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Us Got The Bestest Teachers in The Everywhere: North Carolina Public School Teacher Employment Problems, Interests, and Potential Solutions

J. TYLER WALTHALL¹

INTRODUCTION

There are two kinds of teachers: the kind that fill you with so much quail shot that you can't move, and the kind that just gives you a little prod behind and you jump to the skies.

~Robert Frost²

Ms. Walker is an indisputably horrible educator. She “teaches” seventh grade English, lectures by reading from a pre-printed manual, has trouble understanding the subject matter, never goes beyond the call of duty, ignores e-mails from parents, and has six miserable, passionless years of teaching experience. She graduated from a local university with a degree in literature and has never been reprimanded by her superiors. Parents often complain about her, but such remonstrations fall on deaf—or powerless—ears. She has been ceremoniously “observed” a few times by a number of overworked principals, and while they do not love her pedagogy, they fail to pinpoint anything that Ms. Walker is actually doing wrong. Thus, after a few mediocre, but passable, reviews and evaluations, Ms. Walker is, on paper, a model employee; she is always sure to turn her work and grades in on time, she never leaves early, and she shows up for hall duty whenever she is scheduled. She is rude, resentful, unintelligent, discouraging, and a detriment to her students. Ms. Walker is also a tenured teacher in North Carolina. The school board for her district would like to terminate her, but without any valid,

1. B.A., J.D. The author, an attorney and former teacher, would like to thank Dr. Ken Coley and Wake County public school teacher Rita Coby for showing him what every educator should be; Professor Melissa Essary; and the *Campbell Law Review* staff whose guidance, feedback, and edits made this Article readable. All errors and boring portions are solely the fault of the author.

2. THE GIGANTIC BOOK OF TEACHERS' WISDOM 20 (Erin Gruwell ed. 2007).

tangible, enumerated reasons, it is paralyzed by fear of a subsequent lawsuit. Thus, it does nothing, much to the chagrin and detriment of her students and their parents.

A myriad of legal issues and competing interests surround teacher employment, tenure, retention, and termination in North Carolina. Perhaps most obvious in the aforementioned hypothetical is the conflict between teacher job security and educational accountability. Many contend that teachers should have some form of job stability and/or recourse when unjustly terminated.³ Others argue that teachers should be held accountable for their actions, attitudes, and abilities; that is, that teachers like Ms. Walker should be politely shown the door, as they undoubtedly would be in the private sector.⁴ Who is right? Is there a system that provides for both interests? Does the North Carolina statutory system for hiring, maintaining, and terminating public school educators account for both of these occasionally competing, and all too often politically polarizing, interests?

This Article will examine the past, current, and future employment issues involving North Carolina public school teachers, celebrate the progress that has been made in the last fifty years, compare our system to those of other states, discuss the competing interests involved, and make suggestions for improvement. To accomplish these goals, this Article will first examine both the historical and current state of the teacher employment statutes controlling in North Carolina, with a critical eye toward the statutes' positive and negative attributes. Second, this Article will scrutinize the applicable case law, paying particular attention to the procedural hoops through which administrators must jump to terminate a public school teacher in North Carolina. Third, this Article will examine the statutes' effects on the quality of North Carolina public school teachers, as seen through the prism of recent research. Fourth, this Article will examine the North Carolina system of public school teacher employment through the lens of recent scholarship in comparison with employment systems utilized in other states. Finally, this Article will conclude with an examination of a bill recently passed by the North Carolina General Assembly that changes the system by

3. See, e.g., *Editorial—Policy on tenure not meant to protect bad teachers from being fired*, STAR NEWS ONLINE (Oct. 26, 2013, 11:50 PM), <http://www.starnewsonline.com/article/20131026/ARTICLES/131029703/1108/editorial?Title=Editorial-Policy-on-tenure-not-meant-to-protect-bad-teachers-from-being-fired#gsc.tab=0>.

4. See, e.g., Terry Stoops, *Ending teacher tenure: A chance to raise standards in NC*, newsobserver.com (Apr. 22, 2013), <http://www.newsobserver.com/2013/04/22/2843046/ending-teacher-tenure-a-chance.html>.

which North Carolina public school teachers are employed and terminated.

I. THE FORMER STATUTE GOVERNING THE EMPLOYMENT, TENURE, AND TERMINATION OF NORTH CAROLINA PUBLIC SCHOOL TEACHERS

A. *Brief History of the Statute*

The first North Carolina statute concerning public school teacher employment was enacted in 1955 in House Bill 869.⁵ This bill established a very elementary form of employment contracts, providing that: (1) all teachers should have to apply to be employed by the State;⁶ (2) all teachers should be employed by contract;⁷ and (3) when teachers are terminated, their contracts should be “likewise terminated.”⁸

A second version of the law followed with the enactment of Senate Bill 3 in 1967.⁹ This version established that public school teacher employment contracts should be year-to-year, and if they are not going to be renewed from one year to the next, the teacher must be so notified.¹⁰

Finally, in 1971 the General Assembly passed a new version entitled, “An Act to Establish an Orderly System of Employment and

5. Act of Apr. 21, 1955, ch. 664, 1955 N.C. Sess. Laws 594.

6. *Id.* § 2, at 594 (“Any teacher or principal desiring election as teacher or principal in a particular administrative unit shall file his or her application in writing with the county or city superintendent of such unit.”).

7. *Id.* § 2, at 595 (“It shall be the duty of all county and city boards of education to cause written contracts on forms to be furnished by the State Superintendent of Public Instruction to be executed by all teachers and principals before any salary vouchers shall be paid.”).

8. *Id.* § 2, at 595 (“All contracts shall be subject to the condition that when the position for which any principal or teacher is employed is terminated the contract is likewise terminated.”).

9. Act of Apr. 24, 1967, ch. 223, 1967 N.C. Sess. Laws 272.

10. *Id.* sec. 1, § 115-142(b), at 272. The Senate Bill specified the notice requirement as follows:

All contracts . . . between a county or city board of education and a teacher, [or] principal . . . shall continue from year to year unless terminated When it shall have been determined by a county or city board of education that an employee is not to be retained for the next succeeding school year it shall be the duty of the county or city superintendent to notify the employee . . . of the termination of his contract.

Id.

Dismissal of Public School Personnel.”¹¹ This version was the first to look substantially like the former statute discussed below, having established and defined “career teacher.”¹² Indeed, for the first time, the North Carolina General Assembly established some form of tenure for public school teachers.¹³ Furthermore, it enumerated the reasons for which a teacher may be justifiably terminated, described the process and procedure, and explained the due process and property rights involved in terminating a teacher in North Carolina.¹⁴

B. *The Former Version of the Statute*

As formerly constructed, section 115C-325 of the North Carolina General Statutes established a comprehensive “[s]ystem of employment for public school teachers” in North Carolina.¹⁵ Lengthy, thorough, and authoritative, the statute seemingly left no stone unturned.¹⁶

The first section of the statute provided a comprehensive list, defining pertinent terms such as “Career employee,” “Career school administrator,” “Career teacher,” “Demote,” “Disciplinary suspension,” and “Teacher.”¹⁷ The third section is particularly important for purposes of this Article, as it established the process by which a teacher was elected to “career status.”¹⁸

[W]hen a teacher has been employed by a North Carolina public school system for four consecutive years, the board, near the end of the fourth year, shall vote upon whether to grant the teacher career status. The teacher has a right to notice and hearing prior to the board’s vote The board shall give the teacher written notice of that decision by June 15 or such later date as provided in G.S. 115C-325(m)(7). If a majority of the board votes to grant career status to the teacher, and if it has notified the teacher of the decision, it may not rescind that action but must proceed under the provisions of this section for the demotion or

11. Act of July 16, 1971, ch. 883, 1971 N.C. Sess. Laws 1396.

12. *Id.* sec. 1, § 115-142, at 1397 (defining a career teacher as one “who has been regularly employed by a public school system for a period of not less than three successive years and who has been reemployed by a majority vote of the board of such public school system for the next succeeding school year”).

13. *Id.* sec. 1, § 115-142, at 1398 (enumerating the exclusive list of grounds for which career teachers could be demoted or dismissed).

14. *Id.* sec. 1, § 115-142, at 1396–1402.

15. N.C. GEN. STAT. § 115C-325 (2013).

16. *See id.*

17. *Id.* § 115C-325(a).

18. *Id.* § 115C-325(c)(1) (repealed for teachers without career status on that date by session law 2013-360, section 9.6(f), effective August 1, 2013).

dismissal of a teacher if it decides to terminate the teacher's employment. If a majority of the board votes against granting career status, the teacher shall not teach beyond the current school term. If the board fails to vote on granting career status, the teacher shall be entitled to an additional month's pay for every 30 days or portion thereof after June 16 or such later date . . . if a majority of the board belatedly votes against granting career status.¹⁹

This classification is vitally important, for as later noted by the statute, “[a] career teacher or career school administrator shall not be subjected to the requirement of annual appointment nor shall he be dismissed, demoted, or employed on a part-time basis without his consent.”²⁰ Furthermore, the statute noted that a “teacher who has obtained career status in any North Carolina public school system need not serve another probationary period of more than one year. The board may grant career status immediately upon employing the teacher, or after the first year of employment.”²¹ The statute went on to establish procedures for providing notice to “Teachers Eligible to Achieve Career Status,” and to establish teachers and personnel who are “Ineligible for Career Status.”²²

The statute then outlined the “Grounds for Dismissal or Demotion of a Career Employee.”²³

No career employee shall be dismissed or demoted or employed on a part-time basis except for one or more of the following:

- a. Inadequate performance.
- b. Immorality.²⁴

19. *Id.*

20. *Id.* § 115C-325(d)(1).

21. *Id.* § 115C-325(c)(2) (repealed for teachers without career status on that date by session law 2013-360, section 9.6(f), effective August 1, 2013).

22. *Id.* §§ 115C-325(c)(2a)–(3) (repealed for teachers without career status on that date by session law 2013-360, section 9.6(f), effective August 1, 2013).

23. *Id.* § 115C-325(e).

24. For a riveting discussion of the inclusion of immorality in statutes of this nature, see Jason R. Fulmer, *Dismissing the “Immoral” Teacher for Conduct Outside the Workplace—Do Current Laws Protect the Interests of Both School Authorities and Teachers?*, 31 J.L. & EDUC. 271 (2002). Fulmer notes:

Inquiries by school authorities into a teacher's conduct away from the school setting should be limited to conduct that has a sufficient connection with the school's interest. Concerns arise when school authorities rely on vague “immorality” based statutes to dismiss a teacher for conduct outside the school setting. By using these statutes, school authorities may be inviting constitutional challenges based on vagueness, as well as claims based on the right to privacy, association, and speech.

- c. Insubordination.
- d. Neglect of duty.
- e. Physical or mental incapacity.
- f. Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.
- g. Conviction of a felony or a crime involving moral turpitude.
- h. Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means.
- i. Failure to fulfill the duties and responsibilities imposed upon teachers or school administrators by the General Statutes of this State.
- j. Failure to comply with such reasonable requirements as the board may prescribe.
- k. Any cause which constitutes grounds for the revocation of the career teacher's teaching license or the career school administrator's administrator license.
- l. A justifiable decrease in the number of positions due to district reorganization, decreased enrollment, or decreased funding, provided that there is compliance with subdivision (2).
- m. Failure to maintain his or her license in a current status.
- n. Failure to repay money owed to the State in accordance with the provisions of Article 60, Chapter 143 of the General Statutes.

An increasingly large number of jurisdictions have adopted a nexus requirement to alleviate some of these concerns. The nexus requirement generally requires that the school district sufficiently demonstrate a connection between the conduct in question and the teacher's fitness to teach. It seems that this approach is fundamentally more fair. By requiring a sufficient showing that the teacher's fitness to teach has been hampered, both the interests of school authorities and teachers will have to be addressed. In addition, the requirement of nexus brings into focus the previously unstated rule of "community standards" and forces the district to articulate which standard is offended and how that offense relates to the education of its children.

Perhaps the solution to these issues lies with the individual school districts and boards educating their teachers as to what specific conduct is required of them. Or perhaps the solution lies with the various state legislatures, in passing laws which more clearly define the scope of prohibited conduct, or by establishing minimal levels of positive qualifications that teachers must possess before being allowed to teach. The laws that allow teachers to be dismissed for "immorality" are simply outdated, and pose significant difficulties when applied to today's more complex world. The need for well-educated, "moral" teachers, however, is not outdated and will likely always be present.

Id. at 288–89.

o. Providing false information or knowingly omitting a material fact on an application for employment or in response to a preemployment inquiry.²⁵

After explaining the procedure by which a teacher could be terminated or not rehired because of a reduction in force,²⁶ the statute expounded upon the aforementioned phrase “inadequate performance.”²⁷

In determining whether the professional performance of a career employee is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Failure to notify a career employee of an inadequacy or deficiency in performance shall be conclusive evidence of satisfactory performance. Inadequate performance for a teacher shall mean (i) the failure to perform at a proficient level on any standard of the evaluation instrument or (ii) otherwise performing in a manner that is below standard. However, for a probationary teacher, a performance rating below proficient may or may not be deemed adequate at that stage of development by a superintendent or designee. For a career teacher, a performance rating below proficient shall constitute inadequate performance unless the principal noted on the instrument that the teacher is making adequate progress toward proficiency given the circumstances.²⁸

The statute outlined the procedural steps for firing or not rehiring a career teacher—namely notice, hearings, and board review—that had to be executed prior to the firing or not rehiring.²⁹ The statute described the “other” type of public school teacher in North Carolina, a “Probationary Teacher.”³⁰ Concerning his or her employment, the statute noted that the “board of any local school administrative unit may not discharge a probationary teacher during the school year except for the reasons for and by the procedures by which a career employee may be dismissed as set forth in [the listed reasons detailed] above.”³¹

Furthermore, the “board, upon recommendation of the superintendent, may [have] refuse[d] to renew the contract of any probationary teacher or to reemploy any teacher who [wa]s not under

25. N.C. GEN. STAT. § 115C-325(e)(1).

26. *Id.* § 115C-325(e)(2).

27. *Id.* § 115C-325(e)(3).

28. *Id.*

29. *Id.* §§ 115C-325(h)–(j3).

30. *Id.* § 115C-325(m).

31. *Id.* § 115C-325(m)(1).

contract for any cause it deem[ed] sufficient: Provided, however, that the cause [was] not [] arbitrary, capricious, discriminatory or for personal or political reasons.”³² Finally, the statute noted the processes by which a dismissed or demoted career teacher could resign from his or her post or appeal a decision made by the board. This appeal, according to the statute, was a right of career teachers and was first made to superior court, though it could have traveled by subsequent appeals to even higher courts.³³

In summation, North Carolina public school educators who were employed for four years or more achieved “career status”—commonly known as tenure—provided the local school board approved. The statute provided for no explicit consideration of merit or effectiveness in rewarding teachers with tenure. Once a teacher achieved that position, administrators were prohibited from terminating him or her, unless one of the reasons in the enumerated list applied. And if he or she was terminated, even for one of the enumerated reasons, he or she had a right to appeal that decision, first to the local school board, and then to superior court and beyond. Thus, career teachers enjoyed something virtually no other employees in North Carolina have—a system of perpetual, lifelong, tenured employment.³⁴

Case law reveals that the application of this statute was costly, nonsensical, and problematic. Though each case is undoubtedly different and involves a myriad of varying issues, they all involve an interpretation of the aforementioned statute and its implications on public schools.

32. *Id.* § 115C-325(m)(2).

33. *Id.* §§ 115C-325(n)–(o). See e.g., *Faulkner v. New Bern-Craven Cnty. Bd. of Educ.*, 316 S.E.2d 281 (N.C. 1984).

34. See *Burgess v. Your House of Raleigh, Inc.*, 388 S.E.2d 134, 136–37 (N.C. 1990) (explaining North Carolina’s at-will employment doctrine allowing either party to terminate the employment relationship “with or without cause”); *McCullough v. Branch Banking & Trust Co.*, 524 S.E.2d 569, 573 (N.C. Ct. App. 2000) (holding that a limitation on the at-will employment doctrine exists where an “employee is fired in contravention of express policy declarations contained in the North Carolina General Statutes”).

II. CASE LAW CONCERNING THE TERMINATION OF PUBLIC SCHOOL
TEACHERS IN NORTH CAROLINAA. *The Former Statute's Failure to Allow for Individual School Autonomy
When Terminating Teachers for Dangerous or Harmful Behavior*

As referenced above, under the former statute, North Carolina career teachers could be terminated for a number of reasons, but all such terminations were subject to the requirements of section 115C-325 of the North Carolina General Statutes.³⁵ Consider, for example, the termination of a North Carolina public school teacher in *Faulkner v. New Bern-Craven County Board of Education*.³⁶ The teacher was terminated for habitual and excessive use of alcohol, including “consum[ing] some form of alcoholic beverages at school, or, at least, [having] the odor of alcohol on his breath at school during instructional hours.”³⁷ Despite this obvious evidence of impropriety, the school board’s decision to terminate the teacher was subject to review by the state court, as was required by section 115C-325(n).³⁸ Thus, the Supreme Court of North Carolina was charged with determining “whether the Board’s findings of fact . . . concerning plaintiff’s use of alcohol [were] supported by substantial evidence [as required by the statute] in view of the entire record as submitted.”³⁹ After careful review, the court found that the termination was justifiable.⁴⁰ In a private school, or in a public school environment where teachers are held accountable and not protected by lifelong tenure, a teacher caught drinking at school while “on the clock” would most likely be terminated without any such review or cost to the taxpayer.

Next, consider an instance where a teacher, upset about not being promoted to assistant principal, sent numerous anonymous letters to the assistant superintendent, threatening, among other things, “that she would learn not to mess with” him.⁴¹ Once the school board determined that the letters were written by the teacher in question, “the Office of the State Superintendent issued a letter notifying [the teacher] that the panel

35. N.C. GEN. STAT. § 115C-325(e).

36. *Faulkner*, 316 S.E.2d 281.

37. *Id.* at 285.

38. *Id.* at 284. *See also* N.C. GEN. STAT. § 115C-325(n).

39. *Faulkner*, 316 S.E.2d at 287.

40. *Id.* at 289.

41. *Richardson v. N.C. Dep’t of Pub. Instruction Licensure Section*, 681 S.E.2d 479, 481 (N.C. Ct. App. 2009).

concluded that his license had been revoked due to moral turpitude and grounds listed in [section] 115C-325(e)(1)(b) (immorality).⁴² Once again, because of the requirements under section 115C-325, the State Superintendent's decision was subject to judicial review, despite the fact that in the private sector such review would not be required.⁴³ As expected, the courts ultimately found that there was in fact "substantial evidence to support the" decision to terminate the teacher.⁴⁴

In *Smith v. Richmond County Board of Education*, the evidence at trial revealed that a teacher was terminated because of abhorrent sexual behavior.⁴⁵ Three individuals who worked at Leak Street School supplied the evidence:

Bonnie Lisenby averred that [the teacher] sexually harassed her by asking her to leave school to meet him, by saying to her, "you know you want it," and by rubbing himself against her. Sharon Peek averred that [the teacher] sexually harassed her by propositioning her for sex on numerous occasions, by asking her, "do you want me?", by pressing his body against her, by unzipping his pants in front of her, and by touching her buttocks. Elizabeth Kirkcaldy averred that [the teacher] made sexual advances toward her, touched her, made sexually explicit comments to her, tried to kiss her, pressed his aroused penis against her, and propositioned her for sex.⁴⁶

The evidence of these occurrences was well established and was clear enough for the school board to terminate the teacher.⁴⁷ Nonetheless, under section 115C-325, a court was required to review the termination upon the teacher's appeal.⁴⁸ Unsurprisingly, the courts, after carefully

42. *Id.* at 482.

43. *Id.* See also N.C. GEN. STAT. § 115C-325(n) ("Any career employee who has been dismissed or demoted under G.S. 115C-325(e)(2), or under G.S. 115C-325(j)2), or who has been suspended without pay under G.S. 115C-325(a)(4a), or any school administrator whose contract is not renewed in accordance with G.S. 115C-287.1, or any probationary teacher whose contract is not renewed under G.S. 115C-325(m)(2) shall have the right to appeal from the decision of the board to the superior court for the superior court district or set of districts as defined in G.S. 7A-41.1 in which the career employee is employed.").

44. *Richardson*, 681 S.E.2d at 484.

45. *Smith v. Richmond Cnty. Bd. of Educ.*, 563 S.E.2d 258, 262–63 (N.C. Ct. App. 2002), *overruled on other grounds by* N.C. Dep't of Env't & Natural Res., 599 S.E.2d 888 (N.C. 2004).

46. *Id.* at 268.

47. *Id.* at 268–69.

48. *Id.* at 263. See also N.C. GEN. STAT. § 115C-325(n).

reviewing the evidence at great taxpayer expense, affirmed the school board's decision to terminate the teacher.⁴⁹

In *Evers v. Pender County Board of Education*, a male high school teacher, Mr. Evers, was suspected of engaging in sexual conduct with a ninth grade female student.⁵⁰ After the victim informed another teacher what happened with Mr. Evers, the principal placed Mr. Evers on suspension *with pay*, pursuant to the procedural requirements of section 115C-325.⁵¹ Four months later, after an extensive and undoubtedly costly investigation, the principal “notified Evers . . . that it was his intention to recommend to the Pender County Board of Education that Evers be dismissed.”⁵² In compliance with section 115C-325, Evers requested a hearing concerning the allegations against him.⁵³ At the hearing, “the Pender County Board of Education adopted a Resolution which found that . . . the charges against Evers were ‘true and substantiated by a preponderance of the evidence.’ . . . Based on its findings . . . the Board concluded that Evers should be dismissed.”⁵⁴ Despite extensive investigation, the statutorily mandated hearing, and the “preponderance of evidence” supporting the board's decision to terminate Mr. Evers—all funded by taxpayer dollars—Mr. Evers was still entitled by the sword of section 115C-325 to demand a review of the board's decision by North Carolina courts.⁵⁵ The superior court and court of appeals affirmed the school board's decision to terminate Mr. Evers, but not without expending hundreds of man hours and thousands of dollars.⁵⁶

Although it is fairly easy to understand why these teachers were terminated, it is more difficult to comprehend why these decisions were reviewed multiple times at taxpayer expense. Moreover, it is particularly difficult to understand why some teachers were placed on paid leave, even in the face of substantial evidence of dangerous behavior. But the former statute did not fail solely in making it difficult for administrators and educational leaders to terminate dangerous teachers; it also failed to allow for speedy and inexpensive termination of teachers who were simply underperforming in their duties.

49. *Smith*, 563 S.E.2d at 268–69.

50. *Evers v. Pender Cnty. Bd. of Educ.*, 407 S.E.2d 879, 881 (N.C. Ct. App. 1991).

51. *Id.* at 881. *See also* N.C. GEN. STAT. § 115C-325(f1).

52. *Evers*, 407 S.E.2d at 881.

53. *Id.* *See also* N.C. GEN. STAT. § 115C-325(n).

54. *Evers*, 407 S.E.2d at 883, 893.

55. *Id.* *See also* N.C. GEN. STAT. § 115C-325(n).

56. *Evers*, 407 S.E.2d at 893.

B. *The Former Statute's Unreasonable Procedural Barriers to Individual School Autonomy When Making Termination Decisions Regarding Teacher Performance*

Consider *Davis v. Macon County Board of Education*, where a teacher was denied promotion to tenure, and thus necessarily terminated, because she received “two ‘Below Standard’ performance evaluations . . . in the areas of facilitating instruction and performing non-instructional duties.”⁵⁷ Furthermore, the superintendent opined that the teacher was disrespectful, unprofessional, and negatively impacted teacher morale.⁵⁸ For instance, on one occasion the teacher threateningly squirted her principal in the face with a water pistol in front of several students.⁵⁹

Despite the abundant evidence of the teacher’s poor classroom performance and negative impact on the general school atmosphere, the superintendent nonetheless faced several procedural hoops before terminating the teacher was possible.⁶⁰ First, the principal had to make a recommendation to the superintendent, who in turn had to make a recommendation, well supported by evidence, to the school board pursuant to section 115C-325.⁶¹ Next, the school board had to hold a hearing where “[t]he Board discussed [the] Superintendent[’s] . . . recommendation to deny tenure to [the teacher]. . . . The board voted not to renew [the teacher’s] contract.”⁶² Following this determination, the teacher had a right, granted by the statute, to appeal the school board’s decision to the judiciary.⁶³

[The teacher] filed an amended notice of appeal from the board’s decision, alleging that the decision of the board “violated N.C.G.S. § 115C-325(m)(2) in that the decision was arbitrary and capricious or was based on personal considerations.” The trial court conducted a hearing

57. *Davis v. Macon Cnty. Bd. of Educ.*, 632 S.E.2d 590, 592 (N.C. Ct. App. 2006).

58. *See id.* at 592–93.

59. *Id.* at 592.

60. *See id.* at 592–94.

61. *Id.* *See also* N.C. GEN. STAT. § 115C-325(h) (2013).

62. *Davis*, 632 S.E.2d at 593.

63. *Id.* *See also* N.C. GEN. STAT. § 115C-325(n) (“Any career employee who has been dismissed or demoted under G.S. 115C-325(e)(2), or under G.S. 115C-325(j2), or who has been suspended without pay under G.S. 115C-325(a)(4a), or any school administrator whose contract is not renewed in accordance with G.S. 115C-287.1, or any probationary teacher whose contract is not renewed under G.S. 115C-325(m)(2) shall have the right to appeal from the decision of the board to the superior court for the superior court district or set of districts as defined in G.S. 7A-41.1 in which the career employee is employed.”).

on 26 May 2005 and entered an order on 10 June 2005 upholding the board's decision. [The teacher] filed a motion for reconsideration on 20 June 2005. In her motion, [the teacher] stated that at the hearing, the board "claimed it had a copy of the minutes from an April 2003 faculty meeting convened prior to the Spring Festival in which the ban on water pistols was announced—and that [the teacher] had deliberately ignored that directive." However, [the teacher] contended this was false in an affidavit filed with her motion for reconsideration. In an order entered 5 July 2005, the trial court denied [the teacher's] motion for reconsideration. [The teacher appealed].⁶⁴

Thus, despite the evidence of poor performance in and out of the classroom, taxpayers funded an extensive and costly review of the local school's decision not to renew a teacher's contract.

Consider next the case of *Farris v. Burke County Board of Education*, where Ms. Farris, a terminated teacher who had obtained tenured status, "was employed by respondent Burke County Board of Education [], teaching educable mentally handicapped children in the sixth, seventh, and eighth grades."⁶⁵ "[She] began her employment with [Burke County Schools] in 1970 and thereafter attained tenured status as a teacher."⁶⁶ Evidence showed that Ms. Farris had a number of serious issues in her classroom.⁶⁷ Photographs indicated that Ms. Farris' classroom was so poorly kept that "roach droppings and a rat's nest in addition to clutter" was all over the classroom floor.⁶⁸ Furthermore, eyewitness testimony from Ms. Farris' teaching assistant revealed that Ms. Farris "used classroom time to talk to friends on the telephone and to call a psychic hotline" and that she "had returned her students three hours late from a field trip to [the] Biltmore Estate because [she] spent over an hour and a half in the gift shop."⁶⁹ Additionally, evidence showed that Ms. Farris "had called an African American student a 'monkey,' that [Ms. Farris] would give massages to individuals while students were present in the classroom,⁷⁰ and that [she] spent only about ten percent of her time teaching."⁷¹ The director of Ms. Farris' program "also expressed concern

64. *Davis*, 632 S.E.2d at 593.

65. *Farris v. Burke Cnty. Bd. of Educ.*, 559 S.E.2d 774, 776 (N.C. 2002).

66. *Id.*

67. *Id.* at 776–78.

68. *Id.* at 777.

69. *Id.*

70. Giving massages was a side business for this distinguished educator. *Id.* at 780.

71. *Id.* at 777.

that ‘there was [a] lack of quality individualized instruction in [her] classroom.’⁷²

Ms. Farris’ superintendent wanted to fire Ms. Farris, but could not do so without school board approval. Thus, he sent a letter to the school board indicating his recommendation for termination:

The grounds for my recommendation are inadequate performance, insubordination, and neglect of duty, pursuant to [section] 115C-325(e)(1)(a), (c)[,] and (d). [Ms. Farris] repeatedly ignored direct orders, both oral and written, from principals. [Ms. Farris] created, and refused to correct, health and fire hazards, including giving special education children seriously outdated food, all of which endangered her students. [Ms. Farris] refused to follow directives regarding curriculum, and she misrepresented the status of her [lesson] plan book.⁷³

This recommendation was followed by a hearing, a case manager review of the evidence, and numerous court cases pursuant to the requirements of section 115C-325.⁷⁴ Eventually, the superintendent’s decision was affirmed, but again, not without substantial delay and costs to the taxpayer.⁷⁵

Finally, consider *Nestler v. Chapel Hill/Carrboro City Schools Board of Education*, where a school principal became concerned with one teacher’s pedagogy and ability to effectively run a classroom.⁷⁶ Sufficient evidence established that the teacher:

[(1)] made inadequate attempts to check on comprehension by students and that some students went the entire year without being called upon[;] . . . [(2)] assigned problems with no effort made to determine the comprehension level of the students in working the problems[;] . . . [(3)] failed to relate the problems to classroom work[;] . . . [(4)] made no effort to work the problems and was not sure he could have done so[;] . . . [(5)] [conducted] laboratory experiences [with the class that] were inadequate and poorly organized[;] . . . [(6)] did not adequately challenge his students . . . [such that] . . . students asked to be in other classes because of a greater challenge[;] . . . [and (7)] had not made an adequate effort for professional growth and maturity⁷⁷

In a public school setting where educational leaders are empowered to make personnel decisions and no teacher enjoys the power of lifelong

72. *Id.*

73. *Id.*

74. *Id.* at 780–81. See also N.C. GEN. STAT. §§ 115C-325(h), (n) (2013).

75. *Farris*, 559 S.E.2d at 784.

76. *Nestler v. Chapel Hill/Carrboro City Sch. Bd. of Educ.*, 311 S.E.2d 57, 59 (N.C. Ct. App. 1984).

77. *Id.*

tenure, there can be little doubt that this type of poor pedagogy and lack of educational ability would result in a speedy termination with little cost or hassle. In the public sector, however, where section 115C-325 used to govern terminations, a lengthy and costly series of hearings, reviews, and trials that ultimately affirmed the superintendent's decision were required.⁷⁸

Having observed instances where North Carolina General Statute section 115C-325 placed unnecessary barriers between school administrators and their ability to control the quality of education in their schools at great taxpayer cost, the focus now shifts to situations where the statute is shown to be even more intrusive. The North Carolina law governing termination procedures may have wholly prohibited the termination of an underperforming or an otherwise inappropriate North Carolina public school teacher.⁷⁹

C. *The Former Statute's Unreasonable Prohibition of Terminating Public School Teachers in North Carolina Without Paying Substantial Penalties*

In *Rose v. Currituck County Board of Education*, a principal who was, according to the school board, underperforming in his duties, sought to resign from his post to seek a better opportunity and fresh start elsewhere.⁸⁰ The principal achieved "career teacher" status prior to being promoted to principal, a status that followed him to his new position.⁸¹ After the school board accepted the principal's resignation, the principal curiously sought a position with the same school as a "career teacher" once again. The school board, however, did not rehire the former principal as a teacher, causing him to bring an action against the school board for "terminating" him—a career teacher—without complying with section 115C-325.⁸²

The conflict eventually made its way to the Court of Appeals of North Carolina, where the court noted that the "recognized purpose of the Teacher Tenure Act is to provide greater job security for career public school teachers by granting tenure to educators who successfully complete a probationary status."⁸³ With regard to section 115C-325, the

78. *Id.* at 59–60. See also N.C. GEN. STAT. § 115C-325.

79. See *supra* notes 23–25 and accompanying text.

80. *Rose v. Currituck Cnty. Bd. of Educ.*, 350 S.E.2d 376, 378 (N.C. Ct. App. 1986).

81. *Id.* at 378–79.

82. *Id.* See also N.C. GEN. STAT. § 115C-325.

83. *Rose*, 350 S.E.2d at 378 (citing *Thompson v. Wake Cnty. Bd. of Educ.*, 233 S.E.2d 538 (N.C. 1977)).

court held: “Under this provision, a person retains his or her status as a career teacher during the probationary period as a principal. Therefore, in the instant case, the school board could not have refused to renew [the] principal’s contract and dismissed him from employment without satisfying the procedural requirements set forth in [the statute] for a career teacher.”⁸⁴ The court of appeals reversed the decision of both the trial court and the school board, and it “remanded for a full trial on the merits.”⁸⁵ Thus, despite the poor performance of the principal and the local governing school board’s decision not to rehire the principal as a teacher—not to mention the resignation of the principal—the school board was prohibited from terminating him under section 115C-325.⁸⁶

In *Crump v. Board of Education of Hickory Administrative School Unit*, Eddie Ray Crump, a public school teacher, driver’s education instructor, and baseball coach, was terminated for “immorality and insubordination.”⁸⁷ Specifically, Mr. Crump was terminated for making “sexual advances to female driving students.”⁸⁸ Despite the substantial amount of evidence of these illegal acts, the superintendent’s obvious, logical, and fair decision to terminate Mr. Crump had to be reviewed by the school board.⁸⁹ Further, the school board’s decision to terminate the alleged sexual deviant had to be reviewed by the courts, pursuant to section 115C-325(n).⁹⁰ After the superior court reviewed the evidence, it “upheld the Board’s decision to dismiss Crump.”⁹¹

In a separate action, the Court of Appeals of North Carolina, undoubtedly doing its due diligence in accordance with the applicable statute, determined that Mr. Crump’s rights had been violated because the board that approved his termination was not unbiased, as was required by section 115C-325.⁹² Furthermore, the court of appeals affirmed the trial court’s award of \$78,000 in compensatory damages.⁹³

84. *Id.* (citing N.C. GEN. STAT. §§ 115C-325(d)(2), (e)).

85. *Rose*, 350 S.E.2d at 379.

86. *Id.* See also N.C. GEN. STAT. § 115C-325.

87. *Crump v. Bd. of Educ. of Hickory Admin. Sch. Unit*, 392 S.E.2d 579, 580 (N.C. 1990).

88. *Court Upholds Teacher’s Firing*, WILMINGTON MORNING STAR, Dec. 3, 1984, at 6B, available at <http://news.google.com/newspapers?nid=1454&dat=19841203&id=KkhOAAAIAJ&sjid=shMEAAAIAJ&pg=1230,880588>.

89. *Crump*, 392 S.E.2d at 580–81.

90. *Id.* at 584. See also N.C. GEN. STAT. § 115C-325(n).

91. *Crump*, 392 S.E.2d at 580.

92. *Crump v. Bd. of Educ. of Hickory Admin. Sch. Unit*, 378 S.E.2d 32, 43–44 (N.C. Ct. App. 1989).

93. *Id.* at 34.

The Supreme Court of North Carolina likewise affirmed the award of damages and agreed that both the superintendent and the school board improperly denied Mr. Crump due process.⁹⁴

Accordingly, despite the ample evidence of extremely harmful, deviant sexual behavior, the teacher in question was afforded the protection of section 115C-325. The superintendent and the school board were prevented from doing their jobs, resulting in severe—and rather costly—consequences.⁹⁵

To this point this Article has observed a number of cases where section 115C-325 has seemingly done more harm than good. Indeed, the statute has: (1) created unreasonable procedural barriers to terminating dangerous or harmful teachers; (2) created unreasonable procedural barriers to terminating teachers who are performing poorly; and (3) entirely prohibited the termination of teachers without paying substantial penalties that, whether for poor performance or deviant criminal behavior, clearly needed to be let go.

But what about the “cases” that do not make it to court? What was the statute actually achieving when it came to teacher hiring, retention, and training? Put another way: What were the social, educational, positive, and negative effects—as observed and recorded by research—of section 115C-325 in North Carolina classrooms? These questions, and others, will be answered and discussed at length in the next Section.

III. ANALYTICAL RESEARCH CONCERNING THE FORMER STATUTE’S FAILURE TO ADDRESS UNQUALIFIED AND UNDERPERFORMING EDUCATORS

In an attempt to examine the strengths and weaknesses of the statute governing North Carolina public school teacher employment, research of a most impressive nature is readily available.

For five years running, the National Council on Teacher Quality (NCTQ)⁹⁶ has tracked states’ teacher policies, preparing a detailed and

94. *Crump*, 392 S.E.2d at 590–91.

95. *See id.*

96. The National Council on Teacher Quality is a non-partisan, non-profit, private organization funded by, among many others, the Bill and Melinda Gates Foundation. *Funders*, NAT’L COUNCIL ON TEACHER QUALITY, <http://www.nctq.org/about/funders.jsp> (last visited Feb. 20, 2014). In its own words:

The National Council on Teacher Quality advocates for reforms in a broad range of teacher policies at the federal, state and local levels in order to increase the number of effective teachers. In particular, we recognize the absence of much of the evidence necessary to make a compelling case for change and seek to fill that void with a research agenda that has direct and practical implications

thorough compendium of teacher policy in the United States on topics related to teacher preparation, licensure, evaluation, career advancement, tenure, compensation, pensions and dismissal.

The 2011 State Teacher Policy Yearbook includes NCTQ's biennial, full review of the state laws, rules and regulations that govern the teaching profession. This year's report measures state progress against a set of 36 policy goals focused on helping states put in place a comprehensive framework in support of preparing, retaining and rewarding effective teachers.⁹⁷

The NCTQ has examined the aforementioned criteria in North Carolina with regard to five different areas: "Delivering Well Prepared Teachers," "Expanding the Teaching Pool," "Identifying Effective Teachers," "Retaining Effective Teachers," and "Exiting Ineffective Teachers."⁹⁸ Although each area is undoubtedly of great importance, the area specifically significant here is the one relating to public school teacher termination, area five, "Exiting Ineffective Teachers."⁹⁹

According to the NCTQ, each state's termination policies "should articulate that ineffective classroom performance is grounds for dismissal and ensure that the process for terminating ineffective teachers is expedient and fair to all parties."¹⁰⁰ Of the six potential categories or rankings—Best Practice, Fully Meeting Goals, Nearly Meeting Goals,

for policy. We are committed to lending transparency and increasing public awareness about the four sets of institutions that have the greatest impact on teacher quality: states, teacher preparation programs, school districts and teachers unions.

Our Board of Directors and Advisory Board are composed of Democrats, Republicans and Independents, all of whom believe that the teaching profession is way overdue for significant reform in how we recruit, prepare, retain and compensate teachers.

Based in Washington, D.C., the National Council on Teacher Quality was founded in 2000 to provide an alternative national voice to existing teacher organizations and to build the case for a comprehensive reform agenda that would challenge the current structure and regulation of the profession.

About, NAT'L COUNCIL ON TEACHER QUALITY, <http://www.nctq.org/p/about/index.jsp> (last visited Feb. 20, 2014). After each state is evaluated, the school board of that state has the opportunity to deny or admit the NCTQ's findings, in part or in whole. *2011 State Teacher Policy Yearbook: North Carolina*, NAT'L COUNCIL ON TEACHER QUALITY i (Jan. 2012), http://www.nctq.org/dmsView/2011_State_Teacher_Policy_Yearbook_North_Carolina_NCTQ_Report.

97. *2011 State Teacher Policy Yearbook: North Carolina*, *supra* note 96, at 1.

98. *Id.*

99. It is imperative to keep in mind that North Carolina schools do not deny or contest, in any part, the accuracy of the factual findings of the NCTQ. *Id.*

100. *Id.* at 8.

Partially Meeting Goals, Meeting a Small Part of the Goal, and Not Meeting Goals—the NCTQ notes that North Carolina is in the lowest possible category, wholly not meeting four of the stated goals in area five and only nearly meeting one goal.¹⁰¹ North Carolina has acknowledged that this assessment is accurate.¹⁰²

The NCTQ report nicely summarizes the former process of North Carolina public school teacher employment, tenure and termination, noting:

In North Carolina, tenured teachers who are terminated have multiple opportunities to appeal. After receiving written notice of dismissal, the teacher has 14 days to file a request for a hearing by a case manager or a hearing by the board, which must occur within 10 days. The aggrieved teacher may then—within 30 days—file an additional appeal with the district superior court. The state does not specify the time frame for this appeal.

North Carolina does not explicitly make teacher ineffectiveness grounds for dismissal nor does the state distinguish the due process rights of teachers dismissed for ineffective performance from those facing other charges commonly associated with license revocation, such as a felony and/or morality violations. The process is the same regardless of the grounds for cancellation, which include inadequate performance, immorality, insubordination, neglect of duty, physical or mental incapacity, habitual or excessive use of alcohol or nonmedical use of a controlled substance, felony conviction, advocating overthrow of the government, financial debt to the state and providing false information.¹⁰³

The report highlights a number of specific issues with regard to terminating ineffective teachers in North Carolina.

First, the report explains that North Carolina's statutes and policies fail to "articulate that ineffectiveness is grounds for dismissal."¹⁰⁴ Certainly, section 115C-325 noted that "inadequate performance" was a justifiable reason to terminate even a tenured "career teacher" in North Carolina.¹⁰⁵ But, according to the NCTQ research, "'Inadequate performance' is ambiguous at best and may be interpreted as concerning dereliction of duty rather than ineffectiveness."¹⁰⁶ This is particularly disconcerting when compared to other states, such as Oklahoma, which

101. *Id.* at 4.

102. *Id.* at 144, 147, 151, 154.

103. *Id.* at 151.

104. *Id.* at 152.

105. N.C. GEN. STAT. § 115C-325(e)(1)(a) (2013).

106. *2011 State Teacher Policy Yearbook: North Carolina, supra* note 96, at 151.

“clearly articulates that teacher ineffectiveness in the classroom is grounds for dismissal.”¹⁰⁷

Second, the report considers the process by which a North Carolina teacher is permitted to appeal a decision terminating him or her for inadequate performance. As the report and the aforementioned cases note, such teachers are allowed—with substantial costs to the taxpayer—multiple venues of appeal and review.¹⁰⁸ Once again, North Carolina’s policies are troubling when compared with the practice in the State of Oklahoma. According to the NCTQ, Oklahoma “has taken steps to ensure that the dismissal process for teachers deemed to be ineffective is expedited. Teachers facing dismissal have only one opportunity to appeal.”¹⁰⁹

Third, the report criticizes North Carolina’s decision-making process used to determine which teachers to lay off when a reduction in force is necessary.¹¹⁰ According to the report, North Carolina is not meeting its goals in this area.¹¹¹ In fact, rather than properly considering classroom performance as a matter of paramount importance, North Carolina’s policies permit an unreasonable amount of emphasis to be placed on a teacher’s seniority.¹¹²

In summary, the extensive research of the NCTQ report reveals that section 115C-325 left North Carolina with an ineffective means of terminating public school teachers who were performing poorly.¹¹³ Indeed, according to the Schools and Staffing Survey, less than one percent (0.1%) of all North Carolina public school teachers who have received tenure have been terminated—for *any* reason.¹¹⁴ In comparison, that number jumps to nearly ten percent among private school educators nationwide.¹¹⁵

Faced with this research and the aforementioned cases highlighting the issues with teacher tenure in North Carolina, one inevitably comes

107. *Id.* at 152.

108. *Id.* at 3; *see also* N.C. GEN. STAT. §§ 115C-325(h)–(n).

109. *2011 State Teacher Policy Yearbook: North Carolina*, *supra* note 96, at 152. This one opportunity to appeal is one more than a private school teacher—or practically any privately employed American worker—would have upon termination.

110. *Id.* at 153.

111. *Id.* at 153–54.

112. *Id.* at 154.

113. *Id.* at 1, 3–4.

114. Table 8, NAT’L CTR. FOR EDUC. STATISTICS, https://nces.ed.gov/surveys/sass/tables/sass1112_2013311_d1s_008.asp (last visited Feb. 20, 2014).

115. *North Carolina Union Information*, TEACHERS UNION EXPOSED, <http://www.teachersunionexposed.com/state.cfm?state=NC> (last visited Feb. 20, 2014).

to the conclusion that something ought to change. While some may love tenure and others may hate it, hopefully no one would contend that pedophiles and criminals should have lifetime job security as caretakers and educators of children. But what can be done, and how should it be accomplished? What interests are at stake, and what considerations should be made? What attempts at solutions have been proffered and how are they succeeding? These questions, among others, will be tackled at length in the following Section.

IV. TEACHER STABILITY VERSUS TEACHER ACCOUNTABILITY

A. Possible Solutions

Regrettably, the issue of teacher tenure and termination has become a matter of political contention.¹¹⁶ Some assert that we need to keep tenure in place in order to more thoroughly support our teachers.¹¹⁷ Others argue to eliminate tenure, pointing out the problems that accompany not being able to terminate bad teachers.¹¹⁸ As with most debatable issues, the truth likely rests somewhere in both camps. Hopefully both sides could agree that we need to better support our teachers—improved pay, increased benefits, more support, and adequate resources would be great places to start. On the other hand, hopefully few would argue that a system in which a pedophile cannot be readily terminated needs, at the very least, some minor adjustments. Indeed, the goal with any legislation concerning teacher tenure and termination should be to accomplish both tasks by finding a solution that both

116. See Adam Owens, *Wake School Board Grapples With End of Teacher Tenure*, WRAL (Jan. 8, 2014), <http://www.wral.com/wake-school-board-grapples-with-end-of-teacher-tenure/13280329/>; Jane Stancill, *NC Teachers to Sue for Tenure Protections*, NEWS & OBSERVER (Dec. 17, 2013), <http://www.newsobserver.com/2013/12/17/3465920/teachers-to-sue-for-tenure-protections.html>; Matthew Burns, *NCAE Lawsuit Challenges Elimination of Teacher Tenure*, WRAL (Dec. 17, 2013), <http://www.wral.com/ncae-lawsuit-challenges-elimination-of-teacher-tenure/13224414/>; Valerie Strauss, *School Board Defies N.C. State Law Abolishing Teacher Tenure*, WASHINGTON POST (Feb. 12, 2014, 11:14 AM), <http://www.washingtonpost.com/blogs/answer-sheet/wp/2014/02/12/school-board-defies-n-c-state-law-abolishing-teacher-tenure/>.

117. Owens, *supra* note 116; Stancill, *supra* note 116; T. Keung Hul, *Potential Risks for NC Teachers Who Give Up Tenure*, NEWS & OBSERVER (Jan. 8, 2014), <http://www.newsobserver.com/2014/01/08/3514583/potential-risks-for-NC-teachers.html>; Dave Dewitt, *Pay Cuts, End of Tenure Put North Carolina Teachers on Edge*, NPR (Feb. 11, 2014, 4:00 PM), <http://www.npr.org/2014/02/11/275368362/pay-cuts-end-of-tenure-put-north-carolina-teachers-on-edge>; Burns, *supra* note 116.

118. Owens, *supra* note 116; Stancill, *supra* note 116.

supports our teachers and at the same time allows educational leaders to make necessary termination decisions.

Many attempts at establishing a fair system of teacher tenure have been made.¹¹⁹ But have any of them struck upon the middle ground, accomplishing the dual tasks of supporting our teachers appropriately and empowering educational leaders to make necessary termination decisions? Or are these two goals truly incompatible and impossible to accomplish at the same time? Moreover, does the new North Carolina statute concerning teacher tenure strike the appropriate balance?

To answer these questions, the Subsection below will first examine how a few other states have tackled this issue. Then, it will consider the advantages and disadvantages of the North Carolina statute that formerly governed teacher tenure and termination, followed by an examination of how North Carolina's recent effort at a solution compares to past attempts, together while analyzing the degree to which it accomplishes the aforementioned dual goals.

B. *Pennsylvania*

In Pennsylvania, like North Carolina, teachers can achieve tenured status simply by remaining employed for a certain length of time and there is no explicit consideration of effectiveness.¹²⁰ Yet, in Pennsylvania, a system of teacher evaluation is in place, and a teacher who receives two consecutive unsatisfactory evaluations is officially eligible for dismissal from his or her position, even if he or she is tenured.¹²¹ After the first negative review, the applicable statute requires that “an opportunity for the professional employee to improve” be made available.¹²² As has also been the case in North Carolina for several years, tenured teachers in Pennsylvania who are terminated then have multiple opportunities to appeal.¹²³ According to the NCTQ, once a tenured Pennsylvania teacher receives a written notice of dismissal, that teacher “may request a hearing within 30 days[,]” and the “hearing officer must render a decision within 60 days after the hearing’s

119. See *infra* notes 121–61 and accompanying text.

120. 2011 *State Teacher Policy Yearbook: Pennsylvania*, NAT'L COUNCIL ON TEACHER QUALITY 94 (Jan. 2012), http://www.nctq.org/dmsView/2011_State_Teacher_Policy_Yearbook_Pennsylvania_NCTQ_Report; see also 22 PA. CODE § 351.26 (2014).

121. 2011 *State Teacher Policy Yearbook: Pennsylvania*, *supra* note 120, at 151; 22 PA. CODE § 351.26.

122. 22 PA. CODE § 351.26(a).

123. 22 PA. CODE §§ 233.115 to 118; see also 2011 *State Teacher Policy Yearbook: Pennsylvania*, *supra* note 120, at 155.

conclusion.”¹²⁴ This decision can be appealed again, this time to the Pennsylvania Professional Standards and Practices Commission.¹²⁵

No Pennsylvania statute makes it explicitly clear that teacher ineffectiveness can be grounds for dismissal. Moreover, the State does not “distinguish the due process rights of teachers dismissed for ineffective performance from those facing other charges commonly associated with license revocation, such as a felony and/or morality violations.”¹²⁶ Indeed, Pennsylvania does not articulate specific grounds for terminating teachers’ contracts at all.¹²⁷ The researchers at NCTQ ultimately gave Pennsylvania a “D+” for its overall grade on teacher policies, the same grade that North Carolina received.¹²⁸

In response to the NCTQ report, Pennsylvania officials stressed that, in accordance with statute, tenured teachers can only be dismissed for:

immorality; incompetency; unsatisfactory teaching performance . . . ; intemperance; cruelty; persistent negligence in the performance of duties; willful neglect of duties; physical or mental disability documented by competent medical evidence; advocacy of or participation in un-American or subversive doctrines; conviction of a felony or acceptance of a guilty plea or *nolo contendere*; persistent and willful violation of or failure to comply with school laws.¹²⁹

Pennsylvania officials also claimed:

if a tenured teacher is recommended for dismissal, the teacher may request an arbitration hearing or a hearing before the school board. If, after a school board hearing the teacher is dismissed, the teacher can appeal to the Secretary within 30 days of receiving notice of the board’s decision. There is no time period within which the Secretary must issue a decision. The Secretary’s decision can be appealed to Commonwealth Court.¹³⁰

Thus, aside from the provision allowing a teacher to be dismissed for consecutive unsatisfactory evaluations, the Pennsylvania method of teacher tenure is rather similar to North Carolina’s method: both allow for tenured status without any consideration of effectiveness, both provide for multiple levels of costly review of termination decisions,

124. 2011 *State Teacher Policy Yearbook: Pennsylvania*, *supra* note 120, at 155.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.* at 1.

129. *Id.* at 155–56.

130. *Id.* at 156.

both fail to explicitly make teacher performance grounds for termination, and both received poor ratings from the NCTQ on their teacher evaluation and termination policies.¹³¹

C. Nevada

In Nevada, tenured teachers are referred to as “postprobationary” teachers.¹³² To earn tenure, probationary teachers must “show two years of satisfactory performance on each teacher evaluation within a three-year period.”¹³³ Moreover, because “Nevada’s teacher evaluation ratings are centered primarily on evidence of student learning . . . basing tenure decisions on these evaluation ratings ensures that classroom effectiveness is appropriately considered.”¹³⁴

When it comes to evaluation, Nevada stipulates that a tenured teacher—one who is no longer under probationary status—who receives an unsatisfactory evaluation must be evaluated three separate times during the course of the subsequent school year.¹³⁵ The statute requires that under normal circumstances, where a “teacher receives an evaluation designating his or her overall performance as effective, the postprobationary teacher must be evaluated one time in the immediately succeeding school year.”¹³⁶ On an encouraging note, the policy requires that a tenured teacher, who is under a more strict review, have the option to request assistance in correcting the stated insufficiencies, a policy not seen in many other states.¹³⁷ Finally, if “a teacher’s overall evaluation for two consecutive school years is deemed to be ‘below average,’ the teacher will return to probationary status.”¹³⁸

According to the researchers at the NCTQ, Nevada “does not distinguish the due process rights of teachers dismissed for ineffective performance from those facing other charges commonly associated with license revocation, such as a felony and/or morality violations.”¹³⁹

131. *Id.* at 1; *2011 State Teacher Policy Yearbook: North Carolina*, *supra* note 96, at 1.

132. NEV. REV. STAT. § 391.3125 (2006).

133. *2011 State Teacher Policy Yearbook: Nevada*, NAT’L COUNCIL ON TEACHER QUALITY 92 (Jan. 2012), http://www.nctq.org/dmsView/2011_State_Teacher_Policy_Yearbook_Nevada_NCTQ_Report.

134. *Id.*

135. NEV. REV. STAT. § 391.3125(5).

136. *Id.* § 391.3125(6).

137. *Id.* § 391.3125(10).

138. *2011 State Teacher Policy Yearbook: Nevada*, *supra* note 133, at 151.

139. *Id.* at 155.

Surprisingly, the termination and review process is the same notwithstanding the grounds for termination, which include:

inefficiency; immorality, unprofessional conduct; insubordination; neglect of duty; physical or mental incapacity; conviction of a felony or of a crime involving moral turpitude; inadequate performance; failure to show normal improvement and evidence of professional training and growth; advocating overthrow of the Government of the United States or of the State of Nevada by force, violence or other unlawful means, or the advocating or teaching of communism with the intent to indoctrinate pupils to subscribe to communistic philosophy; any cause which constitutes grounds for the revocation of a teacher's license; and dishonesty.¹⁴⁰

Furthermore, a teacher who is placed back on probation due to unsatisfactory performance and “who faces dismissal may request an expedited hearing according to the procedures established by the American Arbitration Association.”¹⁴¹ Nevada received a “C-” as its overall grade on teacher policies from the NCTQ.¹⁴²

In summation, Nevada's policies regarding teacher tenure are somewhat different from those in North Carolina. While both systems allow for teachers to achieve tenured status and appeal any termination decision, the Nevada model appears to establish a more concrete method of evaluating teacher performance.¹⁴³ Moreover, the Nevada method appears to place more emphasis on teacher performance and effectiveness in achieving tenured status than the North Carolina system does. Thus, it is perhaps unsurprising that the NCTQ gave Nevada a slightly higher grade on its teacher tenure and termination policies than Pennsylvania and North Carolina.¹⁴⁴

D. Oklahoma

Oklahoma, in what many consider to be the ideal model, does recognize tenure for public school teachers, however, it states:

“[C]areer teachers” [must] have one of the following: a rating of “superior” as measured by the Oklahoma Teacher and Leader

140. *Id.*

141. *Id.*

142. *Id.* at 1.

143. *Id.* at 150–55; *2011 State Teacher Policy Yearbook: North Carolina*, *supra* note 96, at 150–55.

144. *2011 State Teacher Policy Yearbook: Pennsylvania*, *supra* note 120, at 1; *2011 State Teacher Policy Yearbook: North Carolina*, *supra* note 96, at 1; *2011 State Teacher Policy Yearbook: Nevada*, *supra* note 133, at 1.

Effectiveness Evaluation System for two of three years, with no rating below “effective”; or an average rating of at least “effective” for a four-year period, with a rating of at least “effective” for the last two years.¹⁴⁵

Thus, evidence of teacher effectiveness and student learning is paramount in determining whether a teacher should be rewarded with tenure, unlike the system in North Carolina, where simply staying employed for a matter of years allows a teacher to achieve such status.¹⁴⁶

Concerning teacher evaluation and assessment, Oklahoma demands that “teachers who receive unsatisfactory evaluations be placed on improvement plans[,]” which are not to exceed two months.¹⁴⁷ If the teacher still performs unsatisfactorily after this two-month improvement plan, he or she is officially eligible for dismissal.¹⁴⁸ The most recent legislation in Oklahoma guarantees that teacher ineffectiveness is, by itself, sufficient grounds to justify dismissal.¹⁴⁹ According to the NCTQ, “teachers rated as ‘ineffective’ for two consecutive years, ‘needs improvement’ for three years, or who do not average at least an ‘effective’ rating over a five-year period on the Oklahoma Teachers and Leader Effectiveness Evaluation System shall be dismissed or not reemployed.”¹⁵⁰

Concerning the due process rights of dismissed teachers, there is no distinction between those terminated for ineffective performance and those terminated for felonious actions and/or morality violations.¹⁵¹ Indeed, the termination “process is the same regardless of the grounds for cancellation.”¹⁵² In Oklahoma, teachers can be terminated for a variety of pedagogical grounds: “repeated negligence in performance of duty, willful neglect of duty, incompetency, instructional ineffectiveness or unsatisfactory teaching performance.”¹⁵³ Notice the value placed on performance and instructional effectiveness.¹⁵⁴ Moreover, tenured teachers who are terminated in Oklahoma have only one opportunity to

145. 2011 *State Teacher Policy Yearbook: Oklahoma*, NAT'L COUNCIL ON TEACHER QUALITY 96 (Jan. 2012), http://www.nctq.org/dmsView/2011_State_Teacher_Policy_Yearbook_Oklahoma_NCTQ_Report.

146. *Id.*; 2011 *State Teacher Policy Yearbook: North Carolina*, *supra* note 96, at 90.

147. 2011 *State Teacher Policy Yearbook: Oklahoma*, *supra* note 145, at 153; OKLA. STAT. tit. 70, § 6-101.24 (2005).

148. OKLA. STAT. tit. 70, § 6-101.24(B).

149. 2011 *State Teacher Policy Yearbook: Oklahoma*, *supra* note 145, at 157.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *See id.*

appeal.¹⁵⁵ This appeal, which is made to the school board, “shall be final and nonappealable.”¹⁵⁶ Oklahoma, leading the field, received a “B-” from the team at the NCTQ for its policies concerning public school teachers.¹⁵⁷

There are a number of striking differences between the Oklahoma system of teacher tenure, evaluation, and termination, and the system implemented in North Carolina. While both recognize that there are benefits to rewarding some teachers with tenure, only Oklahoma places a strong emphasis on teacher effectiveness and student learning when rewarding a teacher with such a status.¹⁵⁸ Moreover, while both systems allow for some level of accountability for teacher termination decisions, the system in Oklahoma does not permit multiple and redundant levels of costly appeal.¹⁵⁹ Accordingly, the states’ disparity in grades from the NCTQ is not altogether surprising.¹⁶⁰

E. *The Former North Carolina Statute*

This Article has already examined the former North Carolina statute governing teacher tenure and termination at length, highlighting cases and situations in which it has been implemented. Moreover, it has considered current research on the issues and problems with the statute. However, this Article has not yet analyzed its positive and negative characteristics.

1. *Positives*

There can be little doubt that section 115C-325 accomplished a number of objectives.¹⁶¹ It established a system of procedures that served to ensure the due process and property rights of North Carolina public school teachers.¹⁶² It established a system of keeping records and files.¹⁶³ It outlined the process by which a teacher could be

155. *Id.* See also OKLA. STAT. tit. 70, § 6-101.26 (2005).

156. OKLA. STAT. tit. 70, § 6-101.26.

157. *2011 State Teacher Policy Yearbook: Oklahoma*, *supra* note 145, at 1.

158. *Id.* at 150–55; *2011 State Teacher Policy Yearbook: North Carolina*, *supra* note 96, at 150–55.

159. *2011 State Teacher Policy Yearbook: Oklahoma*, *supra* note 145, at 150–55; *2011 State Teacher Policy Yearbook: North Carolina*, *supra* note 96, at 150–55.

160. See *2011 State Teacher Policy Yearbook: Oklahoma*, *supra* note 145, at 1; *2011 State Teacher Policy Yearbook: North Carolina*, *supra* note 96, at 1.

161. N.C. GEN. STAT. § 115C-325 (2013).

162. See *id.*

163. See *id.*

suspended.¹⁶⁴ It explained how a teacher could resign from his or her position.¹⁶⁵ And it endeavored to define terms relevant to teacher employment.¹⁶⁶

Perhaps most significantly, section 115C-325 established a system for public school teacher tenure, retention, and termination.¹⁶⁷ On the positive side, this likely protected some teachers from capricious terminations, affording them with some measure of job security. Indeed, recall the Students and Staffing Survey, which indicated that less than one percent of all North Carolina public school teachers were terminated—for any reason—under the protection of tenure, compared to nearly ten percent of private school educators nationwide.¹⁶⁸ While some of the teachers highlighted in this Article unquestionably deserve no such protection, the vast majority of North Carolina teachers are hardworking, passionate, trustworthy educators who deserve job security and a competitive salary.

Thus, it is not difficult to understand why some writers and scholars believe that providing teachers with the protection of tenure is incredibly important.¹⁶⁹ Indeed, tenure has long been a highly valued part of educational employment, though usually at the university or collegiate levels and not in secondary schools.¹⁷⁰ Accordingly, the former North Carolina teacher tenure statute had some positive characteristics, particularly because it theoretically could have provided great teachers with protection from capricious terminations.

164. *See id.*

165. *See id.*

166. *See id.*

167. *See id.*

168. *See supra* notes 114–15 and accompanying text.

169. *See e.g.*, Charlotte Garden, *Teaching For America: Unions and Academic Freedom*, 43 U. TOL. L. REV. 563, 564 (2012) (“[C]ollectively bargained protections for academic freedom may be the best available method for shielding teachers who make reasonable pedagogical decisions delegated to them by school administrators.”).

170. Robert B. Conrad and Louis A. Trosch, *Renewable Tenure*, 27 J.L. & EDUC. 551, 571 (1998). Conrad and Trosch note:

Tenure has worked remarkably well throughout the past 130 years in giving tenured faculty the freedom to disseminate knowledge in both the classroom and in research endeavors without the threat of reprisal. Despite assaults leveled against it by various outside sources over the last century, it remains the bastion and protective shield of academic freedom.

Id.

2. *Negatives*

Notwithstanding the former statute's positive characteristics, case law reveals that section 115C-325 gave teachers lifelong, perpetual tenure, which—in addition to the possibility of protecting great educators from being unjustly fired—often stripped schools and administrators of autonomy when making employment decisions.¹⁷¹ Moreover, the reward of tenure was not tied to any consideration of teacher effectiveness or student learning.¹⁷² The statute created unnecessary procedural barriers that made it more difficult and far more costly to terminate someone who unequivocally needed to be terminated.¹⁷³ Similarly, the statute made it difficult for administrators to comply with budgetary demands regarding employment.¹⁷⁴

The statute also made it rather challenging to terminate teachers like Ms. Walker—teachers who submitted their assignments on time, showed up when they were supposed to, and were, on paper, passable educators—for poor performance.¹⁷⁵ In some instances, the statute outright prohibited termination, even when school boards and administrators deemed it best.¹⁷⁶ Indeed, the aforementioned statistic (that less than one percent of all tenured North Carolina teachers are terminated for any reason) strongly suggests that most teachers were practically impervious to termination for poor performance.¹⁷⁷ Furthermore, educational research reveals that teacher performance in North Carolina classrooms was not valued nearly enough when making employment decisions.¹⁷⁸ These were problems with a statute that was well intentioned and not without positive characteristics; nonetheless, these problems were still present and in need of a solution.

171. See, e.g., *Faulkner v. New Bern-Craven Cnty. Bd. of Educ.*, 316 S.E.2d 281, 285–86 (N.C. 1984); *Richardson v. N.C. Dep't of Pub. Instruction Licensure Section*, 681 S.E.2d 479, 481 (N.C. Ct. App. 2009).

172. See *2011 State Teacher Policy Yearbook: North Carolina*, *supra* note 96, at 90.

173. See *id.*

174. See, e.g., *Taborn v. Hammonds*, 380 S.E.2d 513, 519–21 (N.C. 1989); *Goodwin v. Goldsboro City Bd. of Educ.*, 312 S.E.2d 892, 894–96 (N.C. Ct. App. 1984).

175. See, e.g., *Farris v. Burke Cnty. Bd. of Educ.*, 559 S.E.2d 774, 776 (N.C. 2002); *Davis v. Macon Cnty. Bd. of Educ.*, 632 S.E.2d 590, 592 (N.C. Ct. App. 2006); *Nestler v. Chapel Hill/Carrboro City Sch. Bd. of Educ.*, 311 S.E.2d 57, 59 (N.C. Ct. App. 1984).

176. *Crump v. Bd. of Educ. of Hickory Admin. Sch. Unit*, 392 S.E.2d 579, 580 (N.C. 1990); *Rose v. Currituck Cnty. Bd. of Educ.*, 350 S.E.2d 376, 378 (N.C. Ct. App. 1986).

177. *Table 8*, *supra* note 114. Query: after one removes the teachers who have been fired for sexual deviance or criminal behavior, how many of those remaining can be said to have been terminated for poor performance?

178. *2011 State Teacher Policy Yearbook: North Carolina*, *supra* note 96, at 90.

F. *The New North Carolina Statute*

The North Carolina General Assembly passed Senate Bill 361 (Bill 361), currently codified in North Carolina General Statute sections 115C-325.1 to 115C-325.13 (effective July 1, 2014), which, upon becoming law, replaced key provisions of section 115C-325.¹⁷⁹ Bill 361, heralded by some as a monumental shift from the former statute,¹⁸⁰ makes progress in addressing the aforementioned negatives of the current law. It does not, however, come nearly close enough to alleviating the problems of the former system of public school teacher employment in North Carolina.

1. *Text*

First, Bill 361 eliminates teacher tenure in North Carolina by establishing a system that will employ public school teachers for a variety of terms.¹⁸¹ For teachers who have been employed for less than three years, employment contracts are automatically “for a term of one school year.”¹⁸² Teachers who have been employed for three years or more can receive contracts “for a term of one, two, three, or four school years.”¹⁸³ But no teacher, no matter how old, gifted, or experienced, can receive “career status” or tenure.¹⁸⁴

Second, Bill 361 maintains the current policy of prohibiting administrators and leaders from terminating teachers for reasons not within the enumerated list: “A teacher shall not be dismissed or demoted during the term of the contract except for the grounds and by the procedure set forth in [section] 115C-325.4.”¹⁸⁵ This list remains largely unchanged, save for a brief description of what “inadequate performance” actually means:

In determining whether the professional performance of a teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Inadequate performance for a teacher shall mean (i) the failure to perform at a proficient level on any standard of the evaluation

179. N.C. GEN. STAT. §§ 115C-325.1 to .13 (2013) (effective July 1, 2014).

180. Stoops, *supra* note 3.

181. N.C. GEN. STAT. § 115C-325.3.

182. *Id.* § 115C-325.3(a).

183. *Id.*

184. *See id.*

185. *Id.* § 115C-325.3(c).

instrument or (ii) otherwise performing in a manner that is below standard.¹⁸⁶

Third, Bill 361 continues to allow for paid leave for teachers who are under review.¹⁸⁷ Like the former statute, Bill 361 grants superintendents the power to suspend a teacher with or without pay while the dismissal process—hearings and a school board review—takes place.¹⁸⁸ If a teacher is suspended without pay and is subsequently vindicated by a ruling by the school board that the suspension was wrongful, “the teacher shall be reinstated immediately, shall be paid for the period of suspension, and all records of the suspension shall be removed from the teacher’s personnel file.”¹⁸⁹ This too is largely unchanged from the former statute.¹⁹⁰

Finally, Bill 361 continues to allow terminated teachers to appeal the decision of the school board to superior court and beyond:

A teacher who (i) has been dismissed, demoted, or reduced to employment on a part-time basis for disciplinary reasons during the term of the contract as provided in [section] 115C-325.4, or has received a disciplinary suspension without pay as provided in [section] 115C-325.5, and (ii) requested and participated in a hearing before the local board of education, shall have a further right of appeal from the final decision of the local board of education to the superior court of the State¹⁹¹

This provision, applied in the cases discussed above, is also present in the former statute.¹⁹² Bill 361 carries its own set of positive and negative aspects, characteristics that will be analyzed in turn.

2. *Positives*

First, in light of the aforementioned cases, the fact that Bill 361 eliminates the possibility of lifelong, perpetual tenure for public school teachers merits commendation. No longer will teachers be able to go entire decades without evaluation or accountability.¹⁹³ Under Bill 361, the longest a public school teacher will be able to work without a superintendent and school board considering his or her performance,

186. *Id.* § 115C-325.4(a)(1).

187. *Id.* § 115C-325.5(c).

188. *Id.*

189. *Id.* § 115C-325.5(a).

190. *See id.* § 115C-325(f1).

191. *Id.* § 115C-325.8(a).

192. *Id.* § 115C-325(n).

193. *Id.* §§ 115C-325.1 to .13.

merit, and contract is four years.¹⁹⁴ The four-year maximum provided by Bill 361 effectively eliminates any “tenure” or “career status.”¹⁹⁵ Although teachers will still enjoy the protection of numerous procedural barriers to termination, they will no longer have the virtually impenetrable shield of tenure to keep them from being fired.¹⁹⁶ It would have been better, perhaps, to adopt the Oklahoma model of tenure where such a status is still possible but is connected to teacher effectiveness and student learning, rather than simply longevity.¹⁹⁷ Nevertheless, the fact that the new law eliminates the possibility of lifelong tenure, unearned by effectiveness, is worthy of approval.

Second, Bill 361 maintains a system of employment termination in which accountability for personnel decisions remains possible.¹⁹⁸ That is, an administrator’s decision to terminate a teacher is still reviewable by the school board, making it difficult for an administrator to wrongfully fire a teacher.¹⁹⁹ This provision may be unnecessary, however. Teachers are, like all employees, free to bring a wrongful termination suit if they believe they have been unjustly fired.²⁰⁰ Nonetheless, this level of protection and accountability is a beneficial characteristic of employment for some of North Carolina’s hardest working—and most underpaid—civil servants. The extent of that accountability, however, is far too great and will be discussed in the following Subsection.

3. *Negatives*

Bill 361 not only continues to allow a teacher to have his or her termination reviewed by the local school board, it further continues to grant teachers a “right” to appeal the school board’s decision to superior court and beyond.²⁰¹ This is in direct contrast to the practice in Oklahoma, where the decision of the school board is final and cannot be appealed a second time.²⁰² Bill 361 notes that any public school teacher

194. *Id.* § 115C-325.3(a).

195. *See id.*

196. *See id.*

197. *See 2011 State Teacher Policy Yearbook: Oklahoma, supra* note 145, at 96; *2011 State Teacher Policy Yearbook: North Carolina, supra* note 96, at 90.

198. N.C. GEN. STAT. § 115C-325.6.

199. *Id.*

200. *See McCullough v. Branch Banking & Trust Co.*, 524 S.E.2d 569, 573 (N.C. Ct. App. 2000); *see also Kurtzman v. Applied Analytical Indus.*, 493 S.E.2d 420, 422 (N.C. 1997); *Burgess v. Your House of Raleigh, Inc.*, 388 S.E.2d 134, 137 (N.C. 1990).

201. N.C. GEN. STAT. § 115C-325.8(a).

202. *See 2011 State Teacher Policy Yearbook: Oklahoma, supra* note 145, at 157.

who “has been dismissed, demoted, or reduced to employment on a part-time basis for disciplinary reasons during the term of the contract . . . or has received a disciplinary suspension without pay” can—provided he or she requested a school board review of his or her termination—appeal the termination to the superior court if he or she alleges that the termination is based on one or more of the following grounds:

- (1) Is in violation of constitutional provisions.
- (2) Is in excess of the statutory authority or jurisdiction of the board.
- (3) Was made upon unlawful procedure.
- (4) Is affected by other error of law.
- (5) Is unsupported by substantial evidence in view of the entire record as submitted.
- (6) Is arbitrary or capricious.²⁰³

This affords teachers—like the predator in *Evers v. Pender County Board of Education*—the “right” to appeal their termination numerous times.²⁰⁴ Under Bill 361, hypothetically, a teacher who has been caught having sex with a student can, after being fired by a superintendent, request to have that decision reviewed by the local school board.²⁰⁵ As a matter of “right,” that same teacher can appeal the school board’s determination to superior court.²⁰⁶ Further, this “right” permits the teacher to appeal the superior court’s decision to the Court of Appeals of North Carolina and potentially to the Supreme Court of North Carolina.²⁰⁷ Thus, while accountability for termination of some public school teachers is potentially a positive, it is decidedly negative to continue to allow teachers multiple levels of costly judicial review as a matter of right.

A second negative characteristic of Bill 361 is that it is still possible for unworthy teachers—again, like the example in *Evers v. Pender County Board of Education*—to go on paid leave while the facts of their termination are reviewed.²⁰⁸ Bill 361, like the former statute, gives superintendents the right to place a teacher on suspension with or without pay.²⁰⁹ If a teacher is suspended without pay and is then vindicated by a finding that his or her termination was unjust, he or she “shall be reinstated immediately, shall be paid for the period of

203. N.C. GEN. STAT. § 115C-325.8(a).

204. *Id.*; *Evers v. Pender Cnty. Bd. of Educ.*, 407 S.E.2d 879, 881–82 (N.C. Ct. App. 1991).

205. N.C. GEN. STAT. § 115C-325.8(a).

206. *Id.*

207. *Id.*

208. *Id.* § 115C-325.5(c); *Evers*, 407 S.E.2d at 881–82.

209. *Id.* § 115C-325.5.

suspension, and all records of the suspension shall be removed from the teacher's personnel file."²¹⁰ While superintendents have the right to place a teacher on suspension without pay, it seems that such a decision is oddly rare. In cases like *Evers*, to place such a teacher on suspension with pay is reprehensible.²¹¹ Furthermore, such a provision is unnecessary considering the right of such a teacher, upon being proven innocent, to collect the funds he or she would have earned during his or her suspension.²¹² Thus, the provision in Bill 361 that allows superintendents to give inappropriate teachers a paid vacation while administrators review their termination is appallingly negative. These problems are substantial, glaring, and deserving of solutions.

4. Solutions

First, concerning the matter of judicial review, it should be noted that any individual is always free to file a suit in public court. That cannot, and should not, be taken away from anyone. However, such a "right" need not, and should not, be provided for in a statute governing public school teacher termination. If a teacher decides to challenge his or her termination via the courts, so be it, but such a decision and process need not be a "right" protected by statute. To accomplish the best of both worlds and provide for some amount of accountability while eliminating the highly negative and extremely costly steps of judicial review, North Carolina should follow the example of Oklahoma. North Carolina should allow a superintendent's termination decision to be reviewed once by the local school board—providing at least some level of accountability—but should make the school board's decision final and "unappealable," thereby neutralizing the costly and time-consuming legal battles that often follow.²¹³ Providing one form of review and accountability is enough, particularly in light of the fact that very few employees in North Carolina have a similar appeals process at their disposal.

Second, the ability of superintendents to place unsafe teachers—or even just very poor educators—on paid leave while the circumstances of their termination are reviewed should be entirely and swiftly eliminated. Such a provision is not only unnecessary, it is also appalling. This provision is unnecessary because, as discussed above, teachers can

210. *Id.* § 115C-325.5(a).

211. *See Evers*, 407 S.E.2d at 881–82.

212. *See* N.C. GEN. STAT. § 115C-325.5(a).

213. *See 2011 State Teacher Policy Yearbook: Oklahoma*, *supra* note 145, at 157; OKLA. STAT. tit. 70, §§ 6-101.22, .24 to .26, .29 (2005).

recover any funds they would have earned if their termination is deemed wrongful. And it is appalling because when, as seen above, teachers are proven to be guilty of crimes, the fact that they were continuing to receive taxpayer dollars cannot be described in any other terms. Thus, superintendents should not have the ability to place suspended, soon-to-be-terminated teachers on paid leave due to the aforementioned retroactive safeguard.

CONCLUSION

*“The task of the modern educator is not to cut down jungles
but to irrigate deserts.”*
~ C.S. Lewis²¹⁴

Nearly every North Carolina public school teacher that I have met and worked with is hardworking, underpaid, and passionate about serving and educating the children of North Carolina. They should undoubtedly be thanked, respected, and well compensated. Nevertheless, the current system of public school teacher termination is sorely in need of assistance. Case law makes this abundantly and painfully clear.²¹⁵ Furthermore, extensive social and educational research reveals the same conclusion.²¹⁶ Although it was undoubtedly crafted with the best intentions,²¹⁷ the former governing statute—section 115C-325 of the North Carolina General Statutes—seemed to be doing more harm than good, and Bill 361, while a step in the right direction, does not accomplish much in the way of alleviating the present concerns. Superintendents are still free to give soon-to-be-terminated educators a paid vacation while their termination is reviewed.²¹⁸

214. C.S. LEWIS, *THE ABOLITION OF MAN* 13–14 (HarperCollins 1944).

215. See *Farris v. Burke Cnty. Bd. of Educ.*, 559 S.E.2d 774, 776 (N.C. 2002); *Crump v. Bd. of Educ. of Hickory Admin. Sch. Unit*, 392 S.E.2d 579, 580 (N.C. 1990); *Taborn v. Hammonds*, 380 S.E.2d 513, 514 (N.C. 1989); *Faulkner v. New Bern-Craven Cnty. Bd. of Educ.*, 316 S.E.2d 281, 285 (N.C. 1984); *Richardson v. N.C. Dep’t of Pub. Instruction Licensure Section*, 681 S.E.2d 479, 481 (N.C. Ct. App. 2009); *Davis v. Macon Cnty. Bd. of Educ.*, 632 S.E.2d 590, 592 (N.C. Ct. App. 2006); *Rose v. Currituck Cnty. Bd. of Educ.*, 350 S.E.2d 376, 378 (N.C. Ct. App. 1986); *Goodwin v. Goldsboro City Bd. of Educ.*, 312 S.E.2d 892, 893 (N.C. Ct. App. 1984); *Nestler v. Chapel Hill/Carrboro City Sch. Bd. of Educ.*, 311 S.E.2d 57, 59 (N.C. Ct. App. 1984).

216. See generally *2011 State Teacher Policy Yearbook: North Carolina*, *supra* note 96.

217. “Hell isn’t merely paved with good intentions; it’s walled and roofed with them. Yes, and furnished too.” ALDOUS HUXLEY, *TIME MUST HAVE A STOP* 103 (Dalkey Archive Press 1944).

218. N.C. GEN. STAT. § 115C-325.5(c) (2013) (effective July 1, 2014).

Teachers can still, as a matter of right, appeal their terminations to numerous judicial courts at great cost to taxpayers.²¹⁹

Thus, while the recent efforts should be celebrated, particularly for eliminating lifelong, virtually impenetrable tenure, they should be criticized for not doing enough—both for teachers and students. There is still work to do, not for the benefit of political parties, superintendents, or even school administrators. There is still work to do for the benefit of each and every public school student and teacher in North Carolina. Students are, or at least should be, the motivation behind any system of teacher employment or termination. The goal is not really to make it easier to hire or fire teachers; the goal is to create a system in which the students of North Carolina have access to the best, safest, most passionate educators this State has to offer. Any system where administrators are prohibited from firing sex predators, racists, and dispassionate teachers is simply not accomplishing that goal. Hopefully, with this objective in mind, changes can be made so that the students of North Carolina will finally have the education they so urgently need and deserve.

219. *Id.* § 115C-325.8.