *Washington Post*, “Without due process rights, it is even less likely that qualified teachers will want to work in high-needs schools with difficult conditions, because it would also mean that students’ lower test scores could jeopardize their employment with no available recourse.”<sup>64</sup>

For all these reasons, it is not surprising that states with strong tenure laws (and strong unions to back up these laws) tend to perform better than those with weak laws. As former teacher Brian Jones wrote in the *New York Times*, “If teacher tenure is an important obstacle to achievement, Mississippi (with no teacher tenure) should have stellar schools and Massachusetts (with teacher tenure) should have failing ones. Instead, it’s the other way around.”<sup>65</sup> Likewise, some of the leading education systems in the world—Germany, Japan, and South Korea, for example—have long had tenure protections even stronger than those in the United States.<sup>66</sup>

## Can Tenure Laws Be Improved?

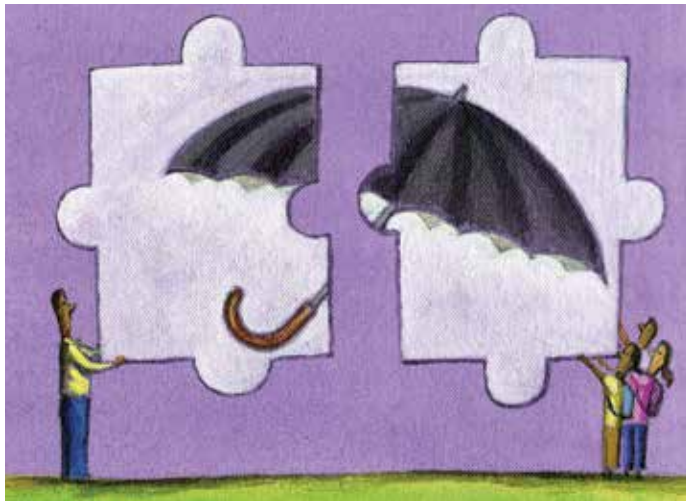
If tenure laws are fundamentally sound, that does not mean the statutes in all 50 states are perfect. Reasonable reforms are underway, but they are needed in more places in two areas: the process by which tenure is earned, and the procedure by which ineffective tenured teachers are removed.

To begin with, getting tenure should mean something, so teachers need a sufficiently long period to demonstrate skills and not everyone who tries should succeed. Most states employ a three-year probationary period, and in *Vergara*, Judge Treu was correct to note that California’s period of less than two years is an outlier\* and not optimal.<sup>67</sup> Indeed, such a short time frame is unfair to teachers, as a decision must be made before they are able to fully demonstrate their mastery of the craft.

\*As noted by Judge Treu in the *Vergara v. California* decision, California’s tenure statute requires that teachers be notified of a decision on their tenure in March of their second year on the job. The period, therefore, is in practice closer to 18 months than two years.

With respect to the rigor of tenure, there should not be a set percentage of teachers who fail, but neither should success be automatic. In 2007, 97 percent of New York City public school teachers who applied got tenure.<sup>68</sup> That's a high figure, even when one acknowledges that large numbers of teachers leave the profession before they apply for tenure, often because they realize they are not cut out for teaching or because principals counsel them out of the profession. However, over time, a set of reforms was instituted in New York City making tenure more rigorous. By the 2013–2014 school year, 60 percent of New York City teachers who were eligible for tenure received it, 38 percent were deferred, and 2 percent were denied.<sup>69</sup> It remains unclear how many of the deferred cases will eventually receive tenure—and they should not be left in limbo for too long—but clearly, achieving on-time tenure means something

So what is to be done? Many of those who believe that eliminating tenure is out of the question, and that defending teacher incompetence is equally intolerable, have converged around a third way: tenure combined with peer assistance and review. First used in Toledo, Ohio, peer assistance and review involves master teachers evaluating new and veteran educators, providing assistance, and in some cases recommending termination of employment.<sup>†</sup> Under the plan, the brainchild of Dal Lawrence, former president of the Toledo Federation of Teachers, Toledo set up a nine-member advisory board (consisting of five teachers and four administrators) to make decisions on assisting and, if necessary, terminating the employment of new and veteran teachers. Six votes are required for action.<sup>77</sup> Evaluators teach the same subject as teachers being evaluated but come from different schools.<sup>78</sup>



Many have converged around another way: tenure combined with peer assistance and review.

more for those who win it in New York City than it did in the past.

How could the procedures for removing inadequate tenured teachers be improved? With nearly 3.4 million public school teachers in the United States, there are five times as many people in the profession as there are in medicine or law.<sup>70</sup> Given those large numbers, it is inevitable that some subpar teachers will slip through the tenure process.

Teachers realize this. In a 2008 poll, almost half of teachers said they personally knew a colleague who should not be in the classroom.<sup>71</sup> In a 2014 survey, teachers said 8 percent of colleagues deserved a letter grade of D, and 5 percent an F.<sup>72</sup>

Union heads also acknowledge the situation. These leaders serve not only the relatively small number of incompetent teachers in the system but the far greater number of strong teachers who want underperforming colleagues out of the profession. As Shanker noted years ago, “Teachers have to live with the results of other people’s bad teaching—the students who don’t know anything.”<sup>73</sup> As far back as 2004, AFT President Randi Weingarten, president of the United Federation of Teachers at the time, declared, “This is a union that is not about just keeping people. We are about keeping qualified people.”<sup>74</sup>

In a 2008 poll, 66 percent of teachers said they would favor their local union playing a role in guiding ineffective teachers out of the profession.<sup>75</sup> At the same time, teachers suggest in polls that they don’t want to go to the other extreme, and they oppose eliminating tenure by a margin of 77-23 percent.<sup>76</sup>

At first, peer review was hugely controversial. When Shanker endorsed the concept in 1984, he estimated that only 10–20 percent of teachers supported the idea. But, he said, it was time to acknowledge “that some teachers are excellent, some are very good, some are good, and some are terrible.”<sup>79</sup> The charge that labor defends incompetent teachers was the Achilles’ heel of the teacher union movement, and labor needed a credible answer.

Peer review weeds out bad teachers in a way that enhances, rather than diminishes, the status of the teaching profession. Peer review and assistance is common among professors, doctors, and lawyers, who police themselves, as Shanker argued, and it strengthens the case for teacher involvement in other areas, like textbook selection and curriculum development.

While some critics liken union involvement in terminating teachers to the fox guarding the hen house, in practice, teachers have been even tougher on colleagues than administrators have been in several jurisdictions. In Cincinnati, which was the second city in the country to adopt peer review, 10.5 percent of new teachers were found less than satisfactory by teacher reviewers, compared with 4 percent by administrators, and 5 percent were recommended for dismissal by teachers, compared with 1.6 percent of those evaluated by principals. The same has been true in other places.<sup>80</sup> In Montgomery County, Maryland, for example, the *Wash-*

<sup>†</sup>For more on peer assistance and review, see the Fall 2008 issue of *American Educator*, available at [www.aft.org/ae/fall2008](http://www.aft.org/ae/fall2008).

*ington Post* reported in March 2012 that a peer assistance and review program had “led to the dismissal of 245 teachers and the resignation of 300” since 2001. In the decade prior to that, when peer review was not in place, only “a handful were terminated for poor performance.”<sup>81</sup>

Unfortunately, peer review has not spread as widely as it should have.<sup>82</sup> In some districts, teachers have expressed concerns about being evaluated by colleagues, and in other districts, management has not wished to share power over personnel decisions with teachers. The up-front costs of hiring new teachers to cover classes while expert consulting teachers provide peer assistance and conduct reviews can also be substantial. Fortunately, districts often recoup costs by increasing teacher retention and reducing costs of dismissal.<sup>83</sup> Especially as attacks on tenure increase, local unions could incorporate this innovative answer to the spurious charge that unions are chiefly in the business of protecting incompetent members.

## Progressives need to redouble efforts to address rising school segregation by race and, especially, by economic class.

### What Can Be Done to Connect Poor Kids and Great Teachers?

Better teacher improvement policies like peer assistance and review won't by themselves solve the genuine problem identified in *Vergara*: that low-income students, on average, get weaker teachers than more-advantaged students. Progressives need to redouble efforts to address the root problem at the heart of why poor kids often have less-qualified teachers: rising school segregation by race and, especially, by economic class.

There have always been heroic, excellent teachers in high-poverty schools. But for many teachers, the working conditions in such schools are intolerable, and the burnout rate is high. University of Pennsylvania's Ingersoll finds that 45 percent of teacher turnover takes place in 25 percent of schools—disproportionately high-poverty schools.<sup>84</sup> New data from the U.S. Department of Education affirm the powerful link between concentrated poverty and lower teacher quality. In New York state, for example, students in high-poverty schools were 22 times more likely than those in wealthier schools to have an unlicensed teacher.<sup>85</sup> The Education Trust finds that poor kids are twice as likely “to serve as training fodder for inexperienced teachers.”<sup>86</sup>

Why do high-poverty schools have a hard time attracting and retaining strong teachers? Because they often provide difficult working conditions. When you pack poor kids into environments

separate from more-affluent students, the schools generally face greater challenges, such as discipline problems, a lack of parental involvement,<sup>87</sup> and inadequate healthcare and nutrition for students, which can hinder the students' performance on academic tests. In such an environment, teachers can feel overwhelmed.

Also, the use of value-added measures, under which schools with low test scores can be closed, and the obsession with testing in general, add to the pressure on teachers because low-income students tend to perform less well than their more-affluent peers on standardized tests used to calculate such measures. As a result, teachers become frustrated with unfair evaluations of their students and themselves and so tend to leave high-poverty schools at higher rates.

In recent years, for example, when Charlotte, North Carolina, schools terminated a racial integration program, researchers found that teacher quality suffered as once-integrated schools morphed into high-poverty, mostly minority schools. As Dana



Goldstein writes, Northwestern University's C. Kirabo Jackson found that “schools that became predominantly black suffered a loss of high-quality teachers as measured by growth in students' test scores, teachers' years of experience, and scores on teacher certification tests.” Goldstein notes that “many effective nonwhite teachers” left too because they “seem to prefer working in integrated or middle-class settings.”<sup>88</sup>

So how can policymakers connect poor kids and great teachers? One possibility is to pay great teachers a salary premium to teach in high-poverty schools. To be effective, the bonus would have to be quite large, experience and research suggest. Ten years ago, scholars Eric Hanushek, John Kain, and Steven Rivkin estimated that in order to get nonminority female teachers to stay in urban schools, school officials would have to offer a salary premium of 25–43 percent for teachers with zero to five years of experience.<sup>89</sup> Likewise, a 2013 study of the federal Talent Transfer Initiative, which offered a \$20,000 bonus to effective elementary school teachers who agreed to move to low-achieving schools within the same district and stay two years, found that few teachers were interested. The study of 10 school districts in seven states found that effective teachers had a positive impact when they transferred to low-performing schools, but 78 percent didn't even fill out an application, despite the fact that the financial reward offered was far more sizeable than the typical merit aid award of

a few thousand dollars or less. “It’s a hard sell, even with \$20,000 on the table,” Steven Glazerman, of Mathematica Policy Research, which conducted the study, told *Education Week*.<sup>90</sup>

The more direct way to connect low-income students and strong teachers is by creating mixed-income schools. Rather than a district automatically assigning children to schools that mirror neighborhood segregation, students should be given an opportunity to choose among a menu of school options, and districts should honor choices with an eye to promoting economic integration. More than 80 districts, educating 4 million students, employ such socioeconomic integration policies. In places like Raleigh, North Carolina, for example, policies promote socioeconomic school integration largely through magnet school programs that attract middle-class students to attend schools with urban students. As a result, high-quality National Board Certified Teachers are spread throughout the district.\*

Other effective ways to make high-poverty schools more attractive places to teach include creating community schools that provide wraparound services to students and families, implementing better mentoring programs for novice teachers, and establishing universal high-quality preschool programs.<sup>†</sup>

Rather than gutting hard-won protections for teachers, the next legal case funded by Silicon Valley millionaires should go after economic segregation itself. Instead of invoking *Brown* in a broad metaphorical sense, why not bring a state-level suit against actual segregation by class and race? If it is a violation of the California Constitution to have tenure laws that make it hard to fire bad teachers in poor and minority communities, why isn’t it a violation when the state and districts draw school boundary lines in a way that promotes deeply unequal, economically segregated schools that many strong educators won’t teach in?

In 1996, Connecticut plaintiffs prevailed in a lawsuit, *Sheff v. O’Neill*, that challenged de facto economic and racial school segregation. As a result, thousands of poor kids have been given access to integrated magnet schools in the city of Hartford and to integrated suburban schools. Careful research comparing students who applied for a lottery to attend the integrated magnet schools found that those admitted later performed better in math and reading than those who lost the lottery and attended other urban schools.<sup>91</sup> California needs a similar lawsuit. Such a case would underline a profound truth: The big problem in education is not that unions have won too many benefits and supports for teachers. It’s the disappearance of the American common school, which once educated rich and poor side by side.

## What’s Really Behind the Attacks on Tenure?

Cases like *Vergara* and *Davids* are problematic in part because they elevate a peripheral issue—tenure—which detracts from the really necessary debates over poverty and segregation. Worse, at a time when we need to recruit and retain the very best teachers, the inordinate focus on bad teachers further demoralizes the education profession. Between 2008 and 2012, a MetLife survey

found that teacher job satisfaction “plummeted from 62 to 39 percent, the lowest level in a quarter century,” Dana Goldstein notes.<sup>92</sup> Some pundits think eliminating tenure will elevate the profession, but by a 3-1 ratio, teachers disagree that they would have greater prestige if collective bargaining and lifetime tenure were eliminated.<sup>93</sup>

So what is really going on? Who benefits from the grossly disproportionate focus on a small number of bad teachers? Going after teacher tenure serves an important function for ideological conservatives. It provides a highly effective way to bludgeon one of the few remaining elements within the largely decimated progressive trade union movement in the United States: teachers unions. With private sector unionism greatly diminished, union critic Richard Berman targeted AFT President Weingarten, going directly to the tenure issue, falsely claiming that she is on a crusade to “protect the jobs of incompetent teachers.”<sup>94</sup>

That the attack on tenure has gained traction in courts, state legislatures, and major media outlets is enormously problematic. Teachers unions are not perfect, but they are one of the few voices speaking on behalf of disadvantaged kids. As journalist Jonathan Chait has noted, politicians have a short-term horizon so tend to underinvest in education. Teachers unions “provide a natural bulwark” against such tendencies, he writes.<sup>95</sup> In places like La Crosse, Wisconsin; Louisville, Kentucky; and Raleigh, North Carolina, teachers unions have fought for school integration—because it makes teaching more manageable and because it is better for students. And, of course, teachers unions are part of the larger trade union movement fighting for collective bargaining for workers and a higher minimum wage, which together probably constitute the nation’s most important educational improvement programs, given the well-documented link between the stresses induced by poverty and lower academic achievement.<sup>96</sup>

Taking on poverty and segregation—long recognized as the largest drivers of educational inequality<sup>97</sup>—is hard work and can be expensive, so conservatives have focused attention elsewhere. For years, the right wing has been using the sad reality that poor and minority kids are stuck in lousy, segregated schools as an argument for private school vouchers to dismantle public education. Now, in *Vergara* and *Davids*, inequality in access to good teachers is leveraged to promote an anti-union agenda. That this is done in the name of poor kids and civil rights turns the world upside down. □

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