

# Foreword

By Dara Zeehandelaar and Michael J. Petrilli

Let's engage in a quick thought exercise. Imagine that you own a restaurant and employ two chefs. One is a grizzled veteran: He's slow, he constantly gets orders wrong, his food tastes terrible, and his hygiene is so poor that he sometimes makes your customers sick. The other is relatively new to the kitchen: She's a great chef now and only promises to get better, she pays attention to detail, she's efficient, her food is truly delicious, and your customers request her by name. Now imagine that you only need one of them. Which would you fire? The awful one, right?

Now, imagine that the law says you cannot do that. Before you are allowed to fire a veteran chef, it requires that you create a multiyear paper trail documenting his every mistake. You must observe him at the stove, multiple times, and you must let him know in advance when you're coming. Even if you provide sufficient evidence under the law that he's bad enough to merit firing, you must put him on a culinary improvement program first (and you must pay for it). Then you have to evaluate him again. You must advise him that he's on the chopping block, and he's free to challenge the process at every step of the way. Those challenges may include costly, protracted proceedings before the "Board of Quality Cookery" and in courts of law.

If you wanted to fire the new chef, however, the law won't stop you. You could do it tomorrow. Maybe with two weeks' notice.

Of course, that's not how it works in the restaurant business. But as absurd as this process appears, it has been the reality for most school principals for decades when it comes to dismissing ineffective teachers. Once a teacher earns "tenure," state and local policy make it complicated and cumbersome to fire him, even if he is a poor educator.

Weren't we supposed to have fixed this by now? Back in the glory days of 2009 and 2010, when Secretary of Education Arne Duncan was riding herd on billions of Race to the Top dollars, reformers were confident that lifelong employment would no longer be a guarantee for demonstrably poor teachers. It was a sound impulse, buoyed by the outrage unleashed by [The Widget Effect](#) and given the beginnings of reality in promising reforms in Washington, D.C., Colorado, and elsewhere.

Finally, many thought, the country was getting serious about differentiating between effective teachers and undeniably lousy ones as well as finding ways to expeditiously bid adieu to the latter. All for good reason: as [Eric Hanushek](#) and others argued so convincingly, achievement would rise, achievement gaps would narrow, [lifetime income would increase](#), and economic growth would surge if only we had the courage to identify and then replace the bottom 5 or 10 percent.

So Duncan and his team not only incentivized states to embrace teacher-evaluation reform via Race to the Top, but they also made it a precondition to states obtaining a waiver from No Child Left Behind.

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What happened next? Not much, according to our read of the [evidence](#). There was, of course, the expenditure of vast political capital, acrimonious battles with unions and their friends, and much fear and loathing on the part of teachers, including the good ones—which had the unintended and damaging side effect of turning many educators against Common Core and nearly nailing shut the coffin of testing and accountability.

After all of that—*all* of that—we learned that [97 percent of America’s teachers](#) are now deemed effective instead of 99.

How about the worst of the worst? Did all these efforts achieve at least one objective and rid America’s classrooms of chronically ineffective teachers, the ones who do real damage to their charges year after year? Is it feasible to dismiss poorly performing, veteran teachers without miles of red tape and years of administrative hurdles?

That was the question that motivated the present report. We wish we could answer it with straightforward numbers. We—and many others—want to know how many ineffective tenured teachers are fired each year in every state and district and whether those numbers have changed over time. Yet there’s no credible data to be had. The only public source is a survey of district administrators conducted once every four years. Not only does this survey rely on self-reporting, but it also only asks about teachers who are officially and involuntary dismissed; it cannot account for teachers who resign before they are fired or districts who abandon (or never even start) proceedings because of time and cost.

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As a parallel inquiry, we decided to dig into the relevant policies and practices in twenty-five diverse districts to find out just how feasible it is or isn’t to dismiss a veteran teacher. (We chose those twenty-five districts because they represent fairly diverse locations, sizes, and political contexts.)

“Feasible” is the operative word. Defenders of tenure protections invariably assert that any teacher can be dismissed so long as her district follows due process. And that’s certainly true, in theory. Due process is an important American value, enshrined (among other places) in the Fifth and Fourteenth Amendments to the Constitution. But when due process is construed in ways that carry enormous costs in time and money, it can, in practice, make it nearly impossible for districts to actually fire bad teachers. We wanted to know whether that is the case in America today.

To answer this question, we scrutinized state and local policies to determine how they enable or constrain the dismissal of ineffective teachers. Once a district identifies an educator as ineffective, how direct or circuitous is the line to dismissal? How many barriers are there along the way? Is it bona fide due process for all concerned or due process run amuck? And how do different districts compare?

For this work, we enlisted two members of Fordham’s research team, Victoria McDougald and David Griffith. Both have significant experience in dissecting, classifying, and grading education policy—Victoria on school choice and David on accountability. The authors created a metric that built on the excellent work of the National Council on Teacher Quality (NCTQ) and the Education Commission of the States (ECS), which previously codified state laws and district policies (in the form of collective-bargaining agreements and employee handbooks) to answer questions such as how many observations are required for dismissal and whether or not a teacher can appeal a firing decision (and on what grounds). The authors also read and interpreted a number of laws and contracts themselves.

Their findings are both revealing and disheartening, if unsurprising. On a ten-point scale (where ten means it is relatively easy to dismiss an ineffective veteran teacher), not a single district made it to nine or ten. Only one, Miami, earned eight points out of ten, and a mere six districts scored six or seven points—which means that on paper it’s feasible but not simple to fire a poorly performing educator. Most districts fared far worse on this metric, meaning that their (and their states’) policies make it difficult, if not impossible, to dismiss a bad veteran teacher.

What we found, sadly, is that the line from dismal performance to dismissal has hardly been streamlined. For the most part, state and local policies create a tortuous maze of paperwork, regulations, and directives. Teachers who receive years’ worth of ineffective ratings are given multiple chances for improvement and reevaluation, and a single procedural violation by the administration starts the process over again.

And remember: This is only on paper. Imagine how few ineffective educators get fired in practice. And imagine how many are still in our classrooms teaching our children because it’s simply too much of a hassle to remove them.

To be clear, we are not seeking a major housecleaning, and we are not advocating for policies that leave the average teacher vulnerable. We’re talking about removing policy and administrative hurdles to dismissing the worst 5 percent—a nontrivial number, but not a vast throng. We are not proposing eliminating the protections of due process, nor are we suggesting denying the opportunity and resources for struggling teachers to improve. Rather, we are directing these efforts at the teachers who demonstrate year after year that someone else should take their place.

So what can policymakers do? One option is to fight the good fight to change tenure laws and due-process procedures. That’s not impossible. Some places, such as Florida, North Carolina, and the District of Columbia have completely abolished tenure. Others—including Colorado and Indiana—have provisions such that ineffective teachers lose their tenured status. And still more—including Ohio, Missouri, and New Hampshire—have increased the number of years until a new teacher can earn tenure to five or more.

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Districts also have some leeway here. Even if they must abide by state laws allowing for unassailable lifetime tenure, they can shorten dismissal timelines and make evaluations and personnel actions less vulnerable to baseless challenges. In eleven of the districts that we studied—including Fairfax Public Schools in Virginia and Milwaukee Public Schools in Wisconsin—once a teacher has been determined ineffective by district or state procedures, administrators do not have to wait

an additional school year to recommend them for dismissal. Charlotte-Mecklenburg School District in North Carolina and Mesa Public Schools in Arizona, for example, both prohibit challenges to evaluations on any grounds other than procedural ones.

But let’s face it: At both state and local levels, this is an extraordinarily steep hill to climb. Teacher unions will do everything in their power—including spending incredible amounts of money and manpower on lobbying and political donations—to protect the status quo, even if it means protecting the worst teachers as a result. Where reformers can prevail, our hats are off to them.

But there's another option. Give peace a chance. Don't declare war. Instead, commit to taking the tenure process seriously, rather than rubber stamping every eligible teacher for approval. That's what Joel Klein and his team did in New York City, after a decade-plus of incompetent tenured teachers [being returned to the classroom](#) because of a highly protective state law. Instead of waiting until teachers were already tenured (and thus essentially invulnerable to dismissal), they asked principals to make a case for each teacher who was up for tenure before granting it. Once the policy was fully implemented, the portion of teachers who were immediately approved for tenure dropped from [94 to 56 percent](#). Later work also found that many teachers not immediately granted tenure ended up leaving the district of their own volition.

Other districts could do likewise. States could encourage this kind of behavior, too, by engaging state teacher's associations in productive conversations and passing tenure laws that allow for, or even encourage, districts to work with their local unions to create smart dismissal procedures. Reformers could focus on fighting the winnable battle of getting superintendents to scrutinize tenure requests rather than automatically ratifying them.

To be clear, we'd still love to give administrators the tools to efficiently fire the very worst teachers, regardless of whether they have many years of experience. But back to our restaurant analogy: Rather than waiting for a chef who has already failed multiple inspections to actually give customers food poisoning before you fire him, make it clear to new cooks when they sign on that they are on trial and that being retained depends on how good a job they do and how well fed the customers are.

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# Executive Summary

Countless studies have demonstrated that teacher quality is the most important school-based determinant of student learning and that removing ineffective teachers from the classroom could greatly benefit students.<sup>1,2</sup> Consequently, many states have reformed their teacher evaluation systems in an effort to differentiate between effective and ineffective teachers, with an eye toward parting ways with the latter.

But is dismissing ineffective teachers truly feasible in America today? After all the political capital (and real capital) spent on reforming teacher evaluation, can districts actually terminate ineffective teachers once they've been granted tenure or achieved veteran status?

That's what we wanted to know. Unfortunately, data on teacher dismissals are impossible to come by. So we decided to dig into state and district policies instead to better understand dismissal processes as they exist *on paper*.

This report seeks answers to a straightforward question: **How hard is it to dismiss an ineffective veteran teacher?**

Toward that end, we constructed a ten-point metric based on three subquestions:

- 1. Does tenure protect veteran teachers from performance-based dismissal?**
- 2. How long does it take to dismiss an ineffective veteran teacher?**
- 3. How vulnerable is an ineffective veteran teacher's dismissal to challenge?**

We then used this framework to gauge the difficulty of dismissing ineffective veteran teachers in twenty-five diverse districts, using data gleaned from the National Council on Teacher Quality's (NCTQ) [teacher-contract database](#) and the Education Commission of the States's (ECS) [fifty-state comparison of teacher-tenure policies](#), supplemented by our own independent analysis of state and district policies. (For a detailed explanation of our evaluation metric, see the *Appendix*.)

As shown in Table ES-1, none of the twenty-five districts in our sample scored a nine or ten, which would have indicated that it is relatively easy to dismiss an ineffective veteran teacher. Rather, the data suggest that significant barriers to dismissal remain in place in every district that we examined.

Overall, seven districts earned scores between six and eight, suggesting that it is feasible to dismiss an ineffective veteran teacher. Thirteen districts earned scores between three and five, suggesting that it is difficult to dismiss an ineffective veteran teacher. And five districts scored between zero and two points, suggesting that it is very difficult to dismiss ineffective veteran teachers in those places. (See our *District Profiles* for detailed information on all twenty-five districts.)

Based on our results, we draw three conclusions about the specific barriers to dismissal that are common across districts.

## **1 In most districts (and states), tenure continues to protect ineffective veteran teachers from performance-based dismissal.**

Three districts in our study are located in places where tenure is prohibited (Florida, North Carolina, and the District of Columbia), and five districts are located in states where teachers forfeit their tenure status after being

rated ineffective on one or more occasions. However, in seventeen of our twenty-five districts, state law still allows teachers to earn tenure and keep it regardless of performance, making it exceptionally challenging for even the most reform-minded administrators to dismiss ineffective veteran teachers.

## 2 In most districts, even the shortest possible timeline for dismissing an ineffective veteran teacher is unreasonably protracted.

In eleven of our twenty-five districts, an ineffective teacher can be dismissed in a year or less, assuming that administrators take the most expeditious route possible and no grievances or appeals are filed. However, in at least twelve districts, dismissing a veteran teacher for poor performance takes a minimum of two years, and in Los Angeles and San Francisco it takes at least five years. That’s obviously far too long—and even more troubling considering that it represents the best-case scenario (rather than the most likely one).

## 3 In most districts, an ineffective veteran teacher’s dismissal is extremely vulnerable to challenge.

Between the evaluation process, the grievance process, and various appeals processes, any attempt to dismiss an ineffective veteran teacher is exceptionally vulnerable to challenge in most districts. More specifically:

- *In some districts, the number of observations required to dismiss a veteran teacher is unreasonable.*

In eleven of our twenty-five districts, veteran teachers must be observed at least six times before they can be dismissed, increasing the risk of a procedural violation by observers and/or administrators.

- *In most districts, teachers can challenge a negative evaluation even if no procedural violation is alleged.*

In six of our districts, state or district policy expressly prohibits nonprocedural challenges to evaluation ratings: Albuquerque, Charlotte-Mecklenburg, Dayton, Gwinnett, Mesa, and Shelby. However, veteran teachers in the other nineteen districts may challenge a negative evaluation rating on virtually any grounds.

**Table ES-1: How easy or difficult is it to dismiss an ineffective veteran teacher (by district)?**

District	Score	Implication
None	9–10	EASY
Miami-Dade County Public Schools (FL)	8	FEASIBLE
Burlington School District (VT)	7	
Mesa Public Schools (AZ)	7	
Charlotte-Mecklenburg Schools (NC)	6	
District of Columbia Public Schools (DC)	6	
Indianapolis Public Schools (IN)	6	
Milwaukee Public Schools (WI)	6	
Albuquerque Public Schools (NM)	5	
Dayton Public Schools (OH)	5	
Fairfax County Public Schools (VA)	5	
Gwinnett County Public Schools (GA)	5	
Houston Independent School District (TX)	5	
Shelby County Schools (TN)	5	
Denver Public Schools (CO)	4	
Detroit Public Schools (MI)	4	
Minneapolis Public Schools (MN)	4	
Montgomery County Public Schools (MD)	4	
Boston Public Schools (MA)	3	
Newark Public Schools (NJ)	3	
School District of Philadelphia (PA)	3	VERY DIFFICULT
Clark County School District (NV)	2	
New York City Public Schools (NY)	2	
Chicago Public Schools (IL)	1	
Los Angeles Unified School District (CA)	1	
San Francisco Unified School District (CA)	0	

- *In most districts, a veteran teacher’s dismissal is subject to multiple appeals, at least one of which is to an authority outside of the district.*

In twenty-one of our districts, veteran teachers can appeal their dismissal more than once, and in those same districts, they can also appeal to an entity outside the district. Teachers are limited to a single internal appeal in just four districts: Burlington, Indianapolis, Miami-Dade, and Milwaukee.



Our analysis yields bleak takeaways. Most states continue to confer lifetime tenure on teachers, weak teachers still take years to dismiss if they achieve tenured status, and any attempt to dismiss an ineffective veteran teacher remains vulnerable to challenge at every stage in the process—from evaluation, to remediation, to the dismissal decision, and beyond. Consequently, in most districts and schools, dismissing an ineffective veteran teacher remains far harder than is healthy for children, schools, taxpayers—and the teaching profession itself.

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