



# Update

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## TENURE

### A Safeguard for Students and Teachers

According to NYSUT the premise of the two New York State anti-tenure lawsuits is unfounded.

In opening legal arguments on Wednesday, NYSUT and UFT legal teams and city and state officials argued that the lawsuits against tenure in New York ( *Davids v. State, & Wright v. State* ) be dismissed before going to trial.

During the hearing, Richard Casagrande, NYSUT general counsel, accused the plaintiffs of trying to eliminate due process rights for teachers, noting that "due process is a basic, fundamental right."

NYSUT president Karen Magee attended the hearing, and told reporters that "tenure gives teachers the right to advocate for students." She added, "The whole premise behind the case is unfounded."

Each side was given a total of 50 minutes to present arguments. We now await the judge's decision.

### NYS Education Law 3020

**"No person enjoying the benefit of tenure shall be disciplined or removed during a term of employment except for *just cause* ..."**

#### **Just Cause:**

- Pedagogical Incompetence
- Misconduct
- Physical or Mental Disability

#### **What is due process?**

- Right to know charges
- Right to see, confront, and rebut evidence
- Right to an impartial decision maker
- Right to Counsel

### **~ Myths about Teacher Tenure ~**

**"Only teachers have tenure." FALSE** Tenure = Due Process

- Municipal, state, and federal civil service workers
- Private sector workers under union contract
- Private employment contracts

**"Tenure is a lifetime job guarantee." FALSE**

- Teachers can be fired for pedagogical incompetence, \*misconduct, and physical or mental disability. (\* Misconduct can range from poor time and attendance, insubordination, verbal abuse, corporal punishment, criminal conduct, to other acts constituting neglect of duty or conduct unbecoming a professional.)

**"Tenure cases are extraordinarily long and expensive." FALSE**

- Most cases that go to a full hearing are resolved in under six months.
- Most cases settle, or are resolved pre-charge, long before that.
  - Full hearing < 200 days
  - Settlement after charges < 100 days
  - Settlement Pre-charges < 40 days

**"Tenure protects bad teachers." FALSE**

- "Bad" teachers can be and are fired for established just cause.
- Put another way: Tenure protects good teachers from unjust or arbitrary dismissal.

## What is the origin of tenure?

- The teacher unions didn't invent tenure, despite widespread beliefs to the contrary.
- Tenure evolved in the 19th century as one of the few perks available to people who were paid low wages, had classes of 70 or 80 or more, and endured terrible working conditions.
- In late 19th century New York City, for example, there were no teacher unions, but there was already ironclad, de facto teacher tenure. Local school boards controlled the hiring of teachers, and the only way to get a job was to know someone on the local school board, preferably a relative.
- Once a teacher was hired, they had lifetime tenure in that school, but only in that school. In fact, they could teach in the same school until they retired—without a pension or health benefits—or died. If a teacher changed schools, even within the same district, they went to the back of the line.
- If a teacher married, they would be fired for gross misconduct.
- Although teachers won the right to marry, if they got pregnant, they could be fired on charges of “gross negligence by being absent to have a baby.”
- Until recently, almost every state had tenure & since 2009, most have “reformed” their tenure laws.
- Several have eliminated tenure: Kansas, North Carolina, and Florida. Legislative attacks on tenure have gone hand in hand with attacks on collective bargaining, e.g., Wisconsin. In NYS, *Dauids v. State*, & *Wright v. State*, both filed in July.

## Why Tenure Matters to All of Us

- Academic Freedom – Teachers have limited first amendment rights. This allows them to be advocates for their students and to speak out on issues affecting the quality of public education.
- Promotes professionalism, and long term, stable service, as well as promoting the school as a community.
- Insulates teachers from political pressure, reinforces impartiality in grades & discipline.

## Attackers – Who & Why

- ALEC – American Legislative Exchange Council
    - > ALEC has crafted state legislation across the country undermining public employee pensions, promoting “right-to-work,” voter disenfranchisement legislation, etc.
  - Anti-Union Groups, e.g., the Walton Foundation
  - “Reformers” – The goal of many is privatization & profit, e.g., charter schools, textbook & test purveyors
  - Politics – Undermine unions & the voice of workers & undermine public education & raid the public treasury
  - A distraction from real issues – poverty, inadequate funding, inequitable funding, etc., ...
- By ERWIN CHERMERSKY, NEW YORK DAILY NEWS, Thursday, October 23, 2014*
- “...The problem of inner-city schools is not that the dedicated teachers who work in them have too many rights, but that the students who go to them are disadvantaged in many ways, the schools have inadequate resources and the schools are surrounded by communities that are dangerous, lack essential services and are largely segregated both by race and class.

Taking the modest job security accorded by tenure away from teachers will address none of these problems.

The causal relationship alleged by the plaintiffs in these lawsuits — that teachers’ rights cause minority students to receive substandard educations — is belied by readily available empirical evidence.

If the plaintiffs were correct, similarly situated students in states with weak protection of teachers — such as Texas, Alabama and Mississippi — would have higher levels of achievement and the racial achievement gap would be smaller in those states. But there is no evidence that minority students in Houston, Birmingham or Jackson outperform those in Los Angeles or New York.

In fact, a study published in the Harvard Educational Review found a significant positive relationship between rates of unionization (and accompanying job security) and student scores on the SAT & ACT...”

This article is respectfully submitted by *Tom Cook* – Political Action Committee Co-chair

A decision regarding NYSUT’s arguments for dismissal of the two cases before a New York State judge is expected within the next few weeks. We will keep you informed on this extremely important issue as it has implications that can affect each and every one of us.

In Unity,

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