

WR 227 Final Proposal

# Tenure: Time for an Update

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## Problem

### INTRODUCTION

For a long time, a battle has raged over public education. Though the issues have changed over the years, one important current conflict is that of public school faculty tenure. Although it may make the news, this battle is not being openly fought between parents and teachers—instead, important decisions are being made behind courtroom doors, where wealthy businessmen face off against powerful teacher unions. David Welch, a Silicon Valley entrepreneur, is just one of many who are clamoring for change in the way schools are run, not only in California, but across the country (Edwards 2014). He recently lodged a complaint against the California school system in the form of an unusual and expensive lawsuit. In their case *Vergara v. California*, Welch’s lawyers argued that tenure is about more than merely monetary compensation. In fact, they went so far as to point out that the very education and career success of students is at stake in the quarrel over tenure. Their logic was that “students who are stuck in classrooms with bad teachers receive an education that is substantially inferior to that of students who are in classrooms with good teachers.” Thus, they reasoned, tenure laws that keep bad teachers in classrooms are violating the right of students to obtain a quality education. Since this logic makes sense, it is clear that it would be foolhardy to dismiss the disagreement over tenure lightly. Because this is a complicated issue, a little research and logical thinking is necessary to determine the correct approach to this issue.

### HISTORY

To begin with, some knowledge of tenure is necessary. This is provided by three writings that clearly outline the subject of tenure. In his summer 2001 article “Why Merit Pay Will Improve Teaching,” Steve Malanga says that tenure was widely adopted in the early 1920s as a means of rewarding teachers according to their seniority and professional advancement. On the surface, this seems a poor way of properly motivating teachers and ensuring good student education, but Haley Edwards’ *Time* article entitled “Taking on Teacher Tenure” points out that the main purpose of tenure was to protect teachers from unfair discrimination by giving them a right to due process. For example, “Before states began passing tenure laws in the early 20<sup>th</sup> century, a teacher could be

fired for holding unorthodox political views or attending the wrong church, or for no reason at all if the local party boss wanted to pass on the job to someone else” (Edwards 2014). In this way, tenure was, and still is, necessary. However, Randi Weingarten (President of the American Federation of Teachers) and Michelle Rhee (CEO of the nonprofit StudentsFirst) acknowledge in their paper “Should Public School Teachers Get Tenure?” that tenure was never intended to ensure permanent employment or hide a teacher’s ineffectiveness. They write “Where due process laws need to be changed, aligned with good evaluation systems or made faster and fairer, they should be.”

## CRISIS

In short, tenure is not an awful system, but it must be updated if it is supposed to help more than harm our schools. An increasing number of people are realizing that the current method of tenure does not sufficiently handle our modern school situation. Haley Edwards states the three main problems with tenure. To begin with, “teachers in California receive tenure—permanent employment status designed to protect them from unfair dismissal—after less than two years on the job” (Edwards 2014). This makes it nearly impossible to remove tenured bad teachers, as Edwards points out that “in some districts it takes years and tens of thousands of dollars to fire a teacher who isn’t doing a good job.” Conversely, tenure also makes it far too easy to lay off untenured good teachers. The article says that “principals are often required to lay off the least experienced teachers first, no matter which ones are the best” (Edwards 2014). These are just three of the most important problems with tenure. Predictably, teachers’ unions strongly oppose any attempts to overturn the status quo because tenured faculty possess powerful protections such as job security and salary guarantees. Yet almost everyone agrees that bad teachers should be swiftly ushered out of the school system in order to make room for better ones. So how can these seemingly opposed views be reconciled?

## Solution

### ANALOGY

In his fascinating 2011 article entitled “If Supermarkets Were Like Public Schools,” Donald J. Boudreaux takes an innovative approach at the issue of tenure by comparing the private and public sectors. Through a clever analogy, Boudreaux points out how ridiculous and inefficient the government would be at running and operating supermarkets. He says, “In reality, of course, groceries and many other staples of daily life are distributed with extraordinary effectiveness by competitive markets responding to consumer choice.” The logical conclusion of Donald’s article is simply that schools would be far more efficient and effective if they were operated in a way that more closely reflects the methods that govern private businesses. For example, private schools are far more efficient at quickly weeding out poor teachers. Steve Malanga’s article says that at “schools with full-fledged merit pay, including many of the nation’s top private schools, the principal and the board of trustees simply negotiate salaries with teachers, offering fatter deals to better instructors.” Since one of the main problems with tenure is the difficulty of releasing poor instructors, it would appear that schools would benefit in at least one way from adopting methods more in line with private schools.

### MERIT PAY

One of these solutions, often proposed by opponents of tenure, is that of merit pay. Under the merit pay system, teachers are paid, hired, and fired based upon their classroom performance. Steve Malanga reports that “Education reformers argue that merit pay will give encouragement to good teachers and drive away bad ones.” However, he says that “most teachers’ unions adamantly oppose the idea.” Those unions are right when they say that merit pay alone cannot sufficiently serve the needs of both teachers and their students. Merit pay tends to create volatile atmospheres that are unsafe for teachers because their pay and benefits are directly linked to student test results and assessor opinions. In addition, merit pay has the possibility to create unhealthy competition between teachers. In other words, a system of pure merit pay merely reverts the scholastic system to a slightly different version of the situation before tenure was enacted. For this reason, merit pay must be coupled with two things.

## DUE PROCESS

First, any performance pay system must include a due process structure that continues to protect teachers' rights, although not as stubbornly as tenure currently does. Randi Weingarten and Michelle Rhee agree that "it shouldn't take 10 years to dismiss someone who should be ushered quickly out of the profession" (2014). According to the framework that Weingarten and Rhee authored, "the process should take a year at most." In this way, teachers' rights are protected, while students are not stuck with bad teachers for more than a year. Apparently, both sides of the tenure argument realize this, because the 2014 article "Should Public School Teachers Get Tenure?" reported that teachers' "union leaders in Connecticut, New Jersey, New York and Maryland...have worked with administrators and legislators to pass innovative due process laws."

## ASSESSMENT

While due process is crucial to teacher acceptance of performance pay systems, it is also essential that such systems include a solid and unbiased method of assessing teacher performance and effectiveness. Under current practice, teachers are periodically reviewed to assess their eligibility for tenure or increased pay. However, many tenure-track faculty fear that their professionalism and teaching quality during such a review will be compromised by other circumstances, such as raising a family. A common solution is STC (Stop-the-Clock) policy. Colleen Manchester, Lisa Leslie, and Amit Kramer's paper "Is the Clock Still Ticking?" quote a research article when they state "STC [Stop-the-Clock] policies have existed for approximately 40 years and are currently available at nearly 90% of research institutions" (Hollenshead et al. 2005). Stop-the-Clock policies are often implemented at academic institutions that have tenured faculty in order to postpone regularly scheduled tenure review of faculty to allow them to deal with family issues. This shows that there is some small level of accountability for tenured faculty, but it also shows that the tenure assessment process can be very subjective. The fact that STC policies even exist (allowing faculty to appear "better" for their reviews by postponing those reviews) demonstrates that tenure policies have some serious flaws that need to be remedied.

## DIFFICULTIES

Unfortunately, a pure merit pay system exaggerates this problem. By increasing the accountability and strict assessment of teachers, merit pay systems actually increase the pressure on teachers to “look good” rather than perform well. Even if Stop-the-Clock policies were abolished, teachers would be tempted to find ways to meet merit pay requirements without improving the quality of their teaching. Haley Edwards’ *Time* article entitled “Taking on Teacher Tenure” clarifies this issue. She quotes Michael McShane, a conservative analyst at the American Enterprise Institute, as saying, “If it’s now unconstitutional to allow a ‘grossly ineffective’ teacher in the classroom, then...How do you define ‘grossly ineffective’?” Edwards points out that “judging a teacher’s quality can be tricky business.” The article then proceeds with a prime example of the problem we are facing—“During the Vergara trial [David Welch’s lawsuit against the California school system], one of the plaintiffs described her middle-school teacher as ineffective and undeserving of tenure; that same teacher had been previously named Pasadena’s Teacher of the Year.” In other words, the merit pay system tends to discourage good teachers if a solid system of assessment is not in place.

## ADVANCES

Steven Malanga’s 2001 article in *City Journal*, however, deals with this very issue. In that article, Malanga summarizes the teachers’ unions’ argument as “We don’t have reliable means to measure a teacher’s classroom performance...so merit plans will inevitably result in supervisor bias and favoritism.” However, Malanga continues his article by using American businesses to prove that this argument is no longer valid. He points out that in the 1980s, American firms tried to boost their efficiency and competitiveness by developing pay plans that closely resemble the merit pay system. Workers’ unions made similar complaints, but American industry, desperate to meet the bottom line, experimented with such systems anyway. Eventually, they experienced booming growth and success as a result of these merit pay systems that are now common in the private workforce. Almost all of these merit pay plans depend heavily upon methods of measuring employee productivity and ability that were previously deemed unreliable. In short, teachers’ unions no longer have a viable argument against merit pay because acceptable measurement

systems have been developed to accurately assess teachers without regard to superficial performance.

## CAUTION

Malanga's article also states that one major breakthrough in merit pay was William Sanders' Value-Added Assessment System, which allows the measurement of teachers' effects upon students. It is partly due to this method that many states base the assessment of their teachers on student test scores (Weldon, 2011). However, Tim Weldon, the Education Policy Analyst for the Council of State Governments, published an excellent research article in October of 2011 in which he cautions the use of any assessment system that indirectly assesses instructors by directly assessing students. The article, entitled "Does Merit Pay For Teachers Have Merit?" concludes that "Both NEA [National Education Association] and AFT [American Federation of Teachers] concur existing pay systems can be improved, but contend compensation should not be based on student test data." Although it makes logical sense that good teachers would raise test scores for students, teachers realize that there are too many variables to make this form of assessment truly reliable. For this reason, teachers' unions strongly oppose any performance pay systems that have "unfair" assessment in the form of student test scores. Nevertheless, many states base their evaluation of teachers upon the performance of their students. To avoid controversy and inaccuracy, a good substitute for tenure should not assess teachers based upon student's performance.

## Implementation

### RESISTANCE

Considering present resistance, it can be expected that teachers and public school management alike will strongly oppose any attempts to implement merit pay systems in place of current tenure structures. There are several ways that school systems have been overcoming this difficulty, however. Steve Malanga used Cincinnati's public school system as an example in his 2001 article. He wrote that "Essential to union support [of the ten-school pilot program of merit

pay] was the pilot's proposed use of peers to evaluate teachers." By using unbiased evaluators in their assessment process, Cincinnati was able to get the unions to support its ambitious plan.

## CHANGES

Consider also the essay written by Michelle Rhee and Adrian Fenty entitled "The Education Manifesto." In this paper, they point out that the only way for them to make the right decisions for Washington, D.C.'s schools as mayor and schools chancellor was to change the political structure to allow more control over the public education system. It was not until "that new structure of governance was in place [that] we were able to chart a new course." Michelle and Adrian thus make the important point that, contrary to what the unions say, it is not always a bad thing to allow school managers and administrators more freedom over hiring and releasing teachers. Without freedom, bad teachers can never be removed from the schools. Of course, this is why due process laws are so important; teachers are far more likely to allow more freedom to administrators if they have strong legal rights.

## ACCEPTANCE

Lastly, Michelle and Adrian explain how they were able to change the tenure system that D.C. schools had become firmly entrenched in. Granted, they had to make concessions in order to strike a bargain with the teachers' union, but ultimately, everyone benefited. In essence, Michelle and Adrian offered a bold proposal that "in exchange for giving up tenure and linking pay to performance, teachers would be able to earn up to \$130,000 a year." Basically, they were offering teachers the opportunity to be rewarded for their hard work in exchange for accountability. "When the union finally allowed [the teachers] to vote, the teachers passed [the contract] overwhelmingly, by 80% to 20%" (Rhee 2014). After two and a half years of bargaining, the teachers of D.C. finally grabbed at "the chance to be treated as professionals and to be rewarded for their achievements."

## ASSURANCES

This success story does not have to be the last. What the teachers and their union were willing to agree to are what any honest educator would want: Fairness, Safety, and Reward. Unions and educators alike are far more likely to embrace performance pay systems if they are



assured of fair assessment, sufficient (but not overbearing) legal rights, and significant monetary rewards. In fact, an increasing number of states and school districts are realizing the benefit of changing tenure laws. As the map below shows, more than half of America's states have already adopted some form of teacher compensation other than tenure.

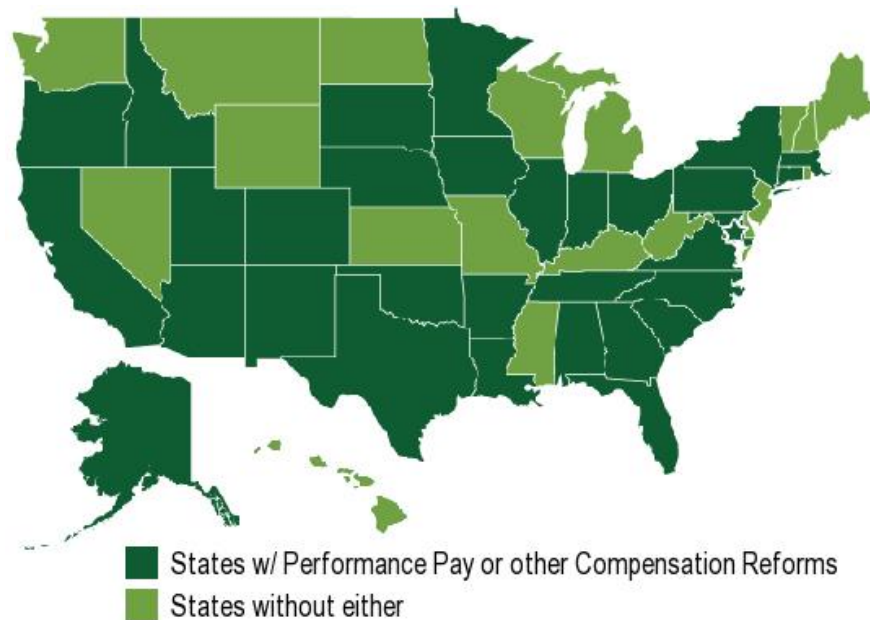


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## Conclusion

Merit pay should be seen for what it is—an opportunity to fix what tenure has gotten wrong while honoring and respecting teachers and students. No one wants a bad education for their children, but unfortunately, educators and parents do not see eye-to-eye on the issue of tenure. Champions for merit pay such as David Welch would do well to learn from Michelle Rhee and Adrian Fenty's mistakes. In their essay "The Education Manifesto," they admitted "We did not communicate with [the community] effectively. We did not explain why we were doing what we were doing well enough. We did not do enough to engage the local leaders and neighborhood activists who needed to be at the forefront of the fight." It is a fight, but everyone can objectively agree upon a plan of action if they understand the option available to solve the issues at stake. Merit pay certainly is not the perfect solution, but both teachers and students agree that tenure

needs to be changed. Without disregarding the rights that tenure was designed to protect, a solution can be forged that joins what was once separate.

Although it has already been stated, the three components of a successful performance pay system are accurate assessment, sufficient reward, and strong support. Ultimately, honestly rewarding excellent teachers for their hard work while removing poor instructors from the school system will not only ensure the success of our students, but it will also ensure the success of our teachers. That is a plan that everyone can rally behind.

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