

Partnership for Educational Justice

Cracks in the System: How New York's Outdated Tenure Laws are Protecting the Jobs of Ineffective Teachers at the Expense of Students

Background

Despite deep ideological divides in public education policy circles, nearly everyone agrees on one thing: teachers are the lynchpin of student success. Research clearly shows that the influence of teachers on student learning is [greater than any other in-school factor](#). Unfortunately, New York's public education system is not designed to prioritize teacher quality.

In fact, since 2010 hundreds of cases of serious teacher misconduct have resulted in unfit teachers remaining in our students' classrooms. For example, in 2014 the New York City DOE attempted to fire an 11-year tenured teacher based on charges of sexual misconduct, verbal abuse, excessive absenteeism, and conduct unbecoming of the profession. In this case, the charges were substantiated by the arbitrator, including that the teacher (1) referred to a student with expletive terms, (2) made comments of a sexual nature with students such as, "I do very good sexual things to my wife" and "you can call me daddy...or you can call me what your mom said, 'oh god, oh god, yes.'", (3) was excessively late or leaving early on 35 different days, and (4) failed to follow state testing procedures which resulted in a student receiving another student's answer grid during a state English exam. The arbitrator noted that this teacher did not show "any remorse or concern for the effect of his comments on students." However, instead of removing the teacher or even ordering remediation and training, the resulting punishment in this case was only a 45-day suspension, without pay. New York public salary records reveal that this teacher was still on payroll with the DOE in 2016, earning \$81,230. When reading this story, and others like it, we all must ask ourselves, what if this teacher was returned to my child's classroom? Would I be willing to allow this teacher to instruct my child next year?

In New York State, 96 percent of educators are rated effective or highly effective even though more than 60 percent of public school students are behind grade-level in reading and math. The disconnect between student achievement statistics and teacher evaluation ratings reveal why we cannot tolerate the laws that permit these harmful outcomes. This is emblematic of a system designed by adults more concerned with protecting their own job security than ensuring that students are taught by effective teachers. That's why a group of New York parents filed a lawsuit in 2014, [Wright v. NY](#), challenging state education statutes that protect the jobs of ineffective teachers at the expense of the quality public education guaranteed to all students.

Since the parents' lawsuit was filed, attorneys representing the teachers unions have fought tooth and nail to dismiss the case. Why? Because they desperately want to avoid being forced to reveal details of teacher dismissal hearings.

If *Wright v. NY* proceeds to the discovery phase of litigation, attorneys for the parents will seek access to disciplinary hearing records— effectively pulling back the curtain and shining a bright spotlight on existing teacher tenure laws and how they protect the state’s most ineffective teachers at the expense of vulnerable children.

This report offers just a snapshot of what will be revealed if transparency is finally brought to New York’s outdated teacher tenure system.

The Data

Partnership for Educational Justice (PEJ) analyzed 212 settlement agreements and arbitration opinions for 773 unique tenured teacher misconduct hearings completed between 2010 and December 2015 pursuant to New York State Education Law 3020-a.

Each settlement agreement and opinion was coded by the type of misconduct substantiated, and the penalties awarded. The findings below may be the most comprehensive analysis detailing what happens as a result of the tenured teacher dismissal process outlined in New York State Education Law 3020-a.¹

Misconduct categories

- Incompetence
- Absenteeism/lateness
- Physical/verbal abuse
- Sexual misconduct
- Acts of dishonesty
- Other conduct unbecoming of the profession

Penalty categories

- Termination
- Suspension
- Fine
- Courses/training
- Letter of reprimand
- Reassignment/new position

Key Findings

Essentially all educators who complete a termination hearing are found guilty of at least one fireable offense.

The teachers facing termination hearings in New York between 2010 and 2015 were accused of a wide range of misconduct and many were charged with multiple fireable offenses. Out of 773 termination hearings, only nine resulted in full acquittal.

¹ The settlement agreements and hearing opinions varied considerably in length and format. Some decisions were heavily redacted, obscuring claims and descriptions of alleged misconduct. Therefore, the results in this report only pertain to the data available pursuant to the constraints of New York’s Freedom of Information Law (FOIL).

This staggering statistic should assuage the fears of those who believe modifying these laws will cause arbitrary and capricious terminations, because this data shows that school administrators are very rarely leveling unfounded allegations at teachers in attempts to fire them without cause or for political reasons. *In fact, in 99 percent of cases, an independent arbitrator agreed that the teacher had indeed committed at least one fireable offense.*

Sixty percent of educators found guilty of a fireable offense after a hearing receive a penalty other than termination.

Although every hearing seeks dismissal for guilty teachers, fewer than half (40 percent) of teachers found guilty of some or all conduct alleged are actually terminated from the job. Most receive penalties other than firing, which almost always allow for the teacher to return to work with students even after an independent arbitrator has ruled that they are guilty of misconduct. The rate of teacher termination is fairly consistent across the different categories of misconduct, ranging from a 38 percent dismissal rate for teachers guilty of physical/verbal abuse to a 48 percent dismissal rate for teachers guilty of absenteeism/lateness and/or incompetence.

Guilty teachers who were not terminated after a hearing usually received a penalty that included either a suspension and/or a fine (86 percent of the time).

Teachers who weren't terminated were often given multiple penalties, and most of the time this included either a fine or a suspension. In only 39 percent of hearings that did not result in termination – or 19 percent of hearings overall – did the penalty require additional training.

This data is notable when considering the public education context. Put simply, for teachers who have committed a fireable offense, New York's tenured teacher misconduct hearings that do not terminate employment most often result in penalties involving fines or suspensions. This reality is alarming because the penalties are not benefitting students when they fail to at least provide these teachers with training that will help them do better, or in more troubling cases, remove them from the classroom to prevent further harm to students. The punishment in most circumstances, therefore, does not coincide with the ultimate goal of improvement of the teaching force, and simply returns the unrehabilitated teachers to our children's classrooms.

On average, it takes more than a year to resolve tenured teacher misconduct charges through a dismissal hearing.

Between 2010 and 2015, tenured teacher dismissal hearings lasted, on average, about 15 months between the date a teacher was charged with misconduct and the date that an arbitrator issued a ruling. This delay, which occurs *after* the charges are brought, is in addition to other significant delays involved in bringing those charges. The Thomas B. Fordham Institute noted in its report [*Undue Process: Why Bad Teachers in Twenty-Five Diverse Districts Rarely Get Fired*](#) that school administrators in New York City must wait at

least two years after identifying an ineffective teacher before they can begin dismissal proceedings, and that this timeline can be extended further by a five to six month grievance process.

The cases of two teachers from central New York exemplify this problem. Those teachers had left their positions due to chronic injury or illness, but refused to relinquish their tenure rights. In one case, a teacher had not been to school for 12 years since suffering an injury. In the other, the teacher was absent for the entirety of three consecutive school years. Even though the basis for termination in each of these cases was undeniable, both cases required full proceedings through the New York State Education Law 3020-a arbitration process, lasting 14 months in one case and 5 and a half months in the other. That New York's tenure laws required the school district to hold positions for teachers who were absent for years – in one case, for more than a decade – presents an undeniable problem because the result is both ongoing uncertainty for school staff and instability for students. Put more simply, the 3020-a statute obstructed the school district's ability to fill these positions with permanent staff, which would have provided students with consistent instruction from the same teacher who, over time can “establish a productive learning relationship with each student” as recognized by one ruling arbitrator.

For at least two decades, the tenured teacher dismissal hearing process has returned most teachers who have committed a fireable offense back to public schools.

In 2014, a report was published by the [American Enterprise Institute](#) showing a similar analysis of teacher dismissal hearings from 1997 to 2007. The researcher, Katharine Stevens, narrowed the scope of her report to teacher misconduct that related directly to students and classroom behavior (instead of conflict between adults in a school, for example), and found that 39 percent of 155 tenured teacher dismissal hearings during that time resulted in job termination.

As compared to Stevens' report, the data contained in this report for the more recent years of 2010-2015 showed that dismissal rates remained essentially flat at 40 percent – and rose only to 41 percent for the subset of misconduct that related directly to students or their families. Remember, these are the percentages of teachers who were found **guilty of a fireable offense** by an independent arbitrator – *not* those who were fully acquitted of the charges brought against them.

Publicly accessible information reported in settlement agreements does not provide full transparency on the issues at hand.

In approximately 20 percent of the cases that resulted in a settlement agreement, even the category of charged misconduct could not be determined from the written documents provided in response to this FOIL request. To fully understand which kinds of cases result in settlement and the resulting penalties assigned, further transparency of these proceedings is needed.

Guilty teachers whose settlement agreement returned them to the classroom were required to attend training more often than those returned to the classroom after dismissal hearings, but incongruent penalties persist in both circumstances.

Training courses were required in 47 percent of the cases that resulted in settlement agreements compared to 19 percent of cases that proceeded to a hearing. However, even though settlement agreements result in proportionally more teachers receiving training before returning to the classroom, the average length of the training required was only 8.1 hours. Especially notable is the fact that only 42 percent of cases that resulted in settlements and involved charges of incompetence required trainings. This suggests that even the cases resulting in settlements fail to provide the rehabilitative remedy necessary to address the charged conduct.

For example, one settlement agreement noted that the case involved charges of physical and verbal abuse, including that the teacher hit the student on the head and lifted the back of the student's seat, physically removing the student from his chair. Instead of a remedy to address the violent nature of the teacher's actions, the settlement required a \$10,000 fine and only a 3-hour training course. In another case resulting in settlement, a teacher faced incompetence charges that spanned four school years, then pursuant to the 3020-a requirements, two additional years of proceedings related to the charges followed, and ultimately a settlement agreement was reached that did not require any professional development or further trainings. Instead, only a 2-week suspension was required and the teacher was then assigned to New York City's Absent Teacher Reserve for reassignment.

Methodology

In October 2015, pro bono attorneys from Kirkland & Ellis utilized New York's Freedom of Information Law to access data that would shed light on what happens to tenured teachers who are accused of fireable misconduct and are subject to what are known as Education Law 3020-a proceedings. The documents sought included both settlement agreements that resulted from 3020-a proceedings and arbitrators' decisions from 3020-a hearings in New York from 2010-2015. However, production of portions of the requested documents have only been achieved because of persistent efforts, including the successful filing of an administrative appeal to compel production. Other documents, however, including exhibits to settlement agreements that contain higher-level detail regarding these proceedings continue to be inexplicably withheld. The result of the productions received thus far are believed to be the largest-ever data set showing the immense scale of the cracks that allow ineffective and harmful teachers to slip through the current system and back into classrooms with New York's children.

While new perspective is available from this data regarding the cracks in the system, it also reveals that limitations and significant gaps in publicly accessible data persist. These limitations result from the fact that documentation of certain details is not required to be included in these documents and, therefore, some data was not available from certain settlement agreements and hearing decisions. Thus, further investigation into this matter is

still of great importance so as to paint the full picture of what happens to tenured teachers who are accused of fireable misconduct. To prove the merits of their claims, the parents need a complete record of what is occurring in New York's teacher dismissal process, beyond the still limited information that was publicly accessible through this FOIL request. It is, therefore, imperative that the parents' lawsuit move forward into the discovery phase of litigation.

New York's Teacher Tenure Laws

When enacted, New York's tenure laws were intended to provide employment protections to teachers who have already proven their value to students in the classroom and serve as a badge of honor for the many qualified and tireless teachers educating public school students throughout the state. However, in practice, these laws also favor the rights of the ineffective teachers who have received tenure, but are no longer educating children. The unconscionable result is that students' educational rights are subordinated to the rights of the state's most ineffective teachers.

Most synonymous with teacher tenure is the right to a hearing before being fired. This protection is codified in New York State Education Law 3020-a. While the intention of this law is reasonable – to ensure that good teachers are not fired for arbitrary or political reasons – the tenure “due process” laws also enforce an outrageously burdensome, time-consuming, costly, and ineffective process for removing poor-performing teachers from New York's public schools. Even those teachers who are found guilty of fireable offenses and should be dismissed, are returned to the classroom most of the time.

When a New York school district wants to fire a tenured teacher, pursuant to state statute 3020-a, specific misconduct must be cited as grounds for dismissal. Then the educator, typically represented by a union lawyer, has the opportunity to present their side to an independent arbitrator who determines guilt or innocence and assigns a penalty. While it sounds simple enough, the loopholes in the process result in multi-year and high-cost proceedings to prove a single teacher's misconduct at a hearing. Because these lengthy proceedings can lead to costs in the hundreds of thousands of dollars, attorneys for school districts typically only pursue arbitration for teachers they believe pose a danger to students and should be fired. That the arbitrator hearing the case has the authority to assign a different penalty, short of firing the teacher, is yet another obstacle in the system. In light of these realities and the need to conserve finite resources, districts will frequently opt to settle with a teacher instead of fully pursuing protracted 3020-a proceedings to completion.

In May 2015, the New York State Legislature passed education reforms that included some minor updates to the tenure laws. Most notably, teachers must now wait until they have completed four years – increased from three years – in the classroom before they are eligible for tenure protections. However, the misconduct arbitration process governed by New York Education Law 3020-a remains largely unchanged by the new law, although hearings will be expedited for charges of physical or sexual abuse of a student. Additionally,

three consecutive annual ratings of “ineffective” for tenured teachers will automatically trigger a hearing and the burden of proof will be shifted from the district to the teacher. Otherwise – and in the vast majority of circumstances that led to tenured teacher arbitration between 2010-2015 – the process remains essentially the same.

Conclusion

The analysis in this report is both alarming and entirely expected, given years of public acknowledgement that even ineffective tenured teachers in New York have essentially landed a “job for life,” no matter how apathetic or abusive they become.

Supporters of the 3020-a law – some of whom will admit that the statute is far from perfect – will point to changes made by legislators in the spring of 2015 as the panacea to the problems identified in this report. But these changes amount to mere tinkering at best, and there has been no significant difference in the speed or ease with which truly harmful tenured teachers are removed from New York’s public schools.

In fact, when the changes to the law prompted a renewed motion to dismiss the *Wright v. New York* lawsuit challenging the tenure laws in New York, the trial judge ruled that “the legislature’s **marginal** changes... are insufficient to prevent this case from moving forward.”(emphasis added). Put more bluntly, the judge agreed there’s still fair grounds to examine whether the laws enacted by New York politicians violate students’ right to a sound basic public education by providing outsized job protections for demonstrably ineffective and harmful teachers.

Putting aside the intentions behind New York’s due process law for tenured teachers, the result is a system that allows for ineffective and harmful teachers to slip through the cracks and remain in our public school classrooms. Students across the state are largely behind grade level – fewer than 40 percent are proficient in reading and math. When research overwhelmingly shows that teacher quality is the key in-school determinant of student learning, should we not examine more critically any law that might protect the jobs of ineffective teachers at the expense of students?

These findings reveal both alarming realities that exist as a result of the requirements of New York’s 3020-a law and the need for increased transparency to fully understand the additional implications. With the future of our children at stake, and having already waited nearly four years for the parents’ lawsuit to reach discovery, it is more important than ever for the parents’ lawsuit to move forward so that they may seek further documentation to prove their claims. With the power of judicial oversight and court orders, the plaintiffs will finally be positioned to obtain these documents. Only with this full picture can the public be rightfully informed about what is happening behind schools’ closed doors, but is very directly impacting families at home.