



**REFORMING
TEACHER TENURE
IN ALABAMA**

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Reforming Teacher Tenure in Alabama

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Introduction

We have reached the hour of decision in Alabama.

—Governor Albert P. Brewer¹

In June 2014, a California court ruled that the state’s teacher-tenure laws were unconstitutional.² The case, *Vergara v. California*,³ was highly publicized in the media and widely celebrated by people of all political persuasions, from the Democratic president to Republican politicians.⁴ It was, as the *New York Times* reported, a “landmark decision” that “hand[ed] teachers’ unions a major defeat” and could “prompt challenges to tenure laws in other states.”⁵ Suddenly, there was a “gathering debate over tenure across the cotuntry.”⁶ That debate culminated in November, when *Time* based its feature story on the *Vergara* case—the cover of the magazine showing a judge’s gavel about to smash an apple, with text reading ROTTEN APPLES: IT’S NEARLY IMPOSSIBLE TO FIRE A BAD TEACHER.⁷

The reason that the *Vergara* case had such an impact was the evidence it presented on the effect of ineffective teachers on students. “Th[at] evidence,” the judge wrote in his opinion, “is compelling. Indeed, it shocks the conscience.”⁸ Here is what the court found:

- Competent teachers are a critical, if not the most important, component of a child’s success in school.
- Grossly ineffective teachers substantially undermine the ability of a child to succeed in school and life.
- Students taught by grossly ineffective teachers lose 9.5 months of learning per year.
- Students taught by grossly ineffective teachers lose \$1.4 million in lifetime earnings per classroom.
- A small but significant number of teachers are grossly ineffective.
- A disproportionate number of poor and minority students are taught by grossly ineffective teachers.
- The direct, real, appreciable, and negative impact of grossly ineffective teachers on students will last for as long as those teachers remain teachers.

- The dismissal of grossly ineffective teachers is made almost impossible due to how complex, time-consuming, and expensive it is to dismiss teachers.⁹

These findings were largely made in the context of California, of course, but they were representative of what researchers had been finding, parents had been witnessing, and students had been suffering across the country for years.

A small percentage of teachers inflicts a great amount of harm on our children and country. Students with good teachers are less likely to have children as teenagers, more likely to attend college after high school, and more likely to earn higher salaries as adults.¹⁰ Moreover, replacing the worst 5%–8% of teachers with average teachers—not good or even great teachers—would have an economic impact amounting to trillions of dollars.¹¹ In the words of one scholar: “[E]liminating bad teachers may be the quickest way to improve the job prospects of low-income Americans, reduce income inequality, and boost our future economy.”¹²

To be able to remove bad teachers from Alabama classrooms, teacher tenure must change. This paper begins with an overview of the history and current problems with teacher tenure. It then proposes four reforms: (1) end tenure as we know it; (2) stop awarding tenure automatically; (3) base tenure on evidence of effectiveness; and (4) lengthen how long it takes to get tenure.

Reforming teacher tenure is an extremely important part of improving education in Alabama. It must be remembered, however, that it is only one part. Alabama’s education system wasn’t broken in a day, and it won’t be fixed in a day. But the time is right for these reforms now—and now, more than ever, they are needed.

What Is the Reason for Teacher Tenure?

Teacher tenure was once a solution to an actual problem. Tenure laws were originally adopted as a protection that “prevented teaching jobs from being used as political patronage and allowed teachers to challenge dismissals or demotions, once commonplace, based on gender, marital status, pregnancy, religion, ethnicity, race, sexual orientation, or political ideology.”¹³ No longer would “offenses” such as becoming pregnant or failing to support a certain politician in the last election be cause for dismissal. Tenure provided teachers with due process—a guarantee that they would only be fired, after reasonable deliberation, for just cause—which served to check abusive and arbitrary power.

From the early twentieth century to the early twenty-first century, the number of states that had tenure laws went from none to all.¹⁴ New Jersey was the first state to grant tenure to teachers, in 1909, with the support of “both ‘good government’ school reformers and then-nascent teachers unions.”¹⁵ Alabama adopted its tenure law thirty years later, in 1939,¹⁶ at a time when “[i]t was not uncommon . . . to see wholesale teacher dismissals in a local system after they supported the wrong candidate for board of education or superintendent.”¹⁷ Less than thirty years after Alabama’s adoption of its law, however, the transformation of tenure was already apparent.

By 1968, teacher tenure had devolved into “job protection for the poor or lazy teacher,” an Alabama newspaper observed at the time.¹⁸ That year, Albert Brewer, who “did more for Alabama education than most of his predecessors or successors,” assumed the governor’s office intent on reforming education.¹⁹ Brewer pledged to “go to bat” for Alabama’s children and proposed repealing the “repugnant” tenure law.²⁰ His reasoning was straightforward:

If teachers wanted to be considered professionals, like doctors and attorneys, Brewer contended, tenure had to go. Job retention based on merit, he explained, would not only rid the profession of incompetents but also lend legitimacy to the field. As part of tenure abolition, Brewer recommended basing higher salaries on merit and competence²¹

These reforms were decades ahead of their time. Instead of enacting them, Alabama has more or less maintained the status quo ever since.

In fact, all states have kept tenure laws on the books—at least until recently.²² In 2011, with “momentum for school reform grow[ing]” and “teacher tenure . . . under increasing scrutiny,” states started to act.²³ Florida, for example, replaced its teacher-tenure law with a merit-pay law, which was fully implemented for the 2014–2015 school year.²⁴

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What Is the Problem with Teacher Tenure?

The current tenure law in Alabama was codified by the Students First Act of 2011,²⁵ which was passed with the stated purpose of streamlining the dismissal process of teachers,²⁶ while also reaffirming teacher tenure.²⁷ Although the Students First Act did make the process *more* streamlined than the previous law²⁸—which itself had promised to streamline the process²⁹—the Students First Act did not make the process *actually* streamlined.³⁰

To illustrate, consider the following outline of what the dismissal process of a tenured teacher can entail under the Students First Act:

1. A tenured teacher performs poorly or acts inappropriately, to such a degree that constitutes a cause for dismissal.
2. The principal of the school requests the teacher's dismissal to the superintendent.
3. The superintendent reviews the principal's request, decides that there is good and just cause for the teacher's dismissal, and formally initiates the dismissal process by sending written notice—which must, among other things, detail the reasons for dismissal and the facts supporting those reasons—to the teacher and the board of education.
4. The board of education holds a trial-like “hearing,” with one lawyer arguing the case for the principal and superintendent (who bear the burden of proof) and another lawyer arguing the case for the teacher, through the presentation of evidence, the delivery of arguments, and the calling and cross-examining of witnesses (who can be compelled to testify by subpoena).
5. The board of education votes on the dismissal of the teacher.
6. The teacher contests the decision by filing an appeal with the state superintendent of education, who refers the appeal to the executive director of the Alabama Bar Association.
7. The executive director of the Alabama Bar Association compiles a list of potential hearing officers, all retired judges, and administers the selection of a single hearing officer whom both sides find agreeable to adjudicate the appeal.
8. The hearing officer holds another “hearing.”

9. The hearing officer rules on the appeal, affirming or reversing (or substituting the hearing officer's own judgment for) the judgment of the board of education.
10. The teacher contests the decision by filing an appeal with the Alabama Court of Civil Appeals.
11. The Alabama Court of Civil Appeals receives written briefs and hears oral arguments from both sides.
12. The Alabama Court of Civil Appeals rules on the appeal.
13. The teacher contests the decision by filing a request to appeal with the Alabama Supreme Court.
14. The Alabama Supreme Court grants the appeal and hears oral arguments from both sides.
15. The Alabama Supreme Court rules on the appeal.³¹

The total length of time of the above process, from the day a principal has cause to dismiss a teacher until the day the teacher is definitively dismissed, can be well over three years.³²

Regardless of whether the dismissal process lasts three years or one-third of that time, however, it is extremely costly—in terms of time and money—to a principal and school district. Given all of the hearings and appeals, each inviting or requiring the participation of lawyers, the legal costs alone of dismissing a tenured teacher can easily amount to hundreds of thousands of dollars.³³

Alabama's tenure law is framed as “[p]roviding for fundamental fairness and due process to [teachers],” as though it were simply a benign guarantee against good teachers being unjustly or arbitrarily fired.³⁴ Furthermore, the law suggests that bad teachers will not be tolerated, stating that “[t]enured teachers...may be terminated at any time...for incompetency, insubordination, neglect of duty, immorality, failure to perform duties in a satisfactory manner, or other good and just cause.”³⁵ The reality, however, is that the dismissal process is simply too burdensome and expensive to fire *any* teachers with tenure who are not committing any great offenses—other than depriving children of their futures.

For evidence, consider the U.S. Department of Education's Schools and Staffing Survey, the most comprehensive study of the characteristics and conditions of schools in the United States. According to the latest available data, the average number of Alabama teachers per district who were dismissed

or did not have their contracts renewed as a result of poor performance during the 2010–2011 school year was zero—or, more precisely, “[r]ounds to zero.”³⁶ Restated, during the 2010–2011 school year, Alabama essentially did not fire a single tenured public-school teacher for being ineffective or even grossly ineffective.

Whereas tenure laws in Alabama and elsewhere were once meant to protect teachers from being fired for *unjustified* reasons, they now serve to protect teachers from being fired for *justified* reasons. Terry Moe, a professor of political science at Stanford University, encapsulated the effect: “[Teachers] essentially cannot be fired. They have ‘tenure’ and—assuming they don’t murder someone or molest a child or stop showing up for work—they are assured of being able to continue in their job for as long as they want.”³⁷ Moreover, “[t]his is the case... regardless of how they perform in the classroom and regardless of how much their students learn.”³⁸

And it is *that* which is the real tragedy of tenure today and the real reason to reform it: not because bad teachers are being protected, but because innocent schoolchildren are being harmed.

How Can We Solve the Teacher-Tenure Problem?

The system of teacher tenure currently in place is bad for students and bad for good teachers—and *only* good for bad teachers. Fixing the system would benefit both the students and teachers of Alabama’s public schools by getting rid of bad teachers. Simply put, what most concerns good teachers is not lifetime job security but incompetent colleagues.³⁹ And, incompetence among Alabama’s teaching corps should, for the sake of Alabama’s schoolchildren, greatly concern the people of Alabama. Reforming the current system so that *all* students are benefited and *good* teachers are protected is the goal. To that end, four reforms:

1. End Tenure as We Know It

Teacher tenure has shifted from meaning “due process” to meaning “undue burden” with regard to dismissing teachers. The former is the term that Alabama’s tenure law should be reformed to reflect: a guarantee that tenured teachers will not be fired *unjustly* or *arbitrarily* (as opposed to *at all*)—and nothing more.

Recall the teacher-dismissal process, outlined above, that Alabama’s current tenure law allows. The following is a better reflection of the original meaning of teacher tenure:

1. A tenured teacher performs poorly or acts inappropriately, to such a degree that constitutes a cause for dismissal.
2. The principal of the school initiates the dismissal of the teacher, sending written notice—which details the reasons for dismissal and the facts supporting those reasons—to the teacher and the superintendent.
3. The superintendent reviews the written notice and allows the teacher a chance to respond in writing, to ensure that there are reasonable grounds to believe that the charges are true and support dismissal.
4. The teacher is allowed, if he or she so chooses, to contest the dismissal by filing an appeal with the board of education, in which case:
5. The board of education holds a *public* hearing that affords *reasonable* deliberation of the dismissal (i.e., the hearing need not be excessively time-consuming or trial-like, but generally must give the teacher the opportunity to present evidence and cross-examine adverse witnesses).
6. The board of education votes on the appeal.

Reforming the current system so that all students are benefited and good teachers are protected is the goal.

Thus would end the teacher-dismissal process.

Notice how the roles in the above example are more closely aligned with what one would expect: principals are empowered to dismiss teachers; superintendents are charged with oversight; and boards of education are able to overturn actions that are not consistent with state law or district policy. The opportunity to one—and only one—full hearing is an immense improvement over the prohibitively costly “hearings” and appeals currently offered under Alabama’s tenure law. And, whatever the hearing does cost can at least be partially rationalized by the value it adds to the education system as a whole: by being public, it will inform other schools that, with regard to this teacher or this principal, *do not hire*. Hence, scarce resources will not be wasted by repeating the process.

Of course, policymakers could craft an efficient dismissal process that accords with due process in

any number of ways.⁴⁰ But, no matter the exact characteristics of the teacher-dismissal process, it should seek to provide fairness and finality *at the local level*.

2. Stop Awarding Tenure Automatically

A teacher in Alabama is a “probationary teacher” for his or her first three years in the classroom, and then a “tenured teacher” thereafter.⁴¹ That is, tenure is automatically awarded to teachers after three years.⁴² Not three years of classroom experience, it is important to note, but simply three years—the equivalent of eighteen months of classroom experience.⁴³ Put differently, under the current tenure law in Alabama, if a teacher can manage to not get fired during a year and a half on the job, he or she is rewarded with what amounts to lifetime employment, including guaranteed pay raises and generous benefits.⁴⁴

There is broad agreement that automatic teacher tenure is bad policy. Consider the uncommonly aligned opinions of the women who have been called “the two faces of American education,” Michelle Rhee and Diane Ravitch.⁴⁵ “For whatever reason,” Rhee, a prominent education-reform advocate, has written, “we have a standard in education where just trying is good enough. If a kid participates today, she gets a medal! When a teacher shows up, he gets tenure, which equates to having a job for life, regardless of performance.”⁴⁶ Ravitch, a prominent education-reform critic, shares the sentiment: “No teacher should win tenure automatically.”⁴⁷

Not only does Alabama have automatic tenure, it has the most automatic form of automatic tenure. Once three years elapse, the teacher is given tenure without consideration of *anything* else.⁴⁸ Even if a teacher, for example, agreed to forgo tenure for an extra year because the district was not yet certain that he or she would make a good teacher, the agreement would be invalid and the teacher would become tenured anyway.⁴⁹ The district is “powerless to modify the terms of the applicable tenure laws,” and therefore has only a binary choice at the end of three years: it can dismiss the teacher or do nothing.⁵⁰ It is safe to assume that the second option is almost always chosen.⁵¹

Alabama should stop automatically awarding tenure to teachers. Instead, the decision should be a deliberate one, made at the local level, according to broad state guidelines. As the National Council on Teacher Quality advises: “Alabama should require a clear process, such as a hearing, to ensure that the local district reviews a teacher’s performance before making a determination regarding tenure.”⁵²

3. Base Tenure on Evidence of Effectiveness

The preponderant criterion for deciding whether a teacher is granted tenure should be the

teacher's classroom effectiveness.⁵³ Evidence of effectiveness cannot be found on a teacher's résumé, which only lists information—such as degree level, certification, and experience—that says absolutely nothing about a teacher's classroom effectiveness.⁵⁴ The quality of a teacher *as a teacher* only becomes truly observable after he or she gets into the classroom.⁵⁵ As one education scholar has observed: “It is notoriously difficult to identify the best teachers without seeing them perform on the job. . . . Judging teachers before they enter the classroom appears to be as effective as signing an athlete without having him step on the field.”⁵⁶

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The best way to evaluate a teacher's classroom effectiveness is through the use of a value-added model (VAM) in conjunction with other performance-based measures.⁵⁷ The purpose of a VAM is not to grade a teacher on the cumulative achievement of his or her students—that would be unfair, given the fact that students vary in ability and preparation—but rather to measure how much a teacher adds to the achievement of his or her students.⁵⁸ To do this properly, a VAM must use a pre-test and a post-test to calculate the gain made by each student over the course of a school year, and then adjust that score to account for non-teacher effects (socioeconomic status, etc.).⁵⁹ Because VAMs can tell us something but not everything about a teacher's effectiveness, they must always be employed judiciously along with other performance-based measures, such as classroom observations.⁶⁰

Alabama's tenure law should explicitly mandate that the decision to grant tenure be based on statistical and empirical evidence—derived from a value-added model and multiple rigorously scored classroom observations—of a teacher's classroom effectiveness.⁶¹

4. Lengthen the Time It Takes to Get Tenure

The length of the “probationary period” for Alabama teachers—that is, the time before a teacher can (and, under current law, automatically does) attain tenure—is three years.⁶² This is simply insufficient, regardless of whether tenure is an automatic award that grants essentially all teachers

lifetime employment (as under current law) or a deliberate decision that grants only effective teachers reasonable protection (as under these reforms).

The National Council on Teacher Quality recommends the following: “Alabama should extend its probationary period, ideally to five years. This would allow sufficient time to collect data that adequately reflect teacher performance.”⁶³ To that recommendation, some improvement and amplification:

Alabama should extend its probationary period *to at least five years*, meaning that a teacher would be in the classroom for a minimum of five school years—the equivalent of two and a half years of teaching experience⁶⁴—before being *considered for tenure*. Furthermore, Alabama should give districts discretion to extend the probationary period, at the local level, even farther.

Conclusion

The reforms proposed in this paper return teacher tenure to its original purpose: to protect teachers from being fired *without* just cause, not to protect teachers from being fired *with* just cause. Today, the dismissal of even the most ineffective teachers is so time-consuming and expensive as to be impossible. As recently as the 2010–2011 school year, according to the latest available data from the U.S. Department of Education, the number of tenured public-school teachers dismissed in Alabama for being ineffective was practically zero.⁶⁵

In addition to making it efficient to fire ineffective teachers, the reforms proposed in this paper make effectiveness the dominant criterion for deciding whether a teacher becomes tenured. That is, the decision would be a deliberate one, made at the local level after a teacher has been in the classroom for at least five years, based on evidence of the teacher’s effectiveness. Today, a teacher is granted tenure automatically after three years, with the sole criterion being time—the teacher’s effectiveness or ineffectiveness playing no part.

The ability of students to succeed in school and life can be substantially undermined by ineffective teachers. Alabama does a terrible disservice to its schoolchildren—especially its poor and minority schoolchildren—so long as teacher tenure remains unreformed. The time for these reforms is now. This is, to borrow from Governor Brewer, “the hour of decision in Alabama.”⁶⁶

Notes

- 1 Gordon E. Harvey, *A Question of Justice: New South Governors and Education, 1968–1976*, at 59 (2002) (quoting Brewer making a speech to open the legislative special session of 1969 and explain his education-reform proposal).
- 2 Jennifer Medina, “Judge Rejects Teacher Tenure,” *New York Times*, June 11, 2014, at A1.
- 3 *Vergara v. California*, No. BC484642 (Cal. Super. Ct. Aug. 27, 2014). This opinion was originally announced in preliminary form. *Vergara v. California*, No. BC484642 (Cal. Super. Ct. tentative decision June 10, 2014). Hereinafter all citations will refer to the final version of the slip opinion (which is labeled “tentative decision” like the preliminary version, but can be identified by its date).
- 4 Adam Nagourney, “California Governor Appeals Court Ruling Overturning Protections for Teachers,” *New York Times*, Aug. 31, 2014, at A15. Whether the case *should* be celebrated is another matter. *See, e.g.*, Frederick M. Hess, “Second Thoughts on *Vergara*,” *National Review* (June 16, 2014), <http://www.nationalreview.com/article/380447/second-thoughts-vergara-frederick-m-hess> [<http://perma.cc/AN8M-BVUC>]; Elizabeth Slattery & John G. Malcolm, “Was the California Teacher Tenure Decision Judicial Activism?,” *Daily Signal* (June 12, 2014), <http://dailysignal.com/2014/06/12/california-teacher-tenure-decision-judicial-activism/> [<http://perma.cc/W55W-ZVXP>].
- 5 Medina, *supra* note 2.
- 6 Associated Press, “Judge Strikes Down California Teacher Tenure,” *USA Today* (June 11, 2014), <http://www.usatoday.com/story/news/nation/2014/06/11/californiateacher-tenure/10313471/> [<http://perma.cc/JXB7-RRZV>].
- 7 *Time*, Nov. 3, 2014.
- 8 *Vergara*, slip op. at 7.
- 9 *See id.* at 7–8, 13, 14–15.
- 10 Raj Chetty, John N. Friedman & Jonah E. Rockoff, “Measuring the Impacts of Teachers II: Teacher Value-Added and Student Outcomes in Adulthood,” 104 *American Economic Review* 2633, 2633 (2014).
- 11 Eric A. Hanushek, Paul E. Peterson & Ludger Woessmann, *Endangering Prosperity: A Global View of the American School* 62–67 (2013).
- 12 Andrew Biggs, “Fire the Worst Teachers,” *National Review* (June 19, 2014), <http://www.nationalreview.com/article/380727/fire-worst-teachers-andrew-biggs> [<http://perma.cc/SYK4-6FLF>].
- 13 Dana Goldstein, *The Teacher Wars: A History of America’s Most Embattled Profession* 7 (2014).
- 14 *See generally* Kathy Christie & Jennifer Dounay Zinth, Education Commission of the States, *Teacher Tenure or Continuing Contract Laws* (2011).
- 15 Goldstein, *supra* note 13, at 7.

- 16 *Alabama Governors: A Political History of the State* 217 (Samuel L. Webb & Margaret E. Armbruster eds., 2nd ed. 2014)
- 17 Harvey, *supra* note 1, at 50.
- 18 *Id.* at 49 (quoting *Geneva Reaper*, Aug. 15, 1968).
- 19 *Id.* at 64.
- 20 *Id.* at 49.
- 21 *Id.*
- 22 See Rebecca Klein, “This Is What It Takes to Get a Teacher Fired Around the Country,” *Huffington Post* (June 3, 2015, 4:58 PM), http://www.huffingtonpost.com/2015/06/03/teacher-tenure-map_n_7502770.html [<http://perma.cc/NE2W-CTUX>].
- 23 Rehema Ellis, “States Tangle with Teacher Tenure,” NBC News (Mar. 7, 2011), http://www.nbcnews.com/id/41956922/ns/nbc-nightly_news_with_brian_williams/t/states-tangle-teacher-tenure/ [<http://perma.cc/V7HB-EH5E>].
- 24 See generally Student Success Act, S. 736, 2011 Leg., Reg. Sess. (Fla. 2011).
- 25 Students First Act of 2011, Ala. Code §§ 16-24C-1 to -14.
- 26 See *id.* § 16-24C-2.
- 27 See *id.* § 16-24C-4.
- 28 Alabama Fair Dismissal Act, Ala. Code §§ 36-26-100 to -108, *repealed and replaced by* Students First Act of 2011, *supra* note 25.
- 29 Dana Beyerle, “Alabama Legislature Considers Tenure Law Changes,” *Gadsden Times* (Apr. 23, 2011), <http://www.gadsdentimes.com/article/20110423/news/110429891?p=all&tc=pgall> [<http://perma.cc/FWD9-YU5M>] (“The [Alabama Fair Dismissal Act] was supposed to streamline dismissals and lower attorney costs for local school boards. It didn’t.”).
- 30 See, e.g., *Merriam-Webster’s Collegiate Dictionary* 1234 (11th ed. 2003) (defining “streamlined” as “stripped of nonessentials”); *The American Heritage Dictionary of the English Language* 1725 (5th ed. 2011) (defining “streamlined” as “[r]educed to essentials; lacking anything extra”).
- 31 See Ala. Code § 16-24C-6. The parenthetical in number nine was written into the law by the judiciary, as a result of problematic drafting by the legislature. See *Lambert v. Escambia Cty. Bd. of Educ.*, No. 1130071, slip op. at 11–20 (Ala. Aug. 28, 2015).
- 32 See, e.g., *Lambert*, slip op. at 1, 4–5, 20 (revealing that from the date of the fireable offense to the date of the Alabama Supreme Court opinion—which was not even the end of the dismissal process because the case was being sent back to the lower courts for further action—over 1,200 days elapsed).

- 33 See Robin Chait, Center for American Progress, *Removing Chronically Ineffective Teachers: Barriers and Opportunities* 10–11 (2010) (discussing the cost of dismissing tenured teachers and giving specific state and local examples).
- 34 Ala. Code § 16-24C-2.
- 35 *Id.* § 16-24C-6(a).
- 36 Table 8 from the Public School District Data File of the U.S. Department of Education’s 2011–2012 Schools and Staffing Survey, National Center for Education Statistics (2012), http://nces.ed.gov/surveys/sass/tables/sass1112_2013311_d1s_008.asp [<http://perma.cc/4QNW-JEPR>].
- 37 Terry M. Moe, *Special Interest: Teachers Unions and America’s Public Schools* 170 (2011).
- 38 *Id.*
- 39 Katharine B. Stevens, “Good Teachers Want Competent Colleagues, Not Lifetime Job Security,” American Enterprise Institute (Oct. 7, 2014, 9:01 AM), <http://www.aei.org/publication/good-teachers-want-competent-colleagues-lifetime-job-security/> [<http://perma.cc/FPV9-G39M>].
- 40 For an overview of the constitutional and other legal aspects that policymakers would have to carefully consider in enumerating a more efficient teacher-dismissal process, see Michael Imber et al., *Education Law* 411–18 (5th ed. 2014).
- 41 Ala. Code § 16-24C-4(1) (“[A] teacher...shall attain tenure upon the completion of three complete, consecutive school years of full-time employment as a teacher with the same employer....”); see also *id.* § 16-24C-3(8) (using the term “probationary teacher”); *id.* § 16-24C-6 (using the term “tenured teacher”).
- 42 See *Jackson v. Geneva Cty. Bd. of Educ.*, 160 So. 3d 1221, 1225–26 (Ala. Civ. App. 2013).
- 43 See Ala. Code § 16-13-231(b)(1) (setting the school year as “at least 180 full instructional days”).
- 44 See Moe, *supra* note 37, at 170–72.
- 45 Andrew Delbanco, “The Two Faces of American Education,” *New York Review of Books*, Oct. 10, 2013, at 4.
- 46 Michelle Rhee, *Radical: Fighting to Put Students First* 271 (2013).
- 47 Diane Ravitch, *Reign of Error: The Hoax of the Privatization Movement and the Danger to America’s Public Schools* 129 (2013).
- 48 See *Jackson v. Geneva Cty. Bd. of Educ.*, 160 So. 3d 1221, 1225–26 (Ala. Civ. App. 2013).
- 49 See *Haas v. Madison Cty. Bd. of Educ.*, 380 So. 2d 873, 875–76 (Ala. Civ. App. 1980).
- 50 *Id.* at 875
- 51 See, e.g., Jason Felch, Jessica Garrison & Jason Song, “Failure Gets a Pass: Bar Set Low for Lifetime Job in L.A. Schools,” *Los Angeles Times*, Dec. 20, 2009, at A1 (investigating the second-largest public-school system in the United States, the Los Angeles Unified School District, and finding that fewer than 2% of its

probationary teachers were denied tenure in the last several years).

- 52 National Council on Teacher Quality, *2015 State Teacher Policy Yearbook: Alabama* 61 (2015).
- 53 *Id.*
- 54 Jason Richwine & Andrew G. Biggs, Heritage Foundation, *Assessing the Compensation of Public-School Teachers* 6–8 (2011).
- 55 Jason Richwine, Heritage Foundation, *A Better Way to Pay: Five Rules for Reforming Teacher Compensation* 3 (2012).
- 56 Biggs, *supra* note 12.
- 57 For a recent review of the literature on value-added modeling, see generally Cory Koedel, Kata Mihaly & Jonah E. Rockoff, “Value-Added Modeling: A Review,” 47 *Economics of Education Review* 180 (2015).
- 58 Richwine, *supra* note 55, at 2–3.
- 59 *Id.* But see Henry I. Braun, Educational Testing Service, *Using Student Progress to Evaluate Teachers: A Primer on Value-Added Models* 11–13 (2005) (discussing the Educational Value-Added Assessment System (EVAAS), the most widely used VAM, and noting that its developer “argues that there is no need to include student characteristics...in the model”).
- 60 Richwine, *supra* note 55, at 3.
- 61 For a survey of the structure of the District of Columbia’s evaluation and compensation system, see Thomas S. Dee & James Wyckoff, “Incentives, Selection, and Teacher Performance: Evidence from IMPACT,” 34 *Journal of Policy Analysis and Management* 267, 272–76 (2015).
- 62 Ala. Code § 16-24C-4(1) (“[A] teacher...shall attain tenure upon the completion of three complete, consecutive school years of full-time employment as a teacher with the same employer....”). The term “probationary period” does not itself appear in the Students First Act, although “probationary teacher” does. *E.g., id.* § 16-24C-3(8).
- 63 National Council on Teacher Quality, *supra* note 52, at 61.
- 64 *See* Ala. Code § 16-13-231(b)(1) (setting the school year as “at least 180 full instructional days”).
- 65 *See supra* text accompanying note 36.
- 66 *See supra* note 1 and accompanying text.

ABOUT API

The Alabama Policy Institute (API) is an independent, nonpartisan, nonprofit research and education organization that is issue-centered and solution-oriented. We provide in-depth research and analysis of Alabama's public-policy issues to impact policy decisions and deepen Alabama citizens' understanding of and appreciation for sound economic, social, and governing principles.

Since 1989, API has been on the front lines of critical public debates, helping Alabama citizens, lawmakers, and business leaders better understand and apply principles that maximize individual freedom, limit government interference, and encourage personal responsibility. API is the largest free-market policy research center in Alabama.

For more on API, please visit www.AlabamaPolicy.org and follow us on Twitter @AlabamaPolicy.



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