

Teacher Tenure Reform

Applying Lessons
from the Civil Service
and Higher Education

BY PUBLIC IMPACT

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Public Impact team members contributing to this work include Emily Ayscue Hassel, Julie Kowal, Joe Ableidinger, and Bryan C. Hassel

About the Authors

EMILY AYSUCUE HASSEL is Co-Director of Public Impact. She provides thought leadership and oversight to Public Impact's work on human capital, organizational transformation, and emerging opportunities for dramatic change in pre-K to grade 12 education. Her work has appeared in *Education Week*, *Education Next* and other publications. She previously worked for the Hay Group, a leading human resources consulting firm. Ms. Hassel received her law and master in business administration degrees from the University of North Carolina at Chapel Hill.

JULIE KOWAL is a senior consultant with Public Impact. She consults and leads teams to offer research-based guidance on several challenging policy and management issues in education, including teacher quality, evaluation, retention, and compensation, and dramatic change in persistently underperforming schools. Ms. Kowal recently led Public Impact's involvement in several applications for the federal Race to the Top and Investing in Innovation competitions. An alumna of AmeriCorps NCCC and Public Allies DC, Ms. Kowal earned her law degree with honors from the University of North Carolina at Chapel Hill.

JOE ABLEIDINGER is a consultant with Public Impact. His work focuses on a variety of education policy issues, including emerging technologies in education, human capital management, and charter schools. Before joining Public Impact, Mr. Ableidinger taught high school English with the Fulbright Program in Korea and started a family resource center at an underperforming elementary school as an AmeriCorps VISTA volunteer. Mr. Ableidinger received his B.A. with highest honors from Duke University, his master's in public administration from the John F. Kennedy School of Government at Harvard University, and his law degree with honors from Harvard Law School.

BRYAN C. HASSEL is Co-Director of Public Impact. He consults nationally with leading public agencies, nonprofit organizations and foundations working for dramatic improvements in K-12 education. He is a recognized expert on charter schools, school turnarounds, education entrepreneurship, and human capital in education. His work has appeared in *Education Next*, *Education Week*, and numerous other publications. Dr. Hassel received his doctorate in public policy from

Harvard University and his master's degree in politics from Oxford University, which he attended as a Rhodes Scholar. He earned his B.A. at the University of North Carolina at Chapel Hill, which he attended as a Morehead Scholar.

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Teacher Tenure Reform

Applying Lessons from the Civil Service and Higher Education

By Public Impact

INTRODUCTION

Research continues to confirm what intuition has told many of us for years: Teacher quality has a bigger impact on student learning than any other factor in a school. Nationwide, this finding has increasingly motivated policymakers and the public to focus reforms on dramatically improving teacher quality. National, state, and local leaders have initiated reforms designed to better prepare teachers for the classroom, more accurately identify and reward top teachers, support teachers' development, and equip education leaders to identify and remove the very least-effective teachers.

Discussions of teacher quality often lead to questions about which teachers are retained and dismissed in K–12 public schools, and thus to questions about tenure. Teacher tenure was designed in the early 1900s as a set of procedural protections against unfair and arbitrary dismissals.¹ But today, concerns about the effect on student outcomes—along with budgetary constraints—dominate education reform discussions.

As a result, leaders in a handful of states and districts have begun making changes to align their tenure systems with their goal of increasing student learning. Common changes include streamlining tenure protections and increasing the rigor of the tenure-granting process.² Parallel efforts to improve the quality, accuracy, and rigor of educator evaluations have strengthened the basis for personnel

decisions based on performance, and have fueled increased interest in tenure reform.

As education leaders move from questions of *whether* to reform tenure to *how*, they will need better information about how tenure design can best help students succeed.

Could redesigned tenure actually improve student learning? Could it grow the size and power of a high-performing teacher corps?

This paper examines two other sectors that have a long history with tenure—the civil service and higher education. In the civil service, tenure-like job protections apply to nonpolitical positions in both state and federal governments. At colleges and universities, people in many faculty positions can receive tenure. Here, we examine the **purposes of tenure** and the **tenure design elements** in both of these settings and explore how they help or hinder an organization's goals.

Based on these lessons, and in light of today's imperative for better student learning, we then offer a set of **reform options for K–12 education leaders**

who are committed to changing tenure systems to improve student results. The two major paths are **reforming tenure** and **eliminating tenure while adding enticements attractive to effective teachers**. We discuss the elements of tenure design: the **time** before tenure is considered; the **criteria** for obtaining tenure; the **tenure process**; the **protections** that tenure provides; and the **strength of other career advancement and reward opportunities** for better teachers. **Table 2 summarizes the elements of tenure design** that may be changed. **Table 3 presents one model of “Elite Tenure,”** focused on growing the size

and power of a high-performing teaching corps. We also discuss options for reformers who decide to eliminate tenure altogether.

Reformers choosing either route also will need to plan transitions well. States have limited powers to remove tenure from teachers who already have it, but they can leap into the future with tenure approaches for new teachers that fit the demands of education today. The best transitions will pair tenure changes with career and pay opportunities that encourage current teachers to voluntarily relinquish tenure and focus on excellence at work every year.



What are the Purposes of Tenure?

Why do organizations have tenure?* In the civil service and universities, much as in K–12 public schools, tenure was originally developed to insulate employees from undue political forces and to increase the attractiveness of the job.³

Today, institutions of higher education and the civil service use tenure or its associated job protections in part to achieve organizational objectives. In both, tenure serves two important purposes: **job security that attracts and retains talent** despite relatively lower pay, and **insulation of employees from internal and external political forces** that may harm organization performance. In higher education, tenure also serves as a **reward for achievement**, part of a package of opportunities that universities use to retain top faculty and increase performance.

Job Security to Attract and Retain Staff

Almost all professions today lack the job protections that tenure provides for the civil service and higher education. As in K–12 education, employee quality largely determines the quality of the civil service and higher education. To support strong organization performance, these sectors must attract good people despite relatively lower pay. Tenure thus provides a key benefit, lowering risk and thereby helping to attract high-quality candidates who could work elsewhere.

- ▶ **In the civil service**, job protections are credited with making it easier to attract good applicants and retain staff in spite of the sector’s comparatively low pay.⁴ Civil service employees continually report that job security ranks among the top reasons to accept federal employment or to stay in a federal job.⁵ In the few states that have decreased civil service protections in recent years, managers often report difficulty with recruitment and retention when lack of tenure is coupled with the relatively low pay typical of many state-level government positions.⁶
- ▶ **In the university setting**, tenure provides economic security as part of the overall compensation package for existing and prospective employees. Many institutions rely upon increased job security to attract and retain high performers. The prospect of lifetime job security makes the profession more attractive to many applicants and compensates them for giving up the higher salaries they could earn elsewhere, particularly in the private, for-profit sector.⁷

K–12 tenure is granted to nearly all teachers, with almost no criteria, and within the first few years of teaching.

*Throughout this report, we use the term “tenure” to refer to the job protections that accompany non-probationary job status in both higher education and the civil service. Though these job protections are not typically called “tenure” in the civil service, they provide due process rights that limit dismissal, similar to tenured positions in higher education and K–12 public schools.

Historical Purposes of Tenure in K–12

Tenure emerged in response to the spoils system in public schooling, under which teachers were hired (and fired) as a consequence of the political process rather than their competence or fit.⁸ Advocates intended it to be part of teachers' total compensation, helping to attract and retain teachers by making up for relatively low starting salaries and back-loaded pension benefits through long-term job stability.⁹ Tenure also has strong roots in the women's rights movement, with the specific aim of protecting female teachers.¹⁰

Insulation from Internal and External Politics

In both sectors, one of tenure's main purposes is to insulate employees from political forces that may keep the organization from accomplishing its mission.

- ▶ **In the civil service**, one of the primary purposes of tenure is to protect the public from poor services that could result if most government employees were appointed based on friendship and political allegiance, regardless of appointees' qualifications. Cronyism was common in earlier phases of our nation's history, and efforts to decrease politically-based decisions led to multiple reform efforts, including the Pendleton Civil Service Reform Act of 1883 and the Civil Service Reform Act of 1978, designed to professionalize the civil service and guard against such politically-motivated decisions.¹¹
- ▶ **In higher education**, tenure has a different insulating purpose: to enable faculty to pursue new ideas, viewpoints, and research innovations without fear of retribution by academic officials who

might disagree or whose prior work is diminished by new thinking and research.¹² Cutting-edge thinking and research is critical to the mission of many universities. For tenured professors, freedom from internal political forces allows them to challenge the administration on issues of curriculum and quality, and to challenge the conventional wisdom in their fields without fear of reprisal by dismissal.¹³

Reward for Strong Performance

One significant difference between the university and civil service settings is the degree to which tenure rewards achievement, with the goal of improving employee performance and retaining those who perform very well. **Many colleges and universities are highly selective about who receives tenure.** As a result, tenure awards bring more than security and political insulation—they also confer significant status.¹⁴ This prestige boosts the attractiveness of individual schools and academic positions in general, which in turn magnifies the recruitment and retention of high performers. Unlike other settings such as the civil service—in which job protections are quite easy to obtain, and therefore confer little status—tenure at universities serves the organizational goal of increasing the quality of faculties by disproportionately attracting and retaining individuals who are likely to succeed.

Tenure in higher education has been used primarily to further the mission of colleges and universities.

Design Elements of Tenure Systems

Here we examine the design elements of job protections in the civil service and higher education. In both, “tenure” or its functional equivalent is not a one-dimensional policy. Instead, the systems comprise several design elements that affect who receives tenure and what protections it affords, including:

- ▶ **Time to tenure:** the length of time required to become eligible for tenure
- ▶ **Criteria to earn tenure:** the standards an employee must meet to receive tenure
- ▶ **Process for conferring tenure:** the process by which eligible candidates are evaluated
- ▶ **Tenure protections:** the job security that tenure affords, and
- ▶ **Other career and reward opportunities:** the other inducements that institutions use to encourage recruitment, retention, and high performance of top employees.

In the following sections, we explore each of these design elements as they play out in both the civil service and higher education.

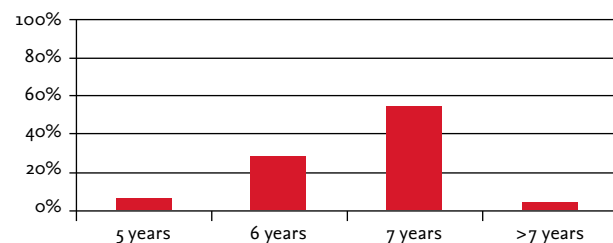
As a tool to strengthen our nation’s schools and children’s prospects, tenure has failed miserably. What can we learn from other sectors to make K–12 tenure more effective?

Time to Tenure

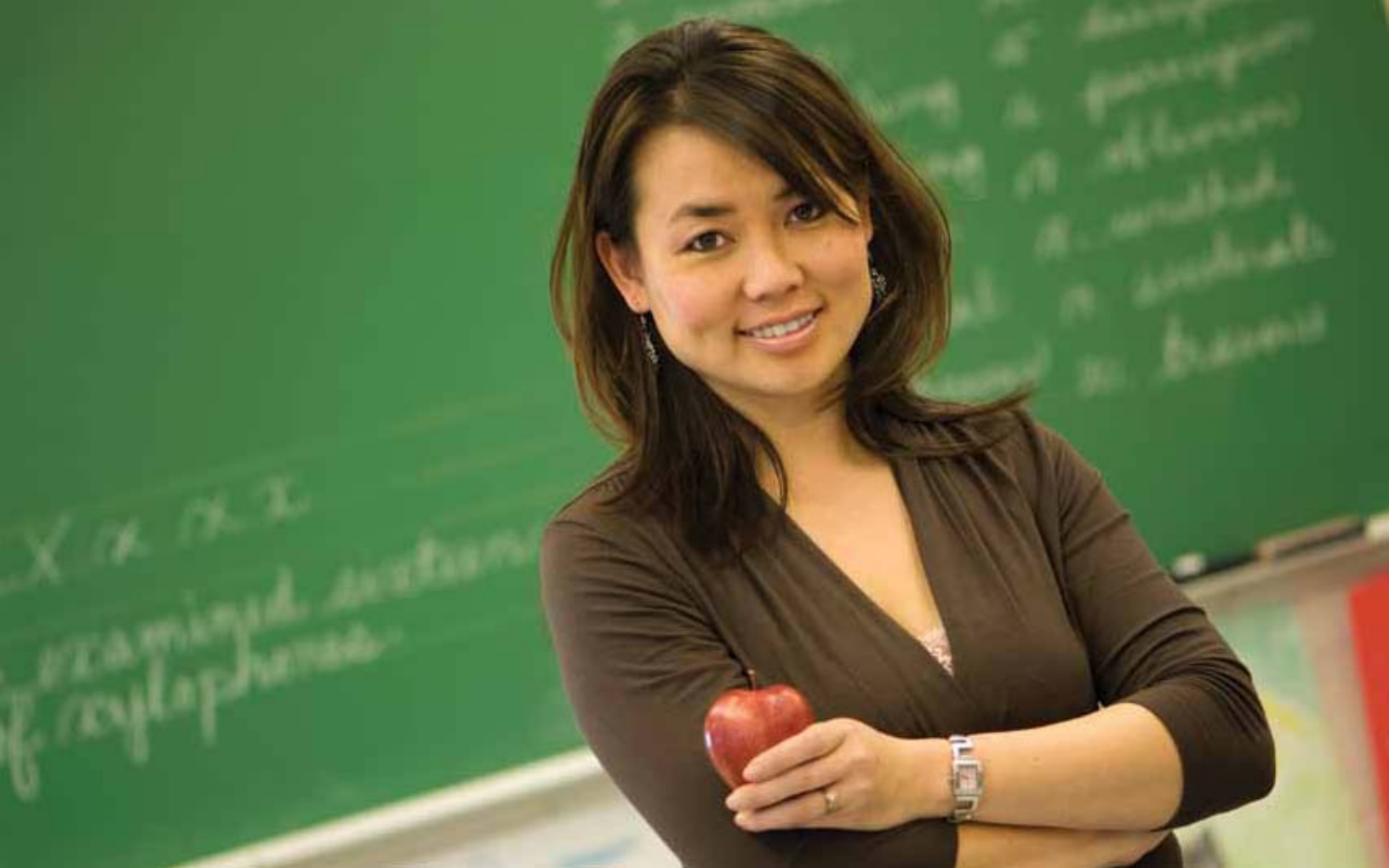
Like K–12 public schools, the civil service and institutions of higher education generally require a particular number of years of service before an employee is eligible to earn tenure. The length of time required differs, however, with higher education typically requiring a much longer probationary period than jobs in the civil service.

- ▶ **Federal permanent employees** are generally hired into “career-conditional” status, which includes a one-year probationary period before they are eligible for increased job protections.¹⁵ Likewise, **state and city systems** require probationary periods generally between six months and a year.¹⁶
- ▶ **At most tenure-granting higher education institutions**, probationary periods last for six or seven years.¹⁷ This average includes wide variation among individual colleges and universities: 54 percent have maximum probationary periods of seven years, 28 percent have probationary periods of six years, 6 percent have probationary periods of five years, and 4 percent have probationary periods of more than seven years (see Figure 1).¹⁸

FIGURE 1. Length of the Probationary Period at Tenure-Granting Universities



The average length of the probationary period also differs by institution type: research and doctoral institutions typically have the longest, with 77 percent requiring seven- or eight-year probationary periods.¹⁹ At four-year colleges, the average is seven years; and at community colleges, the average probationary period is only three years.²⁰



Criteria to Earn Tenure

As with the time required for eligibility, the criteria to earn tenure differ significantly between the higher education and civil service sectors and among individual institutions.

- ▶ **In the federal civil service and in some cities and states**, employees gain job protections automatically at the end of their probationary periods. Managers do not have to take any affirmative steps unless the employee is to be *denied* job protections, which rarely happens.²¹ Indeed, less than 2 percent of federal workers are removed during the probationary period.²² As a result, in the civil service, who ultimately gains increased job protections depends primarily on who is hired.²³
- ▶ **In most universities**, the criteria used to evaluate candidates for tenure are much more rigorous and defined. Nearly all institutions of higher education consider performance in the same three

categories: a candidate's research and scholarship, teaching, and service.²⁴ Some institutions also take into account other variables such as ethics, professionalism, and collegiality.²⁵

- **Research and scholarship:** Within this broad category, criteria in colleges and universities' tenure decisions typically include the number, quality, and prestige of a candidate's publications in scholarly journals, books, and reports; inventions, patents, or original creations; external grants and other fundraising; professional activities such as memberships or participation on editorial boards; presentations, fellowships, awards, workshops, and conferences; and other types of recognition and respect by their peers in the field.²⁶
- **Teaching:** Within this category, criteria usually relate to the quality of a candidate's course syllabi; success with students (as measured through student evaluations, enrollment levels,

availability for student consultation or advising, supervision of student research); classroom observations (to examine factors such as atmosphere, preparation, presentation, methods, organization, and clarity); the candidate's contribution to new courses or new pedagogical techniques; and teaching awards and other forms of recognition.²⁷

- **Service:** This category typically refers to a candidate's service to students (such as through advising, counseling, or involvement in extracurricular groups or activities); service to faculty (such as through service on committees and other governing groups); service to the school (participation in committees, recruitment/admissions, alumni activities, workshops, academic meetings, or college events); and service

to the community (including participation in civic groups, volunteer service, or professional associations).²⁸

Across these criteria, each institution places different weights on scholarship, teaching, service, and other factors. Doctoral institutions tend to place the highest value on candidates' published research and external grant funding, while other universities, liberal arts colleges, and community colleges typically place higher value on teaching success.²⁹

The rigor with which each criterion is judged also varies by institution, with top-ranked institutions and programs typically applying the strictest standards. Few (if any) universities use a set formula for how the criteria are pieced together to arrive at a tenure decision, however—indeed, final tenure decisions are generally shrouded in secrecy.³⁰

Key Design Elements of Tenure in K–12

Since tenure policies differ across states, one cannot generalize fully about the design elements. In addition, many states are reviewing their tenure policies as this report goes to press. Still, the following description provides a high-level view of how tenure generally works in K–12 education.

Time to tenure. All 50 states mandate probationary periods before teachers are eligible to receive tenure (the District of Columbia does not). Thirty-four states mandate periods of three years; most other states range from one year to five. Only Indiana and Missouri require five-year probationary periods; Ohio requires seven. In Hawaii and Mississippi, teachers may receive tenure after only one year.³¹

Criteria to earn tenure. States and districts typically do not follow formal processes for making tenure decisions beyond mandating probationary periods before teachers become eligible.³² In most districts, continued service during the probationary period is the primary criterion for earning lifetime job protections.³³ In 2007, for example, 98.7 percent of New York City teachers eligible to receive tenure did receive it.³⁴ Three states (Colorado, Delaware, and Rhode Island) and the District of Columbia now make evidence of student learning the preponderant criterion in tenure decisions.³⁵

Process for conferring tenure. During each year of their probationary period, most teachers receive one or two formal evaluations by principals or other building-level administrators.³⁶ The evaluations are not typically part of a formal tenure-granting process, however; after a teacher finishes her probationary period, tenure is the default. At most, school leaders consider whether teachers should be deemed ineligible for tenure.

Tenure protections. Tenure protects teachers against arbitrary or unfair dismissal, which includes the processes required to attempt and complete a dismissal. State laws or collective bargaining agreements typically include three requirements: teachers' right to "notice" of the reasons for dismissal, a hearing, and rights to appeal.³⁷ Most states specify "incompetence" or "inadequate performance" as grounds for dismissal, although these terms are typically not defined and lead to widely different interpretations during the dismissal process.³⁸

Process for Conferring Tenure

In addition to setting the time required to become eligible for tenure and the criteria by which candidates are evaluated, institutions in both the civil service and higher education typically follow a prescribed process for conferring tenure awards. Process elements that differ include the timing and frequency of evaluations, and the selection and relative power of evaluators with influence over the tenure decision.

- ▶ **In both state and federal civil service**, the evaluation process during civil servants' probationary period is rigorous in policy, but in practice leads to nearly automatic tenure awards. At the federal level, supervisors must carefully evaluate each employee's performance at the end of the probationary period to determine if each is likely to be a long-term asset to the agency. Federal regulations actually require that supervisors "utilize the probationary period as fully as possible to determine the fitness of the employee" and "terminate [the employee's] services during this period if he fails to demonstrate fully his qualifications for continued employment."³⁹ The evaluation process during probationary periods at the state level is typically designed to be similarly rigorous.⁴⁰

In practice, however, government supervisors at both levels have been reluctant to use evaluations as the basis for denying increased job protections—indeed, very few employees are dismissed during the probationary period for any reason, with a government report finding only 1.6 percent of federal competitive service employees dismissed during the first year, the typical period of probation.⁴¹ Federal employees and supervisors alike typically view evaluations as mere formalities, not opportunities to dismiss even poorly performing employees.⁴² In state civil service systems, many view the evaluations conducted during employees' probationary period as meaningless.⁴³

- ▶ **In higher education**, the tenure process is much more rigorous, both in policy and practice. Tenure denial is the default: Candidates bear the burden

of proving their qualifications to reviewers before receiving the award.⁴⁴ Faculty who are denied tenure at the end of the probationary period typically lose their jobs; most universities follow an "up-or-out" process.⁴⁵

At most colleges and universities, the tenure review process includes several stages of evaluation. The first stage includes review by peers and supervisors at the department level, the second by leaders at the college/school level (if any), and finally by the top leadership of the institution.⁴⁶ At each stage, candidates' tenure files—including formal compilations of scholarly work, other evidence of performance, and a statement by the candidate explaining the coherence, significance, and direction of his or her scholarship—typically form the primary basis for the review.⁴⁷ At many institutions, especially research universities, the tenure process also includes reviews by peers in the candidate's field who work at other universities. Steps to reveal evidence of criteria in addition to scholarship are included along the way, such as gathering student input (e.g. course evaluations) and letters from alumni, observing candidates' teaching, and holding meetings with the candidate and review committee members.⁴⁸

Protections after Tenure

Tenure in the university setting and its practical equivalent in the civil service confer a series of benefits that, together, form the level of job protection that employees receive. These include the grounds for dismissal of employees who have earned tenure and the degree of procedural protections granted to these employees, which in turn determine the ease or complexity of dismissals.

- ▶ **In both the federal and state civil service**, employees who have successfully completed their probationary period can be dismissed only for "just cause," a high bar that requires employers to prepare evidence and specific justification for termination.⁴⁹ Some state statutes include seemingly



specific language, such as Florida’s: “Cause shall include, but not be limited to, negligence, inefficiency or inability to perform assigned duties, insubordination, willful violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime involving moral turpitude.”⁵⁰ But even when language seems specific, the standard for what constitutes “just cause” remains fairly vague at both the federal and state levels, with application of broad legal terms left to arbitrators, hearing officers, and courts.⁵¹

Federal civil service laws require several steps

before dismissing a permanent employee, many of which are similar to the protections provided to tenured K–12 teachers. They include:

- Notice of the dismissal action
- An opportunity to respond and present evidence
- Representation by counsel
- A written decision from the agency that initiated the dismissal
- A right to appeal to the Merit Systems Protection Board, and
- A right to judicial review.⁵²



State systems vary, but the extent of their protections stem from constitutional requirements and generally resemble the federal protections.⁵³ Under these protections, less than 0.5 percent of federal employees lose their jobs after the probationary period.⁵⁴ At the state level, involuntary turnover rates average less than 2 percent annually.⁵⁵ Data suggest that supervisors rarely risk questionable dismissals, and most dismissals are upheld upon appeal. In Florida, for example, more than 90 percent of civil service dismissals were upheld throughout the 1990s.⁵⁶

- ▶ **In universities** as well, a tenured professor can be dismissed only for “just cause” or other specified reasons, including incompetence, neglect of duty, or serious misconduct.⁵⁷ In both public and private universities, some faculty handbooks spell out permissible reasons for dismissal, the procedures for challenging attempted terminations, and impermissible reasons for dismissal that would violate academic freedom.⁵⁸ As in K–12 public education and the civil service, specific causes typically are not precisely defined, leaving it to arbitrators, hearing officers, and courts to apply vague terms to specific facts.⁵⁹ Judges also tend to defer to managers’ subjective assessments, focusing instead on whether procedures were properly followed.⁶⁰

Procedural protections at universities generally include notice, a hearing, and one or more opportunities for appeal.⁶¹ However, an important factor in the level of protections afforded is the scope of the tenure award—i.e., whether it protects a faculty member’s position at the department, school, or institution level. With higher levels of tenure (e.g., university-wide versus campus, department, or program-specific) come stronger degrees of job security.⁶² For example, if a department dismissed a faculty member who received tenure at the institution level, the faculty member would likely be offered placement within the larger institution. Of the schools that discuss where tenure resides, 53 percent extend tenure only within departments, while 31 percent locate it at the institution level.

Universities rarely invoke dismissal procedures against tenured faculty. Even when initiated, they seldom result in dismissal. In recent decades, only about 50 tenured professors (out of roughly 325,000 nationwide, or less than 0.01 percent) have been dismissed for reasons such as incompetence or moral turpitude each year.⁶³

Other Career and Reward Opportunities

In both the civil service and higher education, tenure is one of many rewards that institutions offer to encourage the recruitment, retention, and high performance of top employees. To some extent in the civil service, but especially at universities, tenure is but one of a dynamic array of incentives and rewards available to staff members who excel.

- ▶ **The federal civil service** operates based on a well-defined set of levels that clarify employees’ responsibilities, status, and pay opportunities. As in K–12 education, most federal positions have specified pay ranges through which employees advance at regular intervals. Promotion to new positions within a department—which often come with higher pay rates—is based on merit.⁶⁴ In some federal jobs, performance is a larger determinant of pay within each job, without promotion; in these, pay grades are designed in much larger bands,

and an individual's movement through a band is based on formal performance review.⁶⁵ The federal employment system offers a large number of positions that, altogether, provide a rich menu of advancement options for employees.⁶⁶ While the reward systems are not as robust as many in higher education and the private sector, they offer better performers continual opportunity to advance along career tracks within jobs, and a multitude of job advancement options across departments.

► **Most universities** offer a series of recognitions for achievement, including different levels of professorship (assistant, associate, and full professor), named positions (“chairs”) that confer prestige and extra pay, special program and center directorships, and departmental leadership roles. Furthermore, each of these “brass rings” conveys differing levels of prestige based on the reputation of the university, department, or program. Associated pay differs based on a combination of standard university pay packages and specially-funded pay. Lower-ranked universities are able to compete by offering powerful, prestigious, or funded positions such as endowed chairs and center or program leadership roles.

In this context, college and university faculty regularly leave positions to seek higher pay and

prestige at better-regarded institutions. Others leave less-secure positions in the best universities for the safety and high regard of tenured, endowed positions at less-prestigious universities. Some give up the prospect of tenure at lower-ranked universities to remain in the most prestigious universities without tenure. Tenure is just one part of this dynamic system of rewards for excellent performers.

In higher education as in any sector, however, what is rewarded is what gets done. The most prestigious universities typically value research over teaching, not just for conferring tenure, but for other rewards as well. Higher education institutions have generally shifted the weight of tenure decisions from teaching and service toward a stronger emphasis on scholarship.⁶⁷ For example, more than 62 percent of all English and foreign language departments in a recent survey reported that publication increased in importance between 1995 and 2005.⁶⁸ The percentage ranking scholarship over teaching more than doubled, from 35 percent in 1968 to 76 percent in 2005.⁶⁹ This shift has not been limited to research and doctoral institutions; other colleges and universities have also increased their focus on publication in recent years to enhance their own prestige.⁷⁰

TABLE 1. Key Design Elements of Tenure Systems in Higher Education, the Civil Service and K–12

	Higher Education	Civil Service	K–12 Teaching
Time to tenure	5 to 7 years (varies by institution)	1 year (most federal agencies)	3 years typical; states range from 1 to 5 with exception of Ohio (7)
Criteria for tenure	High (varies by institution)	Low	Low
Process for tenure	Extensive, multifaceted	Minimal; automatic	Minimal; automatic
Tenure protections	Very high	Very high	Very high
Other career and reward opportunities	Tenure is part of a dynamic array of rewards for high performers	High performers can receive promotions and raises; have opportunities for new challenges at other agencies	Few opportunities for promotion or pay advancement beyond salary schedule, unless teacher becomes administrator

Recent Trends in the Civil Service and Higher Education

Several states, the federal government, and many colleges and universities have begun reforming job protections and tenure in response to shifting rationales and changing organizational demands. In recent years, the degree of job protection and frequency of tenure awards has decreased in both sectors.

- ▶ **At the federal level**, recent legislation gave the departments of Homeland Security and Defense increased discretion in agency personnel matters, decreasing job protections and appeal rights for thousands of federal civil service employees.⁷¹
- ▶ **At the state level**, several states—including Texas, Florida, South Carolina, Arkansas, and Georgia—have moved largely to at-will employment for civil service workers.⁷² Other states are also moving away from traditional civil service systems for large groups of employees: At-will employment now covers 48 percent of state workers in Idaho; 40 percent in Kansas; 35 percent in Colorado; 33 percent in Oklahoma; 30 percent in West Virginia; and more than 20 percent in Ohio, Washington, and Illinois.⁷³

For hundreds of thousands of workers in federal agencies and state and local government, however, job protections in the civil service remain in place, with designs very similar to their historical roots.

Studies of the impact of reform in these states have revealed some increase in the number of

dismissals—or a decrease in the time it takes to dismiss underperforming employees—but the jury is still out on whether decreased job protections in reform states improve agencies' overall performance.⁷⁴ Reviewing the available literature in 2007, Condrey and Battaglio concluded that “insufficient time, confounding effects, and inadequate databases preclude rigorous empirically grounded answers to the question of whether radical civil service reform has improved service delivery.”⁷⁵ It is also too soon to tell whether these reforms increase politically-motivated hires or dismissals.⁷⁶

- ▶ **University employment** also has undergone significant changes over the past decade. Visiting, adjunct, and instructor positions are proliferating at U.S. universities, while tenure-track jobs are becoming rarer.⁷⁷ This is due primarily to economic forces—non-tenure-track positions command lower rates and customarily come without benefits—but schools have also pursued the shift because of perceived organizational benefits to limiting the role of research faculty in instruction, especially in introductory-level courses.⁷⁸ For those hired into tenure tracks, higher education institutions have begun to shift the weight of tenure decisions from teaching and service toward a stronger emphasis on scholarship.⁷⁹ Other than this shift, the fundamentals of tenure have changed little since the 1940s.

Tenure Reform Options in K–12

Here we offer options for making tenure a better contributor to student outcomes in K–12 education, applying lessons about job protections in the civil service and university settings while considering the urgent need to improve student learning in the U.S. The two major paths are **reforming tenure** and **eliminating tenure while adding other enticements to attract and retain effective teachers**. Table 2 summarizes the range of options for reforming tenure elements, and Table 3 presents one model of tenure reform focused on growing the size and power of an elite teaching corps.

States have limited powers to remove tenure from teachers who already have it, but they can leap into the future with tenure approaches for new teachers that fit the demands of education today. Some may choose to pair tenure reform with significant career and pay opportunities that encourage teachers to voluntarily relinquish tenure.

Option 1: Redesign Tenure

Many in education will choose to preserve tenure for teachers, or at least some level of due process rights exceeding employment at-will. Eliminating tenure entirely, whether all at once or more gradually, will not be politically feasible in many places. Fortunately, a significantly redesigned tenure system has the potential to support a highly effective teaching workforce. A renewed tenure system could help grow and empower the ranks of our nation’s best teachers.

To envision a new and improved tenure system, we consider options for each design element in turn.

Time to Tenure. Perhaps the simplest reform is extending the time before teachers are considered for tenure, allowing for more complete evaluation of fully-developed performance. As the civil service

and university settings show, there is no standard or known ideal number of years before an employee should be eligible for tenure. Therefore, decisions about timing should be based on relevant factors such as when meaningful evaluation data are available and the typical time it takes for employees to display their contributions as trained professionals.

As states and districts increasingly put value-added data to use in educators’ evaluations, requiring additional years before making tenure decisions could improve the reliability of the teacher outcome data upon which those evaluations are based.⁸⁰ Research also suggests that teachers typically have steep growth curves in their first five years.⁸¹ Evaluating them for tenure at that point, rather than in their developing years, would enable decisions based on data that better predicts long-term performance. Longer





time to tenure would allow districts to see not just how strong a teacher's performance is in one or two years, but how consistent from year to year as well.

Longer time to tenure also opens the door to earlier recognition and rewards for strong performance before tenure, putting tenure in its place as just one of many rewards for better teaching. This is akin to the opportunity that university faculty members have to move from assistant to associate professor in their early years before earning tenure.

Criteria for Tenure. Leaders can send the strongest signal about the meaning of tenure by increasing the rigor of the criteria for earning it—thereby limiting the number of teachers who receive tenure, and transforming it into an award that confers status and respect. Enhanced rigor can include increas-

ing the number of criteria to cover complete job performance, the quality of the measures for each criterion, clarity about their relative weight in tenure decisions, and the standards for tenure-worthy performance. In all cases, criteria for tenure should be linked to broader teacher evaluation systems, which many states and districts are now revamping.⁸² Rigor needs to be more than just on paper: actual tenure decisions must reflect whether teachers meet more stringent standards. As a result, the tenure-granting process, discussed below, is as important as the criteria themselves.

Considerations for reformers who want to increase the rigor of tenure criteria meaningfully include the following (see Public Impact's earlier work on performance measurement for more detail)⁸³:

- ▶ **Including a battery of criteria that fully reflect contributions needed from teachers** will result in more meaningful tenure decisions. Potential tenure criteria include teachers' impact upon student learning and other valued student outcomes; teachers' skills and competencies correlated with student outcomes (e.g., teamwork and leadership of peers); and other contributions teachers make to their schools and the profession.
- ▶ **Giving objective measures of student learning the heaviest weight** will keep academic learning in the fore and drive continued improvement in student assessment. Some reformers may want to treat learning results as a minimum threshold, to deny tenure for teachers who fall short in this area despite other contributions. Improving the quality of student testing to include application of skills and knowledge to analytical, conceptual, and creative problems will help reduce resistance and make the case for such a threshold even stronger.
- ▶ **Assessing criteria with multiple measures** will give a complete picture of each teacher's contributions. This is the next level of detail beneath the criteria. For example, student learning growth can be assessed with multiple-choice tests of knowledge and skill *and also* with standardized rubric scoring of more complex student work. Balancing multiple sources and measurement tools with the feasibility and value of each source is essential. Measures that are not themselves student outcomes should still correlate highly with those outcomes, both for teachers individually and across whole schools. None should be inversely or lightly correlated with student learning, keeping the focus instead on measuring teacher differences that matter most.
- ▶ **Measuring consistency of performance** over several years will require a longer time frame, making increased time before tenure decisions a complementary change.

Tenure systems in higher education provide a cautionary tale. Faculty tenure criteria stand head and

shoulders above those in the civil service for promoting a performance culture. Yet even in the university setting, some reformers have called for abolishing tenure because it often rewards the quantity of journal publications over quality, as well as scholarship over teaching excellence.⁸⁴

Fortunately, more sophisticated and balanced assessments of teachers' impact on student learning are becoming increasingly possible as states and districts dramatically improve their evaluation systems. **How high should the tenure-worthy standard be for each criterion or measure?** The answer depends on the proportion of teachers on whom education leaders want to confer tenure. State and district leaders have at least two routes to pursue. Each sends different signals about what education leaders value, and would likely have different effects on student outcomes over time, as well:

- ▶ **“Inclusive Tenure”** would increase the standards for tenure just enough to preclude tenure for the least effective teachers. Under this design, tenure would be reserved for the top 75 percent or so of teachers in a district or state—those who never dip into bottom ranks of progress in the early years of their career. This design, where most states appear to be headed today as they revise their evaluation systems, does not provide a distinct opportunity for teachers at the top. But it does remove job protections for those at the bottom. As other researchers have shown, encouraging the exit of the least effective teachers alone would have a significant positive impact on student learning.⁸⁵
- ▶ **“Elite Tenure”** would set high standards for tenure, so that it is reserved for teachers consistently performing at the highest levels (e.g., ranking among the top 10 percent to 25 percent in a subject).⁸⁶ This design would explicitly seek to retain these teachers, not just to serve in the classroom but to set the cultural tone within schools, across a district or state, and within the profession at large. Concomitant awards could include opportunities

for increased pay and power over future tenure decisions and other policy and human resource decisions. This tenure system is most aligned with an “opportunity culture,” in which top teachers are able to reach more students and gain disproportionate decision-making power and rewards.⁸⁷ Table 3 presents some initial thoughts about how this kind of tenure could work by providing one example of elite tenure design.

What are the implications for teachers who do not receive tenure? Some may be ill-suited to any role within education, particularly those teachers not chosen under inclusive tenure systems. But many will be capable of serving effectively in more limited roles, such as supervising some students’ independent work while another teacher provides group instruction; tutoring small groups without responsibility for managing whole-class behavior; and working under the direction and with the methods and tools of top teachers. Limited roles for these teachers would be similar to some in the university setting, where non-tenure-track faculty members engage in a portion of the roles expected of their tenured colleagues. Many good teachers could increase their positive effect on students this way, even if tenure was not part of the employment package.

Process for Tenure. The overarching goal for the tenure granting process is ensuring that it leads to grants of tenure as planned, creating the intended staffing quality improvements. Design elements include the number of levels of review, the motivation reviewers have to make selective decisions, and whether there is a presumption of tenure. The many possible levels of review include principals or other supervisors within schools, peer teams, district supervisors of schools, district teams specifically responsible for tenure, district legal departments, and the school board or school board representatives. Reviewers can be motivated by specific rules for review for which they will be held accountable or, more intrinsically, by a professional interest in maintaining a high standard.

Inclusive and elite tenure designs would need to differ on these elements:

- ▶ **Inclusive tenure** likely should be awarded by formula. Teachers whose performance ratings are not above a set threshold for a particular number of years would presumptively not be granted tenure.⁸⁸ All other teachers would receive tenure automatically, much as they do today. Several states are moving toward this kind of process to award tenure to fewer low-performing teachers.⁸⁹ In inclusive systems, districts would bear the burden of collecting and reporting performance data to exclude a portion of the least effective teachers. This type of formulaic process would rely primarily on student performance data and possibly quantitative ratings of teachers from other evaluation steps, eliminating the need for multiple layers of review and requiring less motivation and skill among high-level decision-makers to apply the criteria rigorously every time.
- ▶ **Elite tenure**, with its high bar for tenure awards, would operate on a presumption of non-tenuring. In an elite system, teachers would apply for tenure and bear the burden of making their case. Because the criteria for an award under this system would likely include not only consistently high performance ratings and student outcomes, but also qualitative factors requiring subjective judgments, it would require more discretion by decision-makers. State and district leaders should engage elite teachers who have already earned tenure in decisions about the future corps, magnifying the prevalence and cultural impact of characteristics that are recognized by tenure. Many have called for inclusion of teachers in the design of new tenure systems. But the habits and values of the *most* successful teachers should influence change the most.

In a truly elite system, the majority of employees who have already met the high standard feel motivated to protect it—and the reputation of tenure status—by keeping the standards for future entrants



high. Engaging top teachers in decisions about tenure awards would not only give them disproportionate power over the future of schools, but would also help retain more of the best and increase the total number of truly stellar staff in public schools. Screening by a higher body and possibly a legal team could reduce cronyism and address legal concerns.

Tenure Protections. When policymakers contemplate changing procedural protections, the constitutional requirements for due process typically set the minimum level of protection that teachers receive. But in most states, the job protections that accompany tenure awards exceed constitutional requirements, leaving room for these protections to be revised.⁹⁰ State and district policymakers can change tenure protections on a few fronts by altering the dismissal process: the number of steps, the time required, and the grounds for dismissal. The right combination can help reduce the negative impact

on schools of the employer's burden of proof for dismissal and increase the dismissal of staff who should not be working in schools.

- ▶ **Steps and time required.** Policymakers could reduce tenure protections harmful to students and increase the ease of addressing egregious performance problems simply by streamlining the review process for attempted dismissal. *Fewer levels of review* on the majority of cases and *less time between each review* would make dismissal cases less onerous and costly, while still ensuring review for teachers' protection. Changing policies about timeliness would not be sufficient; policymakers would also need to hold reviewers accountable for carrying out timely reviews *in practice*.
- ▶ **Grounds.** Policymakers can also ensure that the eligible grounds for teacher dismissal include all of the reasons for dismissing a teacher in the interests of students and the school's performance.

At a minimum, these should include a teacher's documented ineffectiveness in the classroom, breaches of ethical standards, and behavior that disrupts student learning or school operations. Careful and complete articulation of grounds that give employers significantly more discretion can make up for the employer's burden of proof that often prevents dismissal of staff who, by any commonsense standard, should not be working with or near children and other staff. If the state or district has enunciated many potential grounds for dismissal under tenure, then even if the burden of proof is on the employer, the *effective* burden shifts to the employee to perform and behave within the expected boundaries. In effect, this would reduce employers' hesitation to dismiss persistently underperforming teachers, while maintaining the burden to document and explain the unacceptable behavior or performance to a neutral third party.

► **Burden of proof.** Tenure vests teachers with a property right to continued employment. When initiating dismissal, therefore, the employer bears the burden of showing reasons for dismissal. Employers cannot shift the burden to the employee to defend against dismissal, unless the employment is actually "at will" and not a grant of a right to employment (i.e., tenure as recognition, but not a right). This is a complex area of constitutional and employment law. Reformers must examine the nature of the rights that tenure confers in each state, and determine whether and how those rights may be changed. Making the grounds broader and easier to document could help balance the burden and increase employers' ability to make decisions in the best interests of students and remaining staff.

Other Career and Reward Opportunities. A significant opportunity for changing tenure's effect is to

make it but one of *numerous* rewards and opportunities for better teachers. Nonselective tenure does not attract, motivate, or retain better performers disproportionately. In contrast, other rewards and opportunities for better teachers could. These could start early for staff who perform very well in the first year and last throughout instructional careers for those who sustain and increase their contributions. Rewards and opportunities that may attract, motivate, and retain very effective teachers include these:

- Opportunities to teach more students in exchange for additional pay
- Reduction of noninstructional duties to enable reaching more students
- Decision-making power over hiring, promotion, and tenure of others
- Opportunities to supervise or manage other teachers to improve their effectiveness
- Professional development/coaching/mentoring responsibility for other teachers
- Title enhancement (advanced, master, lead, etc.)
- Opportunities to participate in or lead policy and instructional practice reforms
- Other recognition and rewards for sustained excellence in performance
- Higher pay to reflect higher contributions to student outcomes, including most of the items above

Opportunities to reach more children and directly influence the effectiveness of peers, in particular, are not just rewards, but also ways to magnify the effects of great teachers and retain them longer, if accompanied by higher pay. But higher pay for higher contribution will require shifting funds from less-effective staff, particularly those who contribute the least to student learning, making tenure and pay policy reform imperative.

TABLE 2. Tenure Design Elements

Design Element	Design Continuum		
	Employee Security	→	Organizational Discretion
Time to Tenure			
Time (# of years)	Short (e.g., 1 year)	Medium (e.g., 3 to 6 years)	Long (e.g., 7 years or longer)
Criteria for Tenure			
Rigor	Easy Criteria	Moderate Criteria	Stringent Criteria
Number	Few Criteria	More Criteria	Many Criteria
Tenure Process			
Levels of Review	One Level of Review	Multiple Levels of Review	Many Levels of Review
Decision-Makers' Motivation to Make Selective Decisions	Weak Motivation	Moderate Motivation	Strong Motivation
Presumption of Tenure?	Yes: Burden on Employer to Deny	N/A	No: Burden on Applicant
Tenure Protections			
# of Steps to Dismiss	Many Steps to Dismiss	Few Steps to Dismiss	One Step to Dismiss
Time Required to Dismiss	Long Time to Dismiss	Moderate Time to Dismiss	Short Time to Dismiss
Burden of Proof	On Employer to Prove	N/A	On Employee to Defend (at-will employment only)
Grounds for Dismissal	Few Grounds—egregious acts only	More Grounds for Dismissal	Many Grounds—ethics, performance, behavior, etc.
Other Career and Reward Opportunities			
Including: Career Advancement Reach Extension Other Recognition Pay	Few	Some—in addition to tenure	Many—career advancement levels, pay, and recognition act in concert with tenure to reward excellence and contribution, and to extend the reach of the best to more children; begins early and lasts throughout career

TABLE 3. “Elite Tenure” Design Example

Tenure Design Element	Reasoning
Time to Tenure <ul style="list-style-type: none"> • 6 years 	<p>New teacher learning curve flattens by year 5. Extra year allows gauging consistency, gathering input, making tenure decisions collaboratively.</p>
Criteria for Tenure <ul style="list-style-type: none"> • Rigor: Stringent • Number: Many 	<p>“Elite tenure” awards to the top 10%–25% provide job protection only for teachers who consistently achieve the best student outcomes and enhance peer effectiveness. These teachers are in short supply, and any recruiting or retention enticements focused on this group specifically will benefit children. Many criteria provide a complete picture of contributions for tenure review and allow reviewers to plot likely career advancement paths.</p>
Tenure Process <ul style="list-style-type: none"> • Levels of Review: Minimum three levels of review • Decision-Makers’ Motivation to Make Selective Decisions: Strong • Presumption of Tenure? No 	<p>Minimum three-level review by elite peers charged with preserving the tenure standards, district-level team committed to rigorous standards, and legal team to ensure compliance. Decision-makers must have strong incentives to hold high standards in order to confer status and make funding of tenure viable by awarding it only to teachers worthy of extending their reach to more children. The applicant must bear the burden of proving worthiness for tenure. However, districts should encourage tenure application by high-performing teachers as a retention tool and also play a role in gathering performance data or ensuring its accuracy.</p>
Tenure Protections <ul style="list-style-type: none"> • # of Steps to Dismiss: Few • Time Required to Dismiss: As short as possible • Grounds for Dismissal: Many • Burden of Proof for Dismissal: On employer 	<p>The primary purpose in this version of elite tenure is conveying status and opening the door to future career opportunities, not job protection. However, job protections in the form of due-process rights still significantly exceed those of at-will employment, and the burden remains on the employer to demonstrate that dismissal is warranted. The selection process will have eliminated many but not all employees who have chronic or recurring performance challenges in one or more critical areas (instruction, peer collaboration, etc.). When a performance problem arises such that termination is the best option for children and the school community, the elite group of tenured peers that plays a role in deciding tenure will need to protect its reputation. Rapid, clear steps that bring evidence of performance problems to a neutral judge are best for students, as are a wide range of grounds that cover the ways in which an individual’s behavior at work may compromise the school’s mission. Broad grounds for dismissal—ethics, performance, behavior, etc.—put the onus on tenured employees to maintain performance and professional behavior. Some reformers might choose to couple higher protections with very strict criteria for elite teacher tenure, e.g., limiting it to those consistently in the top 10%.</p>
Other Career and Reward Opportunities: Many—beginning early and lasting throughout careers, the recognition of exemplary performance, career advancement, reach extension to more students, and pay should act in concert with tenure to reward excellence and contribution.	<p>Tenure should be but one of numerous rewards for teachers who make increasingly valuable contributions to student outcomes. Tenure review should not be the first recognition or opportunity that a teacher receives for teaching well and/or enabling strong peer performance. An elite tenure review process can be one trigger for formal planning about different career paths that fit each individual’s competencies; how each top teacher can reach more children along those career paths; and pay opportunities—for extending their reach to more children, supervising other teachers, or improving student outcomes in other ways within budget.</p>

Option 2: Eliminate Tenure

Although tenure is prevalent in the sectors discussed here, employees in most sectors work under employment at will, without heightened due process protections. Thus, some reformers will aim for elimination of tenure to meet the emerging needs of K–12 education.

Arguably, the main purposes for which K–12 tenure was created are less compelling today, and the costs of tenure as we know it to children and our national economy are great.

- ▶ **Increased public transparency** makes a return to teacher hiring as part of the political appointment machinery unlikely in most locales.
- ▶ **Civil rights and other protections**, not in existence when tenure first emerged, protect existing teachers from the same unfair terminations disallowed in other employment settings.
- ▶ **As a women’s rights tool, tenure has failed.** The lack of paid advancement opportunity in traditional K–12 instructional roles, inhibited by nearly universal tenure, is a thick glass ceiling. The combination of tenure with automatic pay increases for years of service locks up large sums of money to pay less-effective teachers as much as the best, money that in most professions would be used to pay the best more.
- ▶ **The economic rationale for tenure has become blunted** in part by generous health and retirement benefits packages in education, which surpass those available in most sectors.
- ▶ **School systems have increasing numbers of reward tools available** to pay some teachers more, such as extra compensation for service in hard-to-staff schools and subject areas, a growing number of performance pay plans, and other departures from traditional pay schedules. These tools further undercut the economic rationale for tenure and are more focused on ways to reward people for entering schools and positions where they are most needed and for doing well with students.

- ▶ **Emerging efforts to extend the reach of the best teachers to more students** may produce additional pay opportunities for better teachers within instructional roles, closing the compensation gap for the best teachers and replacing tenure’s recruiting and retention roles.⁹¹

Awarding a lifetime job guarantee to even one ineffective K–12 teacher dooms hundreds—sometimes thousands—of children to bad instruction, devastating fragile learners.

At the same time, ensuring that every teacher achieves strong student outcomes has become more compelling than ever. Our nation has begun to grasp that widespread educational opportunity is not just a matter of moral rightness, but is imperative to our national economic stability.⁹² Simultaneously, analysis has revealed that students who start school behind can catch up—but having multiple great teachers over their early years is the critical factor.⁹³ Attracting and keeping the best teachers is therefore essential, as is reducing the presence and impact of their lowest-performing peers. Awarding what amounts to a lifetime job guarantee to even a single ineffective K–12 teacher can unnecessarily doom hundreds—even thousands—of students to poor instruction.

The lack of paid advancement opportunity in K–12 instructional roles is a nearly universal glass ceiling attributable in part to the costs and culture of tenure.

Tenure must go—or be put in its place as one of many career opportunities and rewards for better teaching.

Where eliminating tenure is politically feasible, it is a rapid way to free schools and districts from the financial and student learning costs of tenure. Eliminating tenure all at once, however, may be legally impossible or politically impractical in most places. One alternative is to eliminate tenure for new hires, while retaining it for those already in the system. Another option is to eliminate tenure for new hires, while offering current teachers a choice between the potential for higher pay (such as through substantial awards based on performance) without enhanced job protections, or continuation of existing job protections and current pay scales.⁹⁴

Leaders taking this route should prepare in advance to replace tenure with rewards and career opportunities that favor better teachers. To support this type of reform, policymakers will also need to provide flexibility in state statutes for districts to pursue different approaches to tenure reform and pay systems, and allocate funding to encourage them. States should make more money available for bolder reforms that also address pay and career advance-

ment opportunities within instruction. Federal policymakers also can incent change by allocating funding to performance pay systems that provide greater opportunity to teachers who opt out of existing tenure systems.

Conclusion

Regardless of whether and how tenure is reformed, it should be neither the beginning nor the end of the achievement road for teachers—especially the best. Top teachers need a much richer set of opportunities for achievement, impact, and recognition of their continued commitment and contribution throughout their careers, with the option to continue their direct impact on instruction. As we begin to see shifts from the current monolithic delivery of instruction to models that increase the reach and impact of the best teachers, tenure will likely disappear or become only one of many rewards and recognitions for staff who contribute more to student learning, peer effectiveness, and the profession.

Tenure reformers must make decisions about each design element. Table 2 summarizes these elements along broad continua ranging from employee security at one end to broader organization discretion at the other. From among these options, state and district leaders who are eager to reform tenure in ways that improve student outcomes will find multiple paths to support different philosophies and political realities.

Endnotes

1. Not all states use the term “tenure” to describe the job protections extended to K–12 teachers, but for simplicity this report uses the term “tenure” to refer to any form of job protection that makes it difficult or impossible to dismiss an employee who has obtained such protection.

2. Tenure policies are often set in state law, but carried out primarily by school districts. For more about the current state of tenure policies in the United States, see: McGuinn, P. (2010, May 3). The time is right for teacher-tenure reform [commentary]. *Education Week*. Retrieved from <http://www.edweek.org/ew/articles/2010/05/03/31mcguinn.h29.html?q=tenure>; Sutton, P. S. (2009, December 16). Thinking anew about teacher tenure [commentary]. *Education Week*. Retrieved from <http://www.edweek.org/ew/articles/2009/12/16/15sutton.h29.html?q=tenure>; McGuinn, P. (2010). *Ring the bell for K–12 teacher tenure reform*. Washington, DC: Center for American Progress. Retrieved from http://www.americanprogress.org/issues/2010/02/teacher_tenure_reform.html/print.html; Baratz-Snowden, J. (2009). *Fixing tenure: A proposal for assuring teacher effectiveness and due process*. Washington, DC: Center for American Progress. Retrieved from http://www.americanprogress.org/issues/2009/06/teacher_tenure.html. For coverage of recent reform efforts, see: Greenblatt, A. (2010, April 29). *Is teacher tenure still necessary?* National Public Radio. Retrieved from <http://www.npr.org/templates/story/story.php?storyId=126349435>; Sawchuck, S. (2010, April 7). States strive to overhaul teacher tenure. *Education Week*. Retrieved from http://www.edweek.org/ew/articles/2010/04/07/28tenure_ep.h29.html?q=tenure; Knowles, T. (2010, June 18). The trouble with teacher tenure. *The Wall Street Journal*. Retrieved from <http://online.wsj.com/article/SB10001424052748703303904575292753427609686.html>; Weingarten, R. (2010, January 12). *A new path forward: Four approaches to quality teaching and better schools*. American Federation of Teachers. Retrieved from http://aft.3cdn.net/227d12e668432ca48e_twm6b9ok1.pdf.

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7. See McPherson, M. S., & Winston, G. C. (1993). The economics of academic tenure: A relational perspective. In M. S. McPherson, M. O. Schapiro, & G. Winston (Eds.), *Paying the piper: Productivity, incentives, and financing in U.S. higher education* (pp. 109–134). Ann Arbor: The University of Michigan Press; Trachtenberg, S.J. (2008, October 24). Want tenure? Sign on the dotted line . . . *The Chronicle of Higher Education*.

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39. 5 C.F.R. § 315.803.

40. E.g., N.Y. Comp. Codes R. & Regs. tit. 4, § 35.5 (2009); Louisiana State Civil Serv. Rules, Ch. 10, *Performance planning and review*.

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49. 5 U.S.C. § 7513 (2009). Also see Paul H. Tobias, *Litigating wrongful discharge claims*, 2 Lit. Wrong. Discharge Claims § 7:7 (2009); Fla. Stat. § 100.227 (2000) (“cause shall include, but not be limited to, negligence, inefficiency or inability to perform assigned duties, insubordination, willful violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime involving moral turpitude.”).

50. Fla. Stat. § 100.227 (2000).

51. Saltzman. (2008), pp. 53–54. Saltzman highlights an illustrative 1964 arbitration ruling (also referred to elsewhere) setting out a seven-part test for just cause. Also see Hinderer, J. J. & Josephson, J. J. (1998). Reinventing the public employer-employee relationship: The just cause standard. *Public Administration Quarterly*, 22(1), 98–113; Goddard, M. R. (2008). *Woods v. State Civil Service Commission: Assessing the standards of removal for civil service employees*. *Widener Law Journal*, 17(2), 449–467; Perritt, H. H. (1999). *Employee dismissal law and practice* (pp. 206–208). New York: Aspen Law & Business; Posner, R. (2006, January 15). Tenured employment [Web log post]. Retrieved from http://www.becker-posner-blog.com/archives/2006/01/tenured_employ.html

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56. Gertz. (2001). The author examined data between 1990 and 1999 on Florida’s civil service statutory appeal process, finding that supervisor discipline is rarely altered, and appeals are resolved quickly and cheaply. During this period, 50 to 60 percent of appeals were settled, 25 to 35 percent were affirmed, and few were reversed: reversal rates were less than 10 percent throughout the decade, and near or below 5 percent for most years.

57. Finkin, M. W. (1996). *The case for tenure* (p.3). Ithaca, NY: Cornell University Press; also see East Carolina University Faculty Manual. (2010, July 12). Appendix D: Tenure and promotion policies and procedures of East Carolina University; Stanford University Faculty Handbook. (2007, September 1). Chapter 4: Core Policy Statements.

58. The Duke University Faculty Handbook. (2009, August). Appendix C: Academic Freedom and Academic Tenure; East Carolina University Faculty Manual. (2010, July 12). Part 3: Academic freedom, and Appendix D: Tenure and promotion policies and procedures of East Carolina University; Stanford University Faculty Handbook. (2007, September 1).

59. 14A C.J.S. *Colleges and universities* § 25 (2009). According to this source, “good cause” (equivalent to “just cause”) is “a substantial reason that affords a legal excuse,” and does not include reasons that are “arbitrary, frivolous, or irrelevant.”

60. Saltzman. (2008), p. 62; Raban, D. M. (1993). A functional analysis of “individual” and “institutional” academic

freedom under the First Amendment. In W. Van Alstyne, W. (Ed.), *Freedom and tenure in the academy* (pp. 227–302). Durham, NC: Duke University Press.

61. Kaplin, W. A. & Lee, B. A. (2007). *The law of higher education* (pp. 185–238). San Francisco: John Wiley & Sons; Hustoles, T. P. (2005, February). *A study of the law and practice of academic tenure*. Presented at Stetson University College of Law 26th National Conference on Law and Higher Education, Clearwater Beach, FL. For example, see East Carolina University faculty manual. (2010, July 12), Appendix D; Stanford University faculty handbook. (2007, September 1).

62. Trower. (2000), pp. 79–80.

63. Move to dismiss a tenured professor is a first at Kansas. (1989, October 25). *The New York Times*, p. B7 (citing Jordan E. Kurland, assistant general secretary of the American Association of University Professors); Mooney, C. J. (1994, December 7). Dismissals “for cause.” *The Chronicle of Higher Education*, 41(15), A17, 19–20. “Moral turpitude” includes such conduct as sexual harassment, plagiarism, fraudulent research, and theft of school funds.; Saltzman. (2008), pp. 51–65.

64. Bureau of Labor Statistics (2009, December 17). *Career guide to industries, 2010–11 edition: Federal government*. Retrieved from <http://www.bls.gov/oco/cg/cgso41.htm>

65. See <http://www.makingthedifference.org/federal-benefits/federalpay.shtml>. For general information on federal pay rates, grades, and related policies, see <http://www.opm.gov/oca/11tables/index.asp>

66. For the complete set of federal employment policies, see <http://www.opm.gov/index.asp>

67. Boyer, E. L. (1990). *Scholarship reconsidered: Priorities of the professoriate*. Princeton, NJ: Carnegie Foundation for the Advancement of Teaching; Middaugh, M. F. (2001). *Understanding faculty productivity: Standards and benchmarks for colleges and universities*. San Francisco: Jossey Bass; Modern Language Association. (2007). *Report of the MLA task force on evaluating scholarship for tenure and promotion*. Retrieved from <http://www.mla.org/pdf/taskforcereport0608.pdf>; Green. (2008.), 117–27; Silverman. (1999); Silverman. (2001); Silverman. (2004); Manuel. (1998, February 4). Youn & Price. (2009), and sources cited therein.

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69. Modern Language Association. (2007).

70. Youn and Price. (2009), pp. 207, 222.

71. Battaglio, R. P., & Condrey, S. E. (2009). Reforming public management: Analyzing the impact of public service reform on organizational and managerial trust. *Journal of Public Administration Research and Theory*, 19, 689–707;

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73. Hays & Sowa. (2006), p. 113.
74. Selden. (2006), pp. 335–355; Walters. (2002), p. 26.
75. Condrey & Battaglio. (2007). Also see Coggburn. (2006), 158–177 (conducting a survey of 77 Texas human resources directors and finding mixed opinions on the effects of at-will employment on a variety of employee behaviors, employee motivation, and agency performance).
76. Condrey & Battaglio. (2007). For initial, conflicting anecdotal evidence and results of small-scale surveys, see Bowman & West. (2009), pp. 20–40; Bowman & West. (2006), pp. 139–157; Walters, J. (2002), pp. 20–21, 27; Battaglio & Condrey. (2009).
77. Solem, Foote, & Monk. (2009).
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82. One challenge for policymakers is whether and how to change the criteria for tenure while new evaluation systems are still being developed. Since it may require years for some states to make the transition to a new evaluation system, must policymakers wait that long to change the standards for tenure? This problem is less daunting for states considering “elite tenure,” described above, since identifying the very highest performing teachers is arguably less challenging than making fine distinctions between more and less effective teachers.
83. For more discussion about choosing performance measures, see Public Impact’s earlier work on performance measurement: Public Impact. (2010). *Measuring teacher and leader performance: Cross-sector lessons for excellent evaluations*. (Chapel Hill, NC: Public Impact); Public Impact. (2010). *Using competency-based evaluation to drive teacher excellence: Lessons from Singapore* (Chapel Hill, NC: Public Impact).
84. Boyer. (1990); Steinberg, J. (2010, February 5). A university president advocates tweaking tenure. *New York Times*. Retrieved from <http://thechoice.blogs.nytimes.com/2010/02/05/gee/>
85. Gordon, R., Kane, T. J., & Staiger, D. O. (2006). *Identifying effective teachers using performance on the job*. Washington, DC: The Brookings Institution; Goldhaber, D., & Hansen, M. (2010). *Using performance on the job to inform teacher tenure decisions*. Policy Brief No. 10. Washington, DC: National Center for Analysis of Longitudinal Data in Education Research.
86. Setting the right threshold for “elite tenure” is clearly a vital design task for any state considering it. We offer 10 to 25 percent as an initial range for discussion.
87. See Public Impact’s work on the elements of an opportunity culture: <http://www.opportunityculture.org/>
88. Whether teachers not receiving tenure would be retained or dismissed would be at the discretion of their employers. Failure to achieve tenure would not necessarily mean that a teacher would lose his or her job.
89. For example, Colorado enacted legislation in 2010 that requires teachers to earn three consecutive years of positive evaluations to receive tenure. See Colorado Senate Bill 10-191; Banchemo, S. (2010, May 14). Teacher-evaluation bill approved in Colorado. *The Wall Street Journal*; Administrative action in Delaware in early 2010 tied tenure more closely to teacher effects on student achievement. Sawchuk, S.

(2010, April 7). States strive to overhaul teacher tenure. *Education Week*; Bills under consideration in Indiana in early 2011 would require teachers to earn “professional” status based on evaluations tied to student learning. Gabriel T., & Dillon, S. (2011, January 31). G.O.P. governors take aim at teacher tenure. *The New York Times*.

90. At stake in tenured teacher dismissal cases are an individual’s “property rights,” which include “interests . . . acquired in specific benefits” from the government. *Board of Regents v. Roth*, 408 U.S. 564, 576, 92 S. Ct. 2701, 2708, 33 L. Ed. 2d 548, 560 (1972). Tenured teachers maintain such “interests” in their continuing employment. Once individuals acquire these interests, they are protected by the 14th Amendment, under which the government may not “deprive any person of property, without due process of law.” Because dismissing a tenured teacher would deprive that teacher of the property rights embodied in tenure, under the Constitution the government’s dismissal system must afford the teacher “due process.” Due process includes notice, an opportunity to be heard, and a determination rendered by an impartial decision-maker. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985). The precise legal meaning of each of these three Constitutional requirements in the context of teacher dismissal hearings will vary somewhat from state to state, built upon a set of principles and basic requirements elucidated by the Supreme Court. At a minimum, “[t]he notice should give the [teacher] the full story. And the [teacher] must be afforded adequate opportunity to be heard, an opportunity that should include the right to confront evidence and witnesses,

to present evidence, and to be represented by an attorney” (Joyce, R. P. (2000). *The law of employment in North Carolina’s public schools*. Chapel Hill, NC: Institute of Government, University of North Carolina at Chapel Hill.). To be “impartial,” a decision-maker or decision-making body must be free of bias, basing decisions solely on the evidence in the case.

91. Public Impact. (2009). *3X for all: Extending the reach of education’s best*. (Chapel Hill, NC: Public Impact). Retrieved from <http://publicimpact.com/3x-for-all>

92. McKinsey & Company. (2009). *The economic impact of the achievement gap in America’s schools*. McKinsey & Company; Auguste, B., Kihn, P., & Miller, M. (2010). *Closing the talent gap: Attracting and retaining top-third graduates to careers in teaching*. McKinsey & Company; Hanushek, E. A. (2010). *The economic value of higher teacher quality* (Working Paper No. 16606). Cambridge, MA: National Bureau of Economic Research.

93. For several citations on this point, see Public Impact (2010). *Opportunity at the top: How America’s best teachers could close the gaps, raise the bar, and keep our nation great*. (Chapel Hill, NC: Public Impact). Retrieved from <http://www.opportunityculture.org/opportunity-at-the-top>

94. In June 2010, Washington, D.C., teachers ratified a similar reform—a contract that allows teachers to voluntarily enter a performance pay program that ties large potential pay bumps to student growth but also eliminates some job protections for senior teachers. B. Turque. (2010, June 3). D.C. teachers’ union ratifies contract, basing pay on results, not seniority. *The Washington Post*.