



Teacher Tenure

Trends in State Laws

Education Commission of the States

www.ecs.org

700 Broadway, Suite 810 • Denver, CO 80203-3442 • 303.299.3600 • ecs@ecs.org

Teacher performance plays growing role in employment decisions

By Jennifer Thomsen

May 2014

An increasing number of states are mandating teacher performance be considered in educator employment decisions, including awarding tenure and layoffs, according to a 50-state policy review of teacher tenure laws.

Tenure laws have historically granted job protections based on years of employment. ECS released its last report on tenure laws in 2011 and reviewed reduction-in-force laws in 2012. This 2014 update gauges national trends on how tenure is changing across the states.

[Find your state in the ECS database](#)

ECS' online database can be used to generate profiles of teacher tenure policies in individual states and to view 50-state reports. The database includes requirements for earning tenure, reductions in force and dismissal.

Related reports: [Teacher evaluations and reduction-in-force policies](#) and [Teacher evaluations and tenure decisions](#)

Key trends in teacher tenure laws:

- Three states – **Florida, Kansas** and **North Carolina** – have attempted to eliminate tenure or are phasing it out. Florida and **Idaho** fit this category in 2011 but Idaho voters have since repealed that state's law eliminating tenure.
- 16 states require the results of teacher performance evaluations be used in making decisions about granting tenure or non-probationary status. In 2011, that number was 10.
- Seven states have laws returning tenured or non-probationary teachers to probationary status if they receive ineffective ratings. Two states, **Arizona** and **Louisiana**, have joined this group since 2011. Five states – **Colorado, Idaho, Indiana, Nevada** and **Tennessee** – already had such laws.
- 11 states require school districts to consider performance in deciding which teachers to lay off when declining enrollments or economic factors necessitate reductions in force. **Georgia, Louisiana** and **Maine** are the most recent states making performance a primary consideration. In addition, **Washington** added this requirement in law effective 2015-16.
- 10 states explicitly prohibit the use of tenure or seniority as a primary factor in making lay-off decisions: **Arizona, Florida, Georgia, Idaho, Michigan, Nevada, New Hampshire, Ohio, Utah** and **Virginia**. In 2012, only five states had such prohibitions in law.

In this report

<u>Revisiting teacher tenure.....</u>	<u>p. 2</u>
<u>Using performance evaluations in tenure decisions.....</u>	<u>p. 3</u>
<u>Returning non-probationary teachers to probationary status.....</u>	<u>p. 3</u>
<u>Basing teacher layoff decisions on performance ratings.....</u>	<u>p. 4</u>
<u>Defining tenure: What it is, what it's not and how it's granted.....</u>	<u>p. 4</u>

Revisiting teacher tenure

Although many states have chosen to address issues around tenure and non-probationary status for teachers by making incremental changes to tenure law, a few have chosen to take more drastic action – repealing tenure outright, phasing out tenure and removing the due process provisions at the heart of tenure.

Florida

After completion of a one-year probationary contract, teachers hired in Florida after July 1, 2011, are placed on an annual contract. Because all teachers are awarded an annual contract regardless of probationary status, the state has essentially eliminated tenure. Three additional states have made similar moves since the 2011 policy review.

Idaho

During its 2011 legislative session, the Idaho legislature passed, and the governor signed into law, [Senate Bill 1108](#), which abolished tenure in the state. The bill stated the intent of the legislature that no new employment contract between a school district and a certificated employee would result in the vesting of tenure, continued expectations of employment or property rights in an employment relationship. Two categories of contracts were created in the bill: one-year “category A” contracts and limited two-year “category B” contracts. The bill allowed a school board to non-renew or terminate a teacher’s contract at its discretion, but required the board to provide notice to the teacher and allowed the teacher to request an informal review.

In 2012, voters approved a citizen referendum repealing S.B. 1108. The passage of [Proposition 1](#) reinstated tenure, returning to the statutory language that existed prior to the passage of S.B. 1108.

North Carolina

The North Carolina legislature in 2013 passed [Senate Bill 402](#), which phases out tenure over a five-year period. Under this 2013 law, teachers employed fewer than three years by a local board may be employed only on one-year contracts. Contracts or renewals for teachers employed more than three years may be for one, two or four school years. However, for teachers employed more than three years, a contract term of longer than one year may only be recommended by the district superintendent if the teacher has shown effectiveness, as demonstrated by proficiency on the teacher evaluation instrument.

Under the new law, teachers have the right to petition for a hearing after a nonrenewal of a contract, but the local board has discretion in whether to grant a hearing. A teacher has no right to appeal the denial of the request for a hearing or for the nonrenewal of a contract. Teachers may be dismissed *during the term of the contract* only for one of 15 grounds specified in law, and a dismissed teacher has a right to a hearing before the local board. The local board must grant the hearing if requested by the teacher, and the teacher has a right to a further appeal to the superior court.

The law also requires that, from Sept. 1, 2013 to June 30, 2014, superintendents review the performance and evaluations of all teachers who have been employed for three consecutive years and then recommend 25 percent of the teachers to the local board for four-year contracts starting in the 2014-2015 school year. The local board must review the recommendations and accept them or select other teachers as part of the 25 percent to whom four-year contracts will be offered. Four-year contracts can be offered only to teachers who are effective, as demonstrated by proficiency on the

teacher evaluation instrument. Teachers who are employed on these four-year contracts will receive a \$500 annual pay raise for each year of the contract.

Lawsuits challenging the legislation are pending. An initial ruling on one of the lawsuits found much of the law unconstitutional, and implementation has been halted pending an appeal by the state.

Kansas

The recently enacted education appropriations bill, [House Bill 2506](#), leaves intact provisions allowing teachers to gain non-probationary status after three years. However, it does away with due process for tenured teachers. At least two other states do not allow an appeal of the decision made at a hearing, but Kansas is now the only state that removes due process rights completely.

Using performance evaluations in tenure decisions

ECS' 2011 scan of tenure policies identified 10 states that used the results of teacher performance evaluations to inform decisions about whether to grant tenure or non-probationary status. In 2014, that number had increased to 16. Some notable examples:

New Jersey

New requirements for non-probationary status were added to the law in 2012, when years of service requirements increased from three to four. In addition, teachers are now required to complete a district mentorship program during their initial year of employment and they must receive a rating of "effective" or "highly effective" in two annual summative evaluations within the first three years of employment after the initial year.

Oklahoma

Legislation passed in 2013 provides three paths to non-probationary status:

- A teacher may earn non-probationary status after three years of service if he or she has been rated "superior" for at least two of the three years, and has received no rating below "effective."
- A teacher may earn non-probationary status after four years if he or she has averaged a rating of at least "effective," with at least an "effective" rating for the last two years.
- A principal may petition for non-probationary status for a teacher after four years. The petition must be approved by both the superintendent and the school board.

Washington

Teachers gain non-probationary status after three years, except that a teacher who receives an evaluation rating below 2 on the four-level rating system remains subject to nonrenewal until he or she receives a level 2 rating. In addition, the superintendent has discretion to move a teacher to non-probationary status after only two years if the teacher receives one of the top two evaluation ratings during his or her second year of employment.

Returning non-probationary teachers to probationary status

In an effort to ensure that students are being taught by the best teachers, regardless of the teachers' number of years of service, some states have enacted laws allowing districts to take away teachers' non-probationary status when they don't meet performance standards.

Colorado, Nevada and Tennessee were early adopters of policies allowing for removal of teachers' tenure status, and at least two additional states have enacted such laws since the 2011 policy scan:

Arizona

Arizona enacted legislation in 2013 that requires that tenured teachers who are rated in the lowest performance classification for the current school year be returned to probationary status for the subsequent school year, and remain probationary teachers until their performance improves and is rated in either of the two highest performance classifications.

Louisiana

Louisiana passed a law in 2012 that provides that tenured teachers who are rated "ineffective" lose their tenure status immediately. Tenure may be regained under the law only if:

- The "ineffective" rating is reversed pursuant to the grievance procedure *or*
- The teacher receives a rating of "highly effective" for five years in a six-year period.

Basing teacher lay-off decisions on performance ratings

School districts were forced to make some tough decisions during the recent recession. Big decreases in K-12 funding and shifting demographics leading to drops in enrollment meant programs were cut and teachers were laid off. These challenges sometimes brought to the forefront the methods being used to decide which teachers to cut in reductions in force. Historically, these cuts were made using tenure status or seniority as the deciding factor, but more states are including teachers' performance ratings in these decisions.

While reduction-in-force laws were not included in the 2011 policy scan, a 2012 ECS report on this issue found ten states were using teacher performance as a primary factor. More recently, ECS identified 12 states using teacher performance. In addition, a number of states explicitly prohibit the use of tenure or seniority as the primary factor in making lay-off decisions. In 2012, five states were in that category. That number had doubled in 2014.

Defining tenure, continuing contract or non-probationary status

What it is:

The first tenure law was enacted about 90 years ago in New Jersey. At that time, job protection was seen as necessary because of prevalent nepotism, political favoritism and arbitrary dismissals. Teacher tenure is, therefore, not a job guarantee. Rather, it's a job security device protecting against termination of employment in cases where there are no grounds for termination or where the teacher has no fair opportunity to present a defense. Tenure law generally provides:

- Continuing employment (i.e. contract renewal) for teachers who have gained tenure status.
- Due process rights for tenured teachers who are being dismissed.

To gain tenure, teachers must generally complete a specified period of probationary employment, usually three years. Some states also include performance ratings in tenure decisions and/or return teachers to probationary status if their performance is rated unsatisfactory.

Tenured teachers are assured notice of nonrenewal or dismissal, a statement of causes or reasons for termination and are allowed an appeal hearing before the school board, an arbitrator or a specified person/group. The teacher usually can appeal the decision of the board or arbitrator.

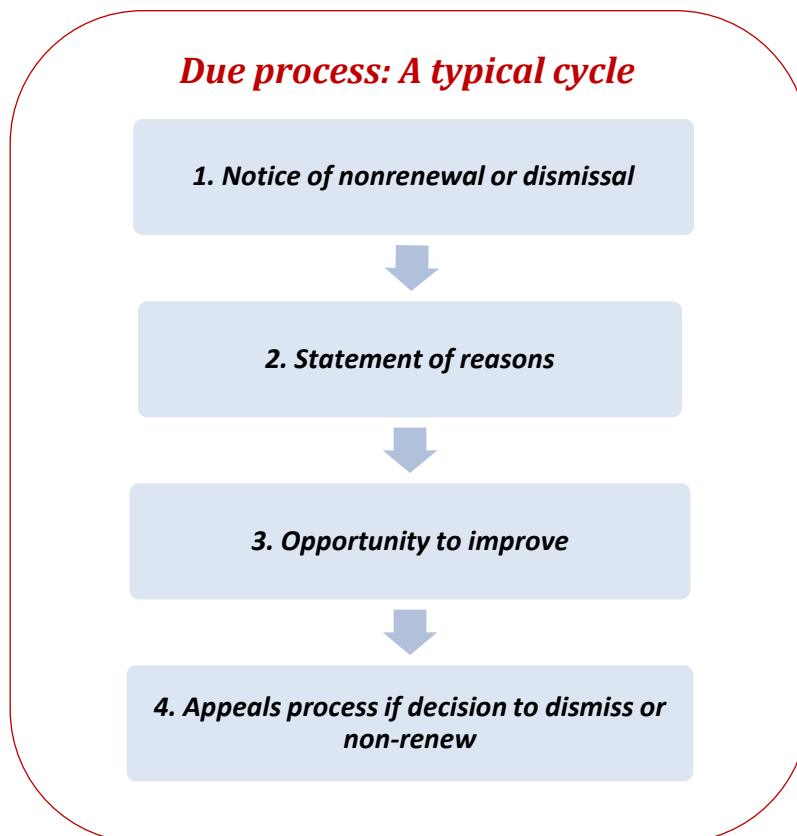
What it's not

Tenure does not require that the employment of an incompetent teacher be continued; tenure laws provide for dismissal of incompetent or inefficient teachers while providing due process rights.

How it's granted

In general, schools and districts have great latitude in deciding whether to grant initial tenure, as long as decisions are neither discriminatory nor based on teachers' exercise of academic freedom. Most laws specify the number of years during which teachers are "probationary" – years during which their contracts might not be renewed. Integrating performance evaluation that includes a teacher's impact on student outcomes is not incompatible with the tenure system.

Some tenure statutes do not address performance evaluation at all, while others mandate evaluation criteria in substantial detail and make evaluation an integral part of the tenure state employment and dismissal laws. Because tenure is a product of legislation, there is no legal obstacle preventing states from strengthening the evaluation component of tenure.



Report author **Jennifer Thomsen** is an ECS policy analyst. She can be reached at jthomsen@ecs.org.

Related reports:

[A closer look: Teacher evaluations and reduction-in-force policies](#) by Jennifer Thomsen, May 2014

[A closer look: Teacher evaluations and tenure decisions](#) by Jennifer Thomsen, May 2014

[Reduction-in-force policies](#) by Emily Workman, March 2012

[Teacher tenure or continuing contract laws](#) by Kathy Christie and Jennifer Dounay Zinth, August 2011

About ECS:

[The Education Commission of the States](#) was created by states, for states, in 1965 to work with governors, legislators, chief state school officers, higher education officials and other leaders across all areas of education, from pre-K to college and the workforce. We track policy, translate research, provide non-partisan advice and create opportunities for state policymakers to learn from one another.

The conclusions presented in this report are those of ECS, which receives the majority of its funding from the member states it serves. State policymakers seeking additional information on this topic should contact author Jennifer Thomsen at jthomsen@ecs.org. As part of the services ECS provides to states, staff members are available for consultation and to serve as third-party experts in legislative hearings.

© 2014 by the Education Commission of the States (ECS). All rights reserved.

ECS is the only nationwide, nonpartisan interstate compact devoted to education.

ECS encourages its readers to share our information with others. To request permission to reprint or excerpt some of our material, please contact the ECS Information Clearinghouse at 303.299.3675 or e-mail ecs@ecs.org.

Equipping Education Leaders, Advancing Ideas