



A Union of Professionals

AFT and Teacher Tenure

WHAT IS TENURE?

Teacher tenure is really the right to due process. Due process is the right to a legitimate reason, or “just cause,” before a teacher can be fired and requires a notice and an impartial just-cause hearing before termination. Inadequate performance is considered just cause for dismissal.

In common usage, the word “tenure” is used to refer to the process a teacher goes through to earn due process rights, the status of a teacher who has earned those rights, due process rights and dismissal procedures, or any combination of these.

Tenure laws differ throughout the states, but generally teachers can be fired for *any* nondiscriminatory reason during a probationary period. After this probationary period, they receive tenure and the accompanying due process rights, including the right not to be fired for an unjust reason. It takes two years for a teacher to get tenure in California. The law in many other states requires at least a three-year probationary period. Many states have recently enacted major changes in laws relating to tenure, teacher evaluation systems and dismissal procedures.

WHY IS TENURE NEEDED?

Due process gives teachers the latitude to use their professional judgment in their classrooms, advocate for their students, and speak the truth or teach controversial subjects like evolution without fear of retribution. Due process promotes stability in the teaching force, places a value on experience and can be an incentive for recruiting capable individuals into a still relatively low-paying profession. The desire by states to professionalize teaching in this way is what led to teacher tenure laws being passed, and why they continue to be needed today.

Tenure is not intended to be a job for life, a cloak for incompetence or a reason for managers not to manage. And when tenure and due process laws need to be changed, aligned with good evaluation systems, or made faster and fairer, the AFT is committed to doing that.

In states that do not provide teacher tenure, teachers basically continue in probationary status, working under contracts that could be as short as one year or as long as five years. At the end of the contract, all the school district has to do is notify the teacher in a timely manner that his or her contract is not being renewed. So while a teacher may have some due process protections under the state public employee laws, those protections would only be in effect during the life of the contract—even though such state public employee due process protections are generally intended to apply on a continuous basis, as they do for other public employees. A district would be under no obligation to show just cause for not renewing a contract, providing an easy way to work around any state public employee due process laws in the absence of tenure. Additionally, due process laws that are not specific to teachers may be more limited and lack the right to a hearing in front of a neutral decision-maker, as well as the right to be represented and to present evidence and witnesses.

Nationally, the AFT has partnered with the American Association of School Administrators to lay out a framework for dismissing teachers that respects due process and includes clear objectives and timelines. Union leaders across the country have worked with administrators and legislators to pass innovative due process laws and procedures, including processes for dismissing a teacher that take fewer than six months. Many AFT local leaders have negotiated peer review systems in which educators share responsibility in ensuring that teachers are all carrying their load while also helping all teachers improve.

ANTI-TENURE LAWSUITS

Students Matter, a nonprofit organization created by wealthy Silicon Valley investors, brought a lawsuit in California to challenge five state statutes that relate to teacher protections for layoff and dismissal. In *Vergara v. California*, the plaintiffs argued—using a mix of anecdotes and the same “value-added” econometric theory that has been debunked by education researchers and economists as an oversimplified attempt to isolate teacher impact on student learning—that the California laws regarding tenure and other teacher protections violated the rights of students to have access to high-quality educators.

In summer 2014, a judge in California ruled in favor of the plaintiffs. That ruling is stayed, pending appeal. Anti-union forces cheered the verdict and said they would support similar lawsuits across the country; this process has begun in New York.

Legally, the *Vergara* and New York lawsuits are not connected, as each lawsuit is based on state laws and state constitutional protections. But politically and from a public relations perspective, they are linked: Many of the same people are behind these lawsuits, and positive headway in one lawsuit provides momentum to the others. For example, the New York lawsuit was filed just one month after the *Vergara* ruling.

THE WRONG SOLUTION

The AFT is committed to supporting equity in education. We know that teacher quality is important, and we have worked to support teachers and students through numerous initiatives, including recommending specific improvements in teacher preparation, offering intensive professional development to our members during the summer, and helping teachers more easily access high-quality lesson plans. But we also know that two-thirds of what affects student achievement occurs outside the classroom—poverty, segregation, violence and underfunding are but a few examples. So while we know there is a real problem facing America’s teaching profession, it has nothing to do with tenure. The problem is in recruiting, retaining and supporting our teachers, especially at the hardest-to-staff schools.

State laws providing for job security for teachers are not to blame for education problems in California, New York or elsewhere. There is no evidence that wiping out tenure for K-12 teachers is going to make a more effective teaching corps. In fact, it will do the opposite. We know that the states with the highest academic performance have the strongest due process protections for teachers.

Throwing out due process entirely because of a few egregious cases—as the court did in *Vergara v. California*—not only would be a mistake, but also would backfire in the long run. We know why teachers stay, and we know why teachers leave. They stay when they’re well-prepared and supported, have manageable class sizes, have effective managers, and when poverty is counterbalanced by wraparound services. They leave when those supports are absent, and due process allows teachers to advocate for the resources and services their students need.

Research has shown that years of teaching experience is one of the best indicators for predicting a teacher’s effectiveness and that teachers continue to improve for decades as they acquire more teaching experience. Yet more than one-third of teachers leave the profession within their first five years of teaching. Knowing that we are having difficulty recruiting and retaining the best teachers for our toughest schools, disbanding the supports these young professionals need, and the protection necessary for them to be innovative and take risks, is the wrong solution.

CONGRESS’ ROLE

Although state laws, not Congress, govern tenure decisions, Congress can help address equity in education by:

- Addressing persistent achievement gaps by requiring states and districts to provide core resources equitably, such as by enacting the Core Opportunity Resources for Equity and Excellence (CORE) Act (S.37/H.R.193).
- Putting resources into specific programs outlined in the congressionally mandated Equity and Excellence Commission report, including early childhood education, wraparound services, safe and nurturing schools, and collaborative learning environments.