



# Devil in the Details

## An Analysis of State Teacher Dismissal Laws

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Saba Bireda June 2010



Center for American Progress



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# Introduction and summary

The teacher dismissal process, once largely unexamined, is quickly becoming a hotly debated area of education policy. Newspapers across the country regularly publish reports on the expense and time associated with dismissing teachers.<sup>1</sup> Steven Brill's "The Rubber Room," an exposé on the seemingly never-ending process of terminating teachers in New York City, brought the topic onto the national stage.<sup>2</sup>

Federal and state policymakers have also begun calling for reform. Both President Barack Obama and U.S. Secretary of Education Arne Duncan have discussed the need to make dismissal a more efficient process.<sup>3</sup> American Federation of Teachers President Randi Weingarten has also acknowledged the "glacial" speed of the dismissal process in many districts and committed her union to working on reform efforts.<sup>4</sup>

The push for dismissal reform comes as districts across the country focus on improving human capital systems. Districts recognize that an inability to dismiss poor-performing teachers undermines efforts to ensure that every student is taught by a highly effective instructor. As districts begin implementing more effective evaluation systems that better identify both low- and high-performing teachers, changes will have to be made to dismissal processes to exit those teachers in a fair and efficient manner.

Budget concerns also propel this discussion. Litigating a dismissal case can cost a district more than \$100,000 in legal fees. Most state tenure laws also provide compensation throughout the dismissal process, requiring districts pay the salaries of teachers they do not believe should be in the classroom for months, even years. More expedient dismissal hearings may mean significant savings, particularly in hard financial times when districts struggle to retain their best performing teachers.

The discussion of dismissal reform invokes a strong response from teachers and their unions. Dismissal reform involves the restructuring of due process procedures that teachers feel are their only protection against the whims of school

administrators. These fears are not always unfounded and due process procedures must remain in place that protect teachers from arbitrary and prejudicial management decisions. Dismissal reform should not be focused on eliminating due process for teachers but rather on creating more efficient methods of identifying and terminating the employment of those teachers who no longer belong in the classroom.

As school districts and unions begin to confront the issue of dismissal reform, it is important to note that the dismissal process does not begin and end at a hearing. Teacher dismissal occurs within a complicated web of school-level management techniques, evaluation systems, local district policies, collective bargaining agreements, and state tenure laws. An efficient dismissal process depends on strong school leaders who can identify poor performers, assist in remediation, and recommend termination. The process also requires high quality evaluation tools that provide fair notice to teachers of their insufficiencies, a framework and support for improvement, and reliable documentation of a teacher's performance over a period of time. The Center for American Progress has provided close analysis of the tenure process and other facets of the dismissal process in previous reports.<sup>5</sup>

The starting point for dismissal reform lies in the state laws that give teachers specific protections when they are dismissed. This report will explain how state law shapes the dismissal process, outline the dismissal process in several states, and analyze the provisions common in state law that make teacher dismissal difficult. The paper also suggests reforms such as:

- State laws should articulate different dismissal procedures that correspond to the particular performance issues for which the teacher is being dismissed.
- States should consider establishing a state-run system of selecting hearing officers to ensure efficiency and consistency of results.
- States should consider requiring districts and teachers to participate in non-binding mediation sessions to encourage alternative resolutions beyond those offered through the traditional disciplinary process.
- States should clarify vague legal terms and processes in state laws that contribute to inefficient hearings.
- State and district policymakers should work collaboratively with unions to create fair and efficient dismissal procedures that incorporate peer assistance and review programs.

## How did we get here?

The dismissal procedures embedded in teacher tenure laws were implemented to protect teachers from unfair and discriminatory management practices. Most tenure laws were enacted well before the passage of federal and state civil rights legislation that protect employees from wrongful and discriminatory termination.<sup>6</sup> Tenure protections have remained in state law despite efforts to repeal or streamline the procedures originally put into place.<sup>7</sup> Tenure supporters argue that complex protections are needed to protect the academic freedom of teachers and guard against termination based on personal and political conflicts with school administrators.<sup>8</sup>

Attempts to reform teacher tenure laws have often focused on eliminating due process rights for teachers while efforts to defend tenure laws overemphasize the need for strict adherence to complicated procedures. Neither approach can make up for a lack of good policy around teacher selection, evaluation, and professional development. In the absence of selective hiring and tenure decisions, ongoing evaluation and feedback, and targeted professional development, the dismissal hearing can become the first place a teacher's performance is seriously discussed. Progress in these other areas of human capital policy is necessary to facilitate reform of the dismissal process. Teachers will remain hesitant to see changes made to tenure laws until they feel that they have been evaluated according to reliable tools and provided with a meaningful attempt at improvement.

Many districts are making steady improvement in the policy areas that impact dismissal. The District of Columbia Public School system introduced in 2009 a new evaluation system, IMPACT, which requires at least five observations of tenured teachers annually.<sup>9</sup> Numerous unions around the country, most recently Philadelphia and New Haven, Connecticut, have implemented Peer Assistance and Review programs that give unions a more progressive role in the remediation and dismissal process by allowing highly effective teachers to evaluate and coach struggling teachers. The Los Angeles Unified School District recently announced the dismissal of more than 110 nontenured teachers this year due to low performance issues, nearly three times the number of probationary teachers the district

typically dismisses annually.<sup>10</sup>

State policymakers should begin examining state statutes governing dismissal procedures in light of these significant policy changes to see how they can be revised to better complement other human capital reforms. The next section explains how current state law shapes the teacher dismissal process.

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## Overview

# How state law shapes teacher dismissal

The process of dismissing public school teachers, unlike that of private sector employees and even many public sector employees, is prescribed by state law. Generally, state law differentiates the process for dismissing a tenured teacher from that of a probationary teacher. Tenured teachers are entitled to distinct protections and benefits, including dismissal procedures nontenured teachers do not enjoy. While it is easier for districts to dismiss nontenured teachers, dismissal rates for nontenured teachers are also low.<sup>11</sup> Using the tenure decision to tightly control entrance into the profession may decrease the number of teachers who end up being poor performers subject to dismissal.<sup>12</sup>

The U. S. Supreme Court has recognized that tenured teachers have a property interest in their employment that guarantees constitutional due process protections.<sup>13</sup> Therefore, at a minimum, a tenured teacher cannot be dismissed without notice and an opportunity to be heard. State laws expand on these basic due process principles and often provide more detailed instructions on the process. Collective bargaining agreements may also add another layer of procedure, especially in regard to remediation and responses to allegations of misconduct.<sup>14</sup>

The dismissal process typically begins at the district level with an administrator giving a teacher notice of her dismissal and an explanation of the behaviors that led to dismissal. The teacher is also given information about her right to have a hearing. If the teacher does not take advantage of the hearing process, the dismissal stands. If the teacher chooses to have a hearing, the district will follow the procedures set out in state law.

These procedures, discussed in the next section, are at the heart of the debate over teacher tenure and dismissal reform. Several questions should be considered when examining the process on the state level and considering the places where reform is needed. What protections do teachers actually need to guard against arbitrary employment decisions? What parts of the process render it inefficient and unworkable? Does the process facilitate the expedient exit of teachers who commit crimes or other serious acts of misconduct?

Dismissal procedures from all 50 states and the District of Columbia were examined for

this paper. Common elements of the laws are discussed in the following sections.

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## Dismissal procedure in statute and code

### Cause for dismissal

Teacher dismissal laws list the reasons why a teacher can be dismissed and school districts are confined to dismissing teachers for these reasons.<sup>15</sup> Typical offenses include incompetency, insubordination, immorality, or unprofessional conduct. Many state laws also allow teachers to be dismissed for “just” or “good” cause, allowing school boards to dismiss teachers for other reasons not specifically listed in the law.

A school district must show there is sufficient “cause” to dismiss the teacher in order to prevail at a dismissal hearing. Dismissal laws rarely provide guidance or definition explaining what constitutes a dismissal worthy offense. So while a district may consider the action of refusing to adhere to a particular instructional program as “insubordination,” there may not be sufficient guidance in the law to determine whether the teacher’s actions actually meet the standard. Courts are often tasked with determining what actions constitute a dismissible offense.

This lack of definition can be particularly problematic when a teacher is dismissed for poor performance in the classroom. Poor instructional performance falls under “incompetence” or “inefficiency” in many states and few state laws define the term. Courts have interpreted incompetency to be a lack of subject content knowledge, a failure to manage one’s classroom or maintain records of student performance, and unreasonable discipline.<sup>16</sup> Determining that a teacher’s performance constitutes “incompetence” may prove to be difficult in the absence of case law providing specific interpretation of the term. Districts can offer evidence of evaluations and specific incidents of poor performance but without a clear definition of incompetence, their interpretation may be subject to much debate in the hearing process.

### The hearing process

#### *Notice*

A tenured teacher must be given notice that the district intends to pursue his dismissal. Notice must include the offense for which the teacher is being dismissed and information about the teacher’s right to a hearing. The purpose of giving

notice is to allow teachers to clearly understand the charges against them so that they may answer those charges at the hearing.<sup>17</sup>

Many courts have found that a teacher must have an opportunity to correct the behavior that may lead to dismissal before a district can give the teacher notice.<sup>18</sup> While the remediation process is usually applied to instructional performance, courts have found other behaviors to be remediable such as not following school procedures.<sup>19</sup> Some state laws even provide for a specific statutory timeline for remediation. For example, California requires a 45-calendar day remediation period before termination for unprofessional conduct and a 90-day period for unsatisfactory performance.<sup>20</sup> Local contracts may also articulate a particular process of remediation. If state law or district policies require remediation, the district cannot pursue dismissal if a teacher is not given this time to improve.

The quality of the remediation process can become a large part of the decision of whether a teacher should be dismissed or not. Not only must a district show that it gave a teacher notice of performance issues, but the district must also show what steps it took to remediate the teacher and then demonstrate that cause remains for dismissal after the remediation period.<sup>21</sup>

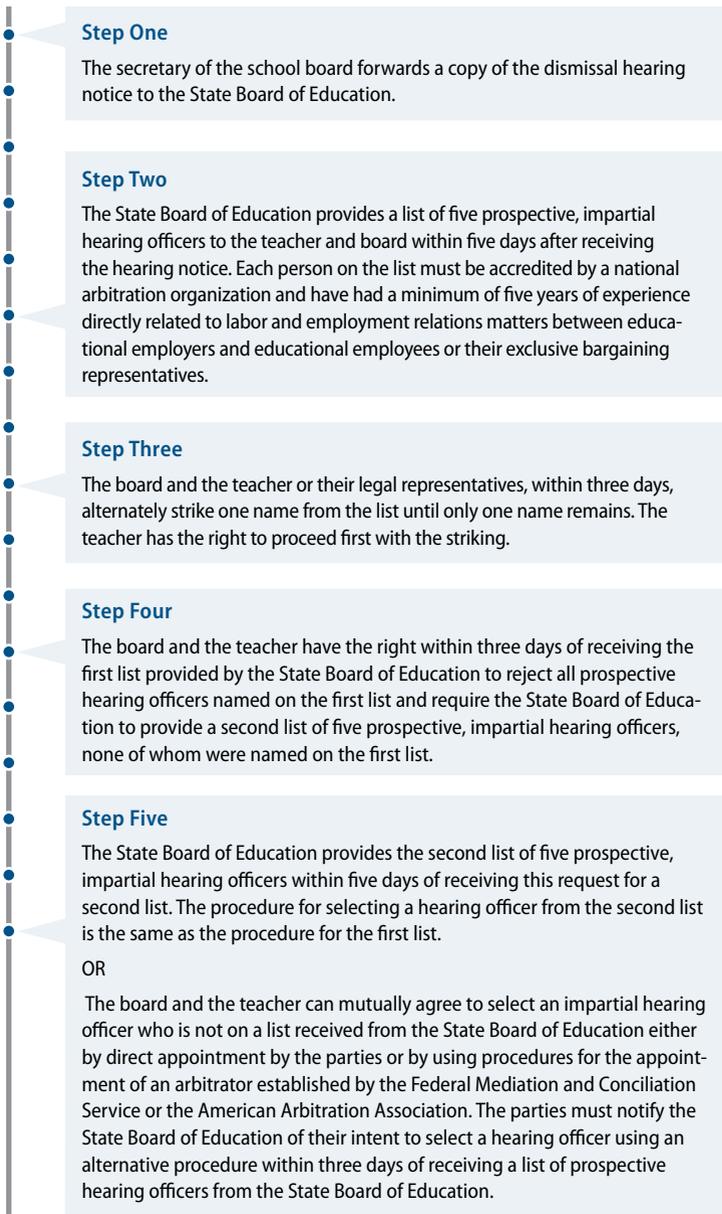
### *Fact finder*

The school district, as the teacher's employer must "prove" the case for dismissal to the school board, which hears the case in a district-level dismissal hearing. A school board may choose to actually hear the case or it may nominate a hearing officer or a subset of the board to perform this function. Dismissal may also be contested through arbitration and a few states have also moved to appointing administrative law judges to hear dismissal cases.

The fact finder in a dismissal case, whether a board, hearing officer, arbitrator, or administrative law judge, is responsible for conducting the hearing and ultimately determining if the facts presented by the school district merit dismissal.

The dismissal process may differ depending on who is acting as a fact finder. A local school board, with elected membership, may be prone to conflicts of interest, accusations of bias, and concerns about local politics.<sup>22</sup> Such concerns prompt many school boards to take advantage of employing a hearing officer to conduct the hearing while leaving the final vote to the board. State law often empowers a teacher to co-select the hearing officer or arbitrator with the district to ease concerns about partiality. The resulting selection process can be lengthy.

FIGURE 1  
Choosing a Hearing Officer for Dismissal Hearings in Illinois



Source: 105 ILCS 5/24-12

\* An alternative process is available for teachers in cities with a population over 500,000.

While bias and local politics may be a concern for school board hearings, a separate arbitration process has its own set of challenges. Commentators have observed that some independent arbitrators may be overly concerned with reaching compromise or have a financial interest in prolonging the process.<sup>23</sup>

The fact finder will also hear cases involving instructional performance. The fact finder is asked to determine whether a district's assessment of a teacher's effectiveness is correct, in addition to ensuring that the district provided due process to the teacher. Fact finders make important decisions about a teacher's effectiveness but may not have any relevant experience in classroom instruction or management. State laws that do list qualifications for arbitrators and hearing officers rarely require educational expertise. Instead, they focus on membership in arbitration or bar associations and past experience in employment matters.<sup>24</sup>

#### *At the hearing*

State law also guides the procedures used to commence and conduct a dismissal hearing. These rules may have implications for how long the hearing lasts, what type of evidence can be presented, who can testify, and what testimony they can give.

**Prehearing conferences:** At least two states, New York and Colorado, require the teacher and district officials to attend a prehearing conference. The Colorado law states that one of the purposes of the prehearing conference is to "limit, to the extent possible, the amount of evidence to be presented at the hearing."<sup>25</sup>

**Discovery:** Many state laws allow for formal discovery to occur prior to the dismissal hearing. Discovery refers to the process by which adverse parties share information in anticipation of the hearing. Lawyers depend on discovery to help prepare to defend against arguments and evidence offered during the hearing. Parties may be required to provide a list of witnesses, interrogatories (a list of questions the opposing party is asked to answer prior to the hearing), copies of documents, and other materials during the discovery period.<sup>26</sup> Witnesses from either side may also be asked to sit for depositions, where they provide testimony in advance of the hearing.<sup>27</sup>

**Restrictions on evidence presented:** District-level hearings are generally conducted without strict adherence to the formal rules of evidence that courts follow. This means that hearing officers can liberally decide what evidence can be presented and which witnesses can testify at the hearing. State law may provide some general guidance, for example, Kansas law instructs a hearing officer to exclude evidence if the value of the evidence is outweighed by the time it will take to present.<sup>28</sup>

A few states restrict the amount of evidence and witnesses presented. For example, dismissal decisions in Arizona cannot be based on evidence related to classroom performance occurring more than four years before the notice was given.<sup>29</sup> Colorado law restricts each party to presenting 10 witnesses.<sup>30</sup> Absent such guidelines, hearing officers can allow both parties to present unlimited amounts of evidence and witnesses leading to longer and unfocused hearings.

**Standard of review and burden:** The fact finder will review the evidence presented in the case de novo—or anew—with no deference to the district’s recommendation of dismissal. The school district generally carries the burden of “proving” that the teacher should be dismissed. The district must show, through evidence, that the teacher’s behavior or performance merits dismissal. The teacher must be able to rebut the evidence the district presents or the dismissal will stand. At least one state, Massachusetts, also asks that arbitrators consider “the best interest of the pupils” and the “need for elevation of performance standards,” when reviewing dismissal decisions.<sup>31</sup>

There may be additional requirements for the district to prove its case, especially in regard to dismissal for poor instructional performance. A district may be required to show that the teacher was evaluated according to state standards and provide documentation of the teacher’s lack of progress after being notified of her performance problems.

**Determination:** The hearing officer, board, or administrative law judge, will issue findings and a decision at the conclusion of the hearing. Some states only allow for a decision of retention or dismissal,<sup>32</sup> while others may have a process for suspension or probation.<sup>33</sup> The fact finder is typically required to substantiate the ruling with specific facts presented in hearing. If a school board has deferred the fact-finding power to a hearing officer or subset of the board, a final board vote may be necessary to officially dismiss the teacher.

**Statutory timelines:** Many states attempt to control the length of the hearing by imposing deadlines at points during the dismissal process. Teachers must formally notify district officials if they wish to have a hearing and the hearing must be scheduled by a certain date, depending on when the district receives notification. State law also gives the fact finder a set amount of time in which to make a decision following the hearing. For example, Nevada gives hearing officers 30 days to conduct a hearing and 15 days to report findings after the hearing's conclusion.<sup>34</sup> Only one state, Colorado, imposes an actual time restriction on the length of hearings; hearings must be completed within six days unless extended by the hearing officer.<sup>35</sup> These guidelines could help to shorten the dismissal process, if properly enforced.

### *Appeals process*

The hearing provided at the district level is the first level of review of a district's decision to dismiss a teacher. A teacher usually has the right to appeal to a state district court if the teacher loses at the district level. Some states build in an intermediate level of appeal with a state commission or board. In Georgia, for example, the state board of education hears appeals from local school boards.<sup>36</sup> A teacher can then appeal the decision of the state board to a local district court.

Courts are generally deferential to the decisions of a school board unless the decision represents an abuse of discretion, violates the teacher's constitutional or statutory rights, or was made in error.<sup>37</sup> The court will generally not hear new testimony or examine additional evidence unless there is good cause to do so.

Although the dismissal process generally follows as described, individual state laws include a number of provisions that can add significant variation in the type of performance issues warranting dismissal, the fact finder, the length of time, and type of evidence to be considered at the hearing. Collective bargaining agreements also play a significant role in dismissal process. Dismissal rates for tenured teachers remain low in most states despite these variations.<sup>38</sup> Figure 2 outlines the dismissal process for nonprobationary teachers in five states. Appendix, at the end of this report, includes a national survey of state procedures for dismissing nonprobationary teachers.

FIGURE 2

**Teacher dismissal process in California, Colorado, Georgia, Pennsylvania, and Washington, D.C.**

Individual state laws and provisions can add significant variation to the length and outcome of the hearing

	Prenotice procedures	Notice	Prehearing	Hearing	Posthearing
California	<p>Teachers receive 45 days termination notice for unprofessional conduct and an opportunity to correct their faults.</p> <p>Teachers receive 90 days termination notice for unsatisfactory performance and an opportunity to correct their faults.</p>	<p>The school district files written charges against the teacher. The board then votes and notifies the teacher if a majority agrees.</p> <p>Teachers have 30 days to demand a hearing after being served a notice; otherwise they will be automatically dismissed.</p>	<p>If the teacher requests a hearing, it must commence within 60 days.</p> <p>The Commission on Professional Competence conducts all hearings. The employee and governing board each select one member of the commission, and one member is an administrative law judge from the Office of Administrative Hearings.</p>	<p>No testimony can be given or evidence introduced relating to matters that occurred more than four years prior to the date of the filing of the notice.</p>	<p>The commission must decide by majority vote to dismiss, suspend without pay, or retain the teacher.</p> <p>The teacher can file appeals with the state Superior Court.</p>
Colorado	<p>The superintendent must send written notice to the Board of Education recommending a teacher be dismissed and specifying at least one of the reasons in the dismissal law.</p>	<p>Written notice of the superintendent's intent to dismiss the teacher by certified mail within three days. The notice must include all exhibits the district intends to use against the teacher and a list of witnesses.</p> <p>The teacher has five days after receipt of the notice to file a written objection with the superintendent and request a hearing.</p>	<p>The teacher and superintendent select an impartial hearing officer within five days of receipt of the teacher's request for a hearing. If the two parties cannot agree, the Department of Personnel will assign an administrative law judge to act as the hearing officer.</p> <p>The hearing officer has three days to set the date for a prehearing conference and the hearing itself, which must begin within 30 days of the prehearing conference.</p> <p>The teacher must provide the superintendent with a copy of all exhibits and witnesses within 10 days of selecting a hearing officer.</p> <p>The superintendent and the teacher supplement their lists of witnesses and exhibits within seven days of the teacher submitting his or her list.</p>	<p>Six days are allotted for the hearing to be completed unless extended by the hearing officer.</p> <p>Each party has a 10-witness maximum except upon a showing of good cause.</p>	<p>The hearing officer has 20 days to submit findings of fact and a decision to dismiss or retain to the teacher and board.</p> <p>The board has 20 days to review the hearing officer's decision and make a decision to dismiss, retain, or give a one-year probation.</p> <p>The teacher has 20 days to file an appeal to the Court of Appeals.</p>

Prenotice procedures	Notice	Prehearing	Hearing	Posthearing
Georgia	The district must give the teacher 10 days notice of charges before a date is set for the hearing.	The local board conducts the hearing or designates a panel of three to five impartial people “possessing academic expertise” to conduct the hearing.	The same rules governing non-jury trials in the superior court apply to hearings. The parties can agree to have a disinterested attorney make evidentiary decisions.	<p>The local board has five days to announce its decision.</p> <p>Or... The panel has five days to file its findings and recommendation with the local board.</p> <p>The local board has 10 days to make a decision after receiving the hearing transcript and report from the panel.</p> <p>The teacher has 30 days to appeal to the State Board of Education.</p> <p>And appeals from the state Board of Education are heard in the Superior Court where the local board of education is located.</p>
Pennsylvania	<p>The president of the school board must sign the notice of the hearing and it must be attested to by the board secretary.</p> <p>The teacher can choose to file a grievance under the collective bargaining agreement or request a hearing, but not both.</p>	The hearing must occur within 15 days after notice is given.		<p>Two-thirds of the Board of School Directors must vote in favor of discharge for the action to occur.</p> <p>The teacher has 30 days after the local board makes a decision to appeal to the superintendent of public instruction.</p> <p>The appeal hearing must be held within 30 days after notice of the appeal.</p> <p>Appeals from the superintendent of public instruction are heard in state court.</p>
Washington, D.C.	<p>The district must give notice to the teacher 10 days prior to dismissal.</p> <p>The teacher has 14 days after receipt of the notice to make a written or oral response.</p>	<p>The teacher has 10 days after receiving the dismissal notice to file a request for a hearing.</p> <p>The superintendent of schools designates a hearing officer.</p> <p>The district must give the teacher access to the “adverse action” file no later than 24 hours after being given notice.</p>	The hearing officer can exclude any evidence or testimony that is irrelevant or repetitive.	<p>The hearing officer can also request proposed findings or posthearing briefs on any issue.</p> <p>Parties can file posthearing briefs.</p> <p>The hearing officer has 10 days to make written findings and recommendations.</p> <p>Any party or its representative has seven days after receipt of the copy of the hearing officer’s findings and recommendations to submit written exceptions.</p> <p>The superintendent or appeals panel has 20 days to make a final determination.</p>

Source: Cal. Educ. Code, Title 2, Division 3, Part 25, Chap. 4 Colo. Rev. Stat. Ann. Title 22, Art. 63. Georgia Code, Title 20, Chap. 2, Art. 17, Part 7. Pennsylvania Statutes, Title 24, Chap. 1, Art. XI, (C) D.C.M.R. Title 5, Chapter 14\*  
 \* DC law allows for an alternative process to be determined through collective bargaining.

# Obstacles to an efficient and effective dismissal process

Surveys of school principals have found that administrators appear to believe the dismissal process in their state or district is too cumbersome to use to terminate the employment of poor-performing teachers.<sup>39</sup> This report identifies six main obstacles written into state laws that make dismissal a difficult management process.

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## Obstacle 1: Same procedures for different “offenses”

**State law provides the same hearing procedures to all teachers, regardless of the reason for dismissal.**

Dismissal statutes outline the offenses for which a tenured teacher may be dismissed; some are highly descriptive,<sup>40</sup> while others require only “just” or sufficient cause. A more typical statute, like Georgia’s, states that a tenured teacher can be dismissed for the following reasons:

1. Incompetency
2. Insubordination
3. Willful neglect of duties
4. Immorality
5. Inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local board of education
6. To reduce staff due to loss of students or cancellation of programs
7. Failure to secure and maintain necessary educational training
8. Any other good and sufficient cause.<sup>41</sup>

Each of these reasons has a vastly different impact on students and the school environment yet a teacher can expect the same dismissal process whether he is accused of shouting at a co-worker or repeatedly failing to show success at teaching students Spanish.

When districts use the same process for every dismissal action, they ignore important differences that may make the hearing process inefficient. Some “offenses,” such as incompetency or neglect of duties require a strong record of documentation. These actions involve an attempt at remediation and an inability of the teacher to change their performance or behavior. The main issues in these cases are whether the teacher’s underperformance merits dismissal and whether the teacher has been given sufficient notice of her underperformance and time to improve.

Other cases may be incident based; the teacher is accused of a serious offense or series of offenses that necessitate dismissal. The central focus in these cases is not necessarily evaluations of instruction but rather witness testimony and documentation of the incident. The issue of license revocation looms over these cases, and as such, teachers are put in the position of defending both their current position and future as an educator if dismissed.

The procedures set out in most dismissal laws are best used to address the most severe violations where extensive examination of the district’s allegations is necessary. When considering such serious allegations as “immorality” or violating state criminal laws, it makes sense that a teacher would have the opportunity to participate in discovery and call witnesses to challenge the district’s account of events. A district seeking dismissal for a more fact-intensive offense will need to devote significant time to preparing a case.

This process is ill suited for other document-based offenses, including underperformance, for which private and public sector employees are regularly dismissed. Where qualified evaluators have documented performance issues and remediation has failed, a criminal law-like proceeding with extensive review of already established facts is unwarranted. Districts have created a management structure that empowers principals and administrators to make hiring and dismissal decisions—the dismissal process for issues like underperformance should provide a check for basic fairness but not seek to overturn a decision based in professional expertise. Furthermore, the time and work associated with such hearings—when a basis for dismissal has been clearly established through evaluation—discourages use of the process at all.

Under current laws, states may require different notice periods for dismissal for instructional performance or require specific documentation of a teacher’s incompetence, but the dismissal hearing process essentially remains the same. At least one state, New York, differentiates the fact finder selection process for removing a teacher for instructional performance from that of other violations.<sup>42</sup> Under New

York law, a teacher removed for “pedagogical incompetence,” may choose to have a single hearing officer or a three-member panel (including a member selected by the teacher).<sup>43</sup> The New York law acknowledges that a teacher dismissed for instructional ineffectiveness will ostensibly want to select another teacher to be on the hearing panel. The law does not, however, articulate any other differences in the process.

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## Obstacle 2: Incompetency is undefined

**Ineffective teachers are often dismissed for being “incompetent” but state law rarely provides a workable definition of poor instructional performance.**

If a teacher commits a crime or exhibits some other behavior that endangers students, administrators know that they have a basis to dismiss the teacher. The basis for dismissing a teacher for chronic instructional ineffectiveness may be much harder to determine and few state laws clarify the issue.

Chronically ineffective performance in the classroom is most often characterized as “incompetence,” a vague term state courts have attempted to interpret.<sup>44</sup> A school district may believe that they have evidence of a teacher’s ineffectiveness in the classroom but a law’s ambiguity can invite debate over whether dismissal is appropriate.<sup>45</sup> To prove its case, a district may need to present years of documentation of the teacher’s poor performance to show that it extends beyond a few observations.<sup>46</sup> Districts are therefore hesitant to bring charges of incompetence for which they may not have sufficient documentation and instead pursue cases of more egregious misconduct. If districts rarely pursue dismissal for chronically ineffective teachers, the standard for dismissal becomes skewed toward more outrageous behavior instead of considering the harm done by a teacher who cannot teach.

States have the tools to provide a functional definition to guide dismissal for ineffectiveness. Formal evaluations, as explained previously, provide direct documentation of a teacher’s performance. A teacher in Pennsylvania, for example, may be dismissed for “unsatisfactory teaching performance” if he receives two consecutive negative ratings on an evaluation.<sup>47</sup> Student achievement data, whether from standardized exams or other measures is increasingly being included in evaluations of teacher performance, could also be referenced in the definition. Many states require remediation as a prerequisite to pursuing dismissal for instructional performance but do not specifically include a teacher’s failure to show improvement after remediation as part of the definition of incompetence.

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### Obstacle 3: No link between evaluation and dismissal

**State dismissal laws may not explicitly link the evaluation process to the dismissal process, devaluing the role of evaluations in termination decisions.**

Almost every state offers some guidance on the teacher evaluation process.<sup>48</sup> These laws cover a wide range of topics—from specifying the number of times a tenured teacher may be evaluated to explaining the remediation process for teachers who earn unsatisfactory evaluations. One element of the evaluation process is conspicuously missing from many state laws—dismissal as the eventual result of multiple negative evaluations. Only 11 states advise that teachers with a record of unsatisfactory evaluations are eligible for dismissal, according to the National Council for Teaching Quality.<sup>49</sup>

Formal evaluations provide important information about a teacher’s performance yet their place in the dismissal process is unclear. The absence of a formal link between evaluation and dismissal sends the message that dismissal is not a potential consequence of receiving multiple negative evaluations. It’s no wonder that few administrators give negative evaluations—if an evaluation does not form the basis of a dismissal charge, a principal may see no benefit to giving a negative rating. Struggling teachers are also disadvantaged when evaluations are not seriously contemplated. Teachers facing dismissal due to poor performance in most states are entitled to remediation. Without a serious evaluation process, struggling teachers cannot be identified and remediated toward success.

Teachers must be evaluated, at least annually, for school systems to have an accurate view of their performance. Only 15 states currently require annual evaluations for nonprobationary teachers.<sup>50</sup> Teachers may not have fair notice of their performance issues when evaluations are conducted infrequently, further complicating the dismissal process.

When states and districts have rigorous evaluation systems in place that are linked to dismissal, it makes sense that evaluations would play a prominent role in a dismissal hearing. A state law recommending dismissal after multiple negative evaluations creates a presumption that the evaluation procedure has identified poor performers. Without this link, a fact finder may not give appropriate deference to the evaluation process and may feel free to consider other less relevant evidence in determining whether a teacher should be dismissed.

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## Obstacle 4: The requirements for remediation are vague

**Districts must show that dismissed teachers were given an opportunity to remediate, but the requirements for remediation are unclear in state law.**

School districts are generally required, either by statute, collective bargaining agreements, or case law, to show that a dismissed teacher was offered an opportunity to improve. The amount of time provided to teachers to improve is often cited as a contributing factor to the lengthiness of the dismissal process.<sup>51</sup> But the quality of the remediation process is also an obstacle to an efficient process. While the amount of time provided to teachers is often addressed in state law, the steps a district must take to show an adequate effort of remediation are not clear. California, for example, instructs districts that they cannot dismiss a teacher for “unsatisfactory performance,” unless the district gives a teacher “an opportunity to correct his or her faults and overcome grounds for the charge.”<sup>52</sup> What actions constitute sufficient opportunity to remediate can easily become a contentious topic in the hearing and many courts have been asked to stop a termination action based on problems in the remediation process.<sup>53</sup>

This lack of clarity can undoubtedly lead to objections that the teacher was not provided with sufficient tools and direction to improve. Administrators using an ad hoc method of remediation may also be vulnerable to suggestions that different teachers are treated differently during the remediation process. With no direction from state law, district officials may be unclear on how much time and money should be spent on remediating one teacher.

Alaska provides an example of a state that requires districts to follow a state-mandated remediation plan for teachers who have received an unsatisfactory evaluation. Principals are required to articulate specific performance goals for the teacher and offer specific ways for the teacher to improve.<sup>54</sup> The district is also required to formally evaluate the teacher at least twice during the improvement period.<sup>55</sup> The district can move to dismiss a teacher who does not show improvement, according to the remediation plan, at the end of the designated period.<sup>56</sup>

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## Obstacle 5: Absence of timelines or timelines that don't work

### **State laws often lack timelines that could make the process more efficient.**

State laws may actually create lengthy, expensive hearings by not imposing and enforcing strict timelines on crucial parts of the dismissal process. More than half of state laws describe a dismissal process that will last more than 40 days, not taking into account the delays that occur once a case begins.<sup>57</sup> A study of New York dismissal hearings found that the average proceeding lasted 520 days in 2005.<sup>58</sup>

State law typically provides guidelines for the time a district must give to a teacher to respond to a notice of dismissal and the time between the request for a hearing and when the hearing commences. This period can range from five days to more than one month. The selection of the hearing officer or arbitrator, often a process of back and forth between the teacher and the district, can add more delays to the process.<sup>59</sup> Parties can also agree to extend statutory deadlines for any part of the process.

Few states attempt to actually restrict the time a hearing can take once it commences. Strict guidelines on the type of evidence and number of witnesses each party presents could limit the length of hearings, but few state laws provide any restrictions in this area. The liberal allowance of time combined with lax evidentiary rules almost guarantees lengthy hearings. Several states do require hearing officers to report their findings within a certain period of time but with no enforcement mechanism built into the law, even this requirement is rendered meaningless.

Teachers placed on administrative leave while awaiting the completion of their hearing can generally expect to be paid unless they have committed or plead guilty to an offense for which pay is prohibited under state law.<sup>60</sup> There is a strong argument in defense of this practice as teachers should not be deprived of their salary while fighting a charge that may prove to be erroneous. This practice certainly would make more sense if teachers were provided with an expedient dismissal process. Under the current framework, however, paying a teacher's salary while the dismissal takes months, or worse, years, discourages teachers from demanding a more efficient process.

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## Obstacle 6: State law, local process

**Factors on the local level can further complicate the dismissal process.**

State laws offer the guiding principles by which dismissal hearings are conducted, but the teacher dismissal process is subject to many factors on the local level that may add to its inefficiency.

Most state laws specifically allow for collective bargaining agreements with local unions that add layers of process beyond those articulated in the state dismissal law.<sup>61</sup> The Los Angeles Teachers' Union agreement describes the specific steps a principal must take to evaluate and remediate a teacher.<sup>62</sup> New York City's contract with the teacher's union requires the use of a panel of arbitrators to hear dismissal cases who each only hear cases five days a month.<sup>63</sup> Collective bargaining agreements can also restrict the type of documents a district can keep and use in a dismissal hearing.<sup>64</sup>

Fact finders exercise a tremendous amount of power in the hearing process yet the process hardly ensures that the fact finder will be qualified to second-guess decisions of school administrators. State law instructs fact finders to determine if a school district has proven their case, not if the teacher's behavior negatively impacts the school or student body to the extent that their employment must be terminated. Under this framework, fact finders may concentrate more on adherence to steps in the process instead of overwhelming evidence of the teacher's misconduct or ineffectiveness.

State law may or may not discuss procedures within the hearing but even then, fact finders are empowered to make important decisions that affect everything from the length of the hearing to the type of evidence that is heard. There may be wide variation in the approach different fact finders take to conducting hearings because hearings generally are not run according to formal rules of evidence.

## Toward reform

The harm that occurs when a poor-performing teacher remains in the classroom cannot be overstated. Therefore, the core of any reform strategy must be the well-being of those students who may be negatively affected by the teacher's continued employment in a school or district. Changes can be made to state laws that respect the due process rights of teachers while allowing for the fair and efficient dismissal of teachers who do not belong in the classroom.

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### Recommendation 1: Create a system of differentiated due process procedures that correspond to particular performance issues

There are many reasons why a teacher may be dismissed from her position. Ongoing instructional issues may be addressed through a process of evaluation and remediation. Professional conduct issues like tardiness and other forms of misconduct should be handled through a “progressive discipline” process.<sup>65</sup> Incidents of extreme malfeasance or criminal behavior may warrant immediate dismissal with no remediation process. The “one size fits all” approach to dismissal does not acknowledge the distinct nature of teacher performance issues nor does it recognize the extensive administrative processes that occur before a hearing.

State law should articulate distinct processes for teachers being dismissed for: 1) chronic ineffectiveness; 2) unprofessional conduct; and 3) committing criminal acts.

**Chronic ineffectiveness:** The dismissal process should be used as a last check to ensure teachers were provided with notice of their poor performance and given sufficient opportunity to improve. Teachers should use the hearing opportunity to argue issues regarding the evaluation *process* and not the substance of their evaluations.<sup>66</sup> Unfortunately, bias and personal conflicts can interfere with an administrator offering a fair evaluation. Therefore, the use of multiple evaluators, including at least one impartial evaluator working outside the school, provides a consistent

record of performance evaluation. State legislators could consider shifting the burden in cases of chronic ineffectiveness to the teacher to show that he or she should not be dismissed once districts can show that they are consistently using reliable evaluation systems.

**Unprofessional conduct:** Many performance issues will fall under the umbrella of unprofessional conduct and state legislators should contemplate levels of conduct and corresponding processes. Such a system should distinguish those offenses that merit a more traditional, trial-like proceeding and those that do not. Consistent tardiness and absences, for example, for which notice of the issue and remediation are easily documented, should be facilitated through an expedited hearing for the teacher to object to any process complaints. Other offenses that involve accusations of serious improper behavior such as sexual harassment, causing bodily injury to students or staff, or financial misconduct may require a longer hearing for the teacher to present a full defense.

**Criminal offenses:** If a teacher has already plead guilty or been convicted of crime that triggers license revocation, it makes no sense to require a school district to expend the money and time to try the same case. A district should only be required to introduce a certificate of conviction or record of a guilty plea to meet its burden. State legislators should consider including a provision that addresses the issue of teachers awaiting trial for criminal offenses by putting the teacher on unpaid administrative leave, with the potential of back pay if the teacher is found not guilty.

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## Recommendation 2: Establish a state-administered system for selecting hearing officers

Creating a state-administered system for selecting hearing officers could greatly reduce the time associated with selecting hearing officers and arbitrators, ensure that fact finders have a background in educational matters, lessen the impact of personal or financial conflicts of school board members or arbitrators on the process, and lead to greater uniformity in dismissal procedures and outcomes.

**Selection:** The selection process can take months in states where the teacher and district must mutually select a hearing officer or arbitrator. Hearings must be scheduled according to the hearing officer or arbitrator's availability adding further delay. Under a state-administered system, the state education agency could employ a staff of hearing officers who conduct hearings on full-time basis across

the state. Hearing officers can be chosen through a random selection process reducing the time spent on mutual selection processes.

**Qualifications:** Hearing officers are typically lawyers or licensed arbitrators with a background in employment law but not necessarily instructional practice. It is important that hearing officers not only be able to analyze the facts of dismissal case but also understand the impact of the teacher's behavior and performance on a school and its students. Such qualifications are particularly important when considering cases of chronic ineffectiveness where hearing officers may review classroom evaluations and student performance data. The state could require that hearing officers have some prior educational experience or offer panel hearings that include members with an education background as well as an administrative law judge.

**Impartiality:** Political and personal connections to a dismissal case may influence elected school board members. Arbitrators may have a financial incentive to endure lengthy hearings or avoid displeasing either party. State-employed hearing officers will have no incentive to decide for either party or to tolerate unnecessarily lengthy dismissal hearings.

**Uniformity in hearing decisions:** Guidelines and procedures for conducting dismissal hearings should be uniformly applied. A panel of hearing officers, all working from the same guidelines, will improve the consistency of evidentiary decisions. State education agencies or boards of education can promulgate guidelines with input from state teachers' unions.

**Enforcement of statutory timelines:** State legislators should consider implementing statutory guidelines for all aspects of the dismissal process. Hearings should be held within a prescribed amount of time, with extensions granted only for extraordinary cause.<sup>67</sup> Hearing officers should be expected to publish their decisions in a timely fashion or face removal from the officer pool. State guidelines should address the penalties incurred when parties do not meet indicated deadlines.

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### Recommendation 3: Use mediation as an alternative to traditional dismissal hearings

Many low-performing teachers are aware of their performance issues but may feel that they have no other option than to fight dismissal. Since state law allows for compensation during the dismissal process, teachers also are essentially encouraged to continue through the process. Districts and teachers can avoid unneces-

sary dismissal hearings and appeals by thinking creatively about alternatives to traditional, high-stakes dismissal hearings.

Implementing a mandatory nonbinding mediation session prior to the dismissal hearing, where both the district and teacher can present their perception of the case may actually encourage many teachers not to pursue a traditional dismissal hearing. The mediation may provide an opportunity for the teacher to better understand the reasoning behind dismissal and allow the district to see if the case can be resolved outside of an actual dismissal hearing. The parties can also determine if alternatives to dismissal are appropriate such as an alternative noninstructional placement for teachers with applicable skills in other areas, a cash “buyout,” or another mutually agreeable arrangement.

Teachers will take full advantage of their right to a hearing and pursuing multiple appeals when faced with the possibility of losing a current position and any possibility for attaining another position in the field. Limiting license revocation to a small subset of teachers who commit crimes or endanger students’ lives, as suggested by The New Teacher Project, will discourage teachers from aggressively fighting a dismissal charge for lesser “offenses” that allow them to keep their license.<sup>68</sup>

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#### Recommendation 4: Define ineffective classroom performance in state law

State laws should provide a definition of ineffective classroom performance that references: 1) ineffective instructional practice as observed through formal and informal evaluations, 2) a failure to promote student achievement (through multiple measures), and 3) a lack of improvement after the remediation period. Defining ineffective classroom performance will provide greater guidance to all participants in the dismissal process and reduce the amount of time spent deliberating whether a teacher’s performance meets the law’s definition.

Evaluations are the key factor in assessing teacher effectiveness and state laws should require at least annual evaluations for every teacher. State evaluation laws should also explicitly link to dismissal as a potential result of consecutive negative evaluations.

Policymakers should also articulate a specific process for remediation in state law and regulations and allow evaluations to take place on a shorter schedule for those teachers in the remediation phase. For example, under Delaware’s revised evaluation system, an improvement plan for a teacher must contain:

- Identification of the specific deficiencies and recommended area(s) for growth
- Measurable goals for improving the deficiencies to satisfactory levels
- Specific professional development or activities to accomplish the goals
- Specific resources necessary to implement the plan, including but not limited to, opportunities for the teacher to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s), or others with relevant expertise
- Procedures and evidence that must be collected to determine that the goals of the plan were met
- Timeline for the plan, including intermediate check points to determine progress
- Procedures for determining satisfactory improvement
- Multiple observations and opportunity for feedback provided by a trained evaluator, a mentor, a lead teacher, or an instructional coach<sup>69</sup>

Implementing specific requirements for remediation plans will eliminate ambiguity within hearing process regarding the level of assistance offered to poor-performing teachers.

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### Recommendation 5: States and districts should work with unions to facilitate fair and efficient dismissal procedures

Unions should play an active role in the dismissal process—and not only in a defensive role in hearings. Unions can contribute in prehearing discussions with teachers who are experiencing performance issues in the classroom and be actively involved in efforts to help teachers remediate. A formal remediation process, jointly offered by unions and written into collective bargaining agreements, can help districts avoid prolonged disputes over the quality of the assistance offered to a struggling teacher.

Several districts have implemented Peer Assistance and Review programs that employ expert teachers (and union members) to identify, evaluate, and assist teachers with performance issues. After a teacher is identified for PAR participation, another highly effective teacher jointly selected by the PAR panel composed of union- and district-selected members closely monitors and mentors the teacher through a remediation period.<sup>70</sup> The PAR panel makes retention recommendations for teachers who participate in PAR and may recommend that a district dismiss a teacher who does not show improvement. The PAR process provides

ongoing communication with the teacher about their performance virtually guaranteeing that due process has been afforded to the teacher. Unions rarely contest a teachers' dismissal under such circumstances.<sup>71</sup>

State law could bolster the strength of the PAR process by requiring teachers who have been recommended for dismissal through the process to carry the burden in a dismissal hearing. Although PAR has been implemented in several districts, the process depends heavily on principal referrals. Reluctance on the part of principals to refer teachers to PAR can undermine the program's success, therefore districts should consider allowing others with evaluation duties to make referrals to the program or create a pipeline to the program for teachers who receive "ineffective" ratings.

States' legislators should seek to include union members in their efforts as they begin the process of revising teacher tenure laws. Colorado established a state-wide task force in 1997 to assist legislative members in studying the state's teacher evaluation and dismissal process.<sup>72</sup> The task force, which included representatives from the teachers' union, recommended a number of changes to state law including the shortening of the dismissal hearing timelines and procedures and clarifying the role of hearing officers.<sup>73</sup>

## Conclusion

There is a movement across federal, state, and local policy to create policies that ensure that every student is taught by an effective teacher. A necessary corollary to this movement is the creation of policies that facilitate the expedient identification and dismissal of chronically ineffective teachers. Current state law presents a number of obstacles that hinder the effectiveness of the dismissal process as this paper has explained. These obstacles can be overcome, through significant changes to state law, and dismissal systems can be created that focus on the well-being of schools and students while respecting teachers' due process rights.

# Appendix

State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
Alabama	Incompetency, insubordination, neglect of duty, immorality, failure to perform duties in a satisfactory manner, justifiable decrease in the number of teaching positions, or other good and just cause. Ala. Code § 16-24-8.	None	None	None	The school board and teacher mutually select a hearing officer or a hearing officer is selected from a mediator list provided by Federal Mediation and Conciliation Services' Office of Arbitration Services. Ala. Code § 16-24-20.	The hearing officer must render a written decision with findings of fact and conclusions of law within 30 days after the hearing. Ala. Code § 16-24-10.	The Alabama Court of Civil Appeals hears all appeals of hearing officer decisions. "The decision of the hearing officer shall be affirmed on appeal unless the Court of Civil Appeals finds the decision arbitrary and capricious." Ala. Code § 16-24-10.
Alaska	Incompetency, immorality, or substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent. Alaska Stat. § 14.20.170.  A teacher may be nonretained if the teacher does not meet performance standards after remediation, immorality, or substantial noncompliance with the school laws of the state, the regulations, or bylaws of the department, the bylaws of the district, or the written rules of the superintendent. Alaska Stat. § 14.20.175.	Incompetency is defined as "the inability or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner." Alaska Stat. § 14.20.170 (a)(1).	To nonretain a teacher, the school district must demonstrate it has fully complied with state evaluation requirements, including the completion of a plan for improvement, documentation that the teacher has failed to meet the performance objectives set out in the plan, and an evaluation that establishes that the teacher does not meet the district performance standards. Alaska Stat. §14.20.175.	A tenured teacher who does not meet district performance standards must be provided with a "plan of improvement," which he or she must execute in 90 to 180 days. The district must observe the teacher at least twice during the course of the plan. The district may nonretain the teacher if he or she again does not meet the district performance standards at the conclusion of the plan. Alaska stat § 14.20.149 (e).	The teacher may select a hearing before the school board or invoke a grievance procedure and submit the matter to arbitration (if the board sustains dismissal or nonretention after an informal hearing). Alaska stat §14.20.180 (d) and (e).	None	If the teacher chooses a hearing before the school board, the teacher may appeal the decision to the superior court for judicial review based on the administrative record. Alaska stat § 14.20:180 (d).

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Arizona	Immoral or unprofessional conduct, conduct in violation of the rules or policies of the governing board, good and just cause, or inadequacy of classroom performance. Ariz. Rev. Stat. § 15-539.	None, but the governing board of each district is charged with developing "a definition of inadequacy of classroom performance" in consultation with its certified teachers. Ariz. Rev. Stat. § 15-539 (d).	None, but the governing board must give the teacher notice of its intention if the dismissal is based on inadequacy of classroom performance. The notice must be based on a valid evaluation and must give the teacher at least 60 days to show improvement. Ariz. Rev. Stat. § 15-539 (c).	None	The governing board or the board designates a hearing officer, which must be mutually agreed upon by the parties. Ariz. Rev. Stat. § 15-541(a).	No testimony or evidence is permitted that relates to adequacy of classroom performance from more than four years prior to notice of dismissal. The four-year time limit does not apply to the introduction of evidence in any area except adequacy of classroom performance. Ariz. Rev. Stat. § 15-542 (b).	The court only reverses the action if it finds the decision was arbitrary, capricious or otherwise contrary to law. Ariz. Rev. Stat. § 15-543; § 41-785 (c).
Arkansas	Incompetent performance, conduct that materially interferes with the continued performance of the teacher's duties, repeated or material neglect of duty, or other just and reasonable cause. Ark. Code § 6-17-1507 (a).	None	None	None, but an administrator "shall" document and share the problems with the teacher and document efforts to correct performance if he or she believes that a teacher's performance may lead to nonrenewal or termination. Ark. Code § 6-17-1504(b).	The board of directors hears the case. Ark. Code § 6-17-1509.	None	Appeals go to the circuit court of the county in which the school district is located; additional testimony and evidence are permitted to demonstrate the lawfulness or unlawfulness of dismissal. Ark. Code § 6-17-1510 (d).

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California	Immoral or unprofessional conduct; commission, aiding, or advocating the commission of acts of criminal syndicalism; dishonesty; unsatisfactory performance; evident unfitness for service; a physical or mental condition unfitting him or her to instruct or associate with children; persistent violation of or refusal to obey the state school laws or reasonable regulations; conviction of a felony or of any crime involving moral turpitude; violation of section 51530 or conduct specified in Section 1028 of the Government Code; knowing membership in the Communist Party; or alcoholism or other drug abuse that makes the employee unfit to instruct or associate with children.	None	None, but the governing board cannot act on charges of “unsatisfactory performance” unless it gives the teacher notice of the unsatisfactory performance and time to correct his or her faults and overcome grounds for the charge. The notice must include an evaluation. Cal. Educ.Code § 44938.	None	A Commission on Professional Competence conducts the hearing, the employee selects one member of the commission, the governing board selects one member, and the third is an administrative law judge of the Office of Administrative Hearings. Cal. Educ. Code § 44944 (b)(1).	Testimonies and evidence related to matters that occurred more than four years prior to the date of notice are not permitted. Cal. Educ. Code § 44944.	“A court of competent jurisdiction” hears the appeal; the court “shall” exercise “independent judgment on the evidence.” Cal. Educ. Code § 44945.
Colorado	Physical or mental disability, incompetency, neglect of duty, immorality, unsatisfactory performance, insubordination, conviction of a felony or acceptance of a guilty plea, a plea of nolo contendere, or a deferred sentence for a felony, or other good and just cause. Colo. Rev. Stat. § 22-63-301.	None	None, but when unsatisfactory performance is a ground for dismissal, the district must establish that the teacher was evaluated pursuant to the written evaluation system required by law. Colo. Rev. Stat. § 22-63-302(8)	If the teacher is still not performing satisfactorily after two evaluations and an unsuccessful remediation plan, the evaluator must either make additional recommendations for improvement or may recommend dismissal.	An impartial hearing officer is jointly selected by the teacher and chief administrative officer. If they fail to agree, the department of personnel assigns an administrative law judge. Colo. Rev. Stat. § 22-63-302 (4)(a).	Hearings are limited to six working days unless extended by the hearing officer. Each party has only three days to present its case. Neither party may present more than 10 witnesses at the hearing unless there is good cause. Colo. Rev. Stat. § 22-63-302 (7)(e).	The court of appeals reviews the record to determine whether the board’s action was “arbitrary or capricious” or legally impermissible. Colo. Rev. Stat. § 22-63-302(10)(c).

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Connecticut	Inefficiency or incompetence, insubordination, moral misconduct, disability as shown by competent medical evidence, elimination of the teacher's position, or other due and sufficient cause. Conn. Gen. Stat. § 10-151(d).	None	The determination of incompetence is based on evaluation of the teacher using teacher evaluation guidelines established in state law. Conn. Gen. Stat. § 10-151(d).	None	The hearing may be before the board of education or a subcommittee of the board, or hearing an impartial hearing panel, or the teacher and superintendent can mutually agree on a single impartial hearing officer. Conn. Gen. Stat. § 10-151(d).	If the hearing is held before an impartial hearing panel, subcommittee of the board, or hearing officer, findings must be made within 75 days of the receipt for request of hearing. Conn. Gen. Stat. § 10-151(d).	The superior court affirms the agency's decision unless the court finds the decision was made in violation of constitutional or statutory provisions or, in excess of the agency's statutory authority, made upon unlawful procedure, affected by other error of law, clearly erroneous in view of evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Conn. Gen. Stat. § 10-151(e); § 4-183(j).
Delaware	Immorality, misconduct in office, incompetency, disloyalty, neglect of duty, a reduction in the number of teachers required as a result of decreased enrollment or a decrease in education services, or willful and persistent insubordination. Del. Code Ann. Tit. 14 § 1411, § 1420.	None, but each district may define "a pattern" of ineffective teaching in its evaluation system. The Delaware Administrative Code defines a "pattern" as two consecutive ineffective ratings. 14 DE Admin. Code 106A.	None	A school district "may" move to terminate a teacher for incompetency when it establishes a pattern of ineffective teaching. Del. Code Ann. Tit. 14 § 1273.	Board or hearing officer conducts the hearing. Del. Code Ann. Tit. 14 § 1413 (b).	Testimony and evidence must be confined to the reasons stated in the written notice of intent to terminate the teacher. Del. Code Ann. Tit. 14 § 1413 (a).	The superior court in the country where the teacher was employed hears the appeal; the Court reviews under a substantial evidence standard. Del. Code Ann. Tit. 14 § 1414
District of Columbia	Just cause, which includes but is not limited to the reasons listed in Rule: D.C.M.R. Title 5, Chapter 14, 1401.2.	Incompetence, including either inability or failure to perform satisfactorily the duties of the position of employment. Rule: D.C.M.R. Title 5, Chapter 14, 1401.2 (c).	None	The DCPS IMPACT evaluation system guidebook suggests that teachers who receive "ineffective" rating are subject to "separation" from school system.	An impartial hearing officer conducts the hearing. Rule: D.C.M.R. Title 5, Chapter 14, 1407.4.	The hearing officer must make written findings and recommendations within 10 days of the conclusion of the hearing. Rule: D.C.M.R. Title 5, Chapter 14, 1408.10.	The superintendent of schools hears the appeal or convenes a panel to do so. Rule: D.C.M.R. Title 5, Chapter 14, 1409.1.

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Florida (Professional service contracts)	Just cause, which includes but is not limited to immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or being convicted, found guilty, or entering a plea of guilty of any crime involving moral turpitude. Fla. Stat. Ann. § 1012.33(1)(a).	None	None	A teacher is notified of unsatisfactory performance, given time to improve, and then a determination is made as to whether he or she has corrected the performance deficiencies. A teacher may be recommended for nonrenewal for dismissal following a finding that performance has not improved. Fla. Stat. Ann. § 1012.33(3)(f), 1012.34(3)(d).	The district school board conducts the hearing, or the Division of Administrative Hearings of the Department of Management Services assigns an administrative law judge to consider the case. Fla. Stat. Ann. § 1012.33 (3)(f),(4) 1012.34(6).	The hearing must be "conducted" within 60 days of receipt of written request for hearing. Fla. Stat. Ann. § 1012.33(3)(f) (4)(a) and (b), 1012.34(6).	The appellate court in the district where the school is located hears the appeal; the court reviews the decision under the standards found in Fla. Stat. Ann. § 120.68.
Georgia	Incompetency, insubordination, willful neglect of duties, immorality, inciting, encouraging or counseling students to violate state laws or policies, failure to secure and maintain necessary educational training, reduction in staff due to loss of students or cancellation of programs or any other good and sufficient cause. Ga. Code Ann. 20-2-940.	None	None	None	The local board or the board may designate a tribunal of persons "possessing academic experience" to consider the case. Ga. Code Ann § 20-2-940 (e)(1).	None	Appeal goes to the state board of education, then the county superior court. Ga. Code Ann § 20-2-940 (f) § 1160.
Hawaii	Inefficiency or immorality, willful violations of the department's policies and rules, or other good and just cause. Haw. Rev. Stat. § 302A-609.	None	None	Tenured teachers are evaluated every five years. State evaluation guidelines state that a teacher who receives an "unsatisfactory" rating "shall" have his or her contract terminated. Teachers with a "marginal" rating are moved to an annual evaluation cycle.	Not available	Not available	Not available

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Idaho	Just and reasonable cause, which may include a material violation of any lawful rules or regulations of the board of trustees or of the state board of education, or any conduct that could constitute grounds for revocation of a teaching certificate. Idaho Code § 33-513, §33-515.	None	None	None	The local board hears the case. Idaho Code § 33-513.	None	Not available
Illinois	Incompetency, cruelty, negligence, immorality, or other sufficient cause; failure to complete a one-year remediation plan with a "satisfactory" or better rating; not qualified to teach; whenever the interests of the schools require dismissal, or due to a decision of the board to decrease the number of teachers employed by the board, or to discontinue some particular type of teaching service. 105 Ill. Comp. Stat. 5/10-22.4; 5/24-12. Alternative procedures for teachers exist for teachers classified under 105 Ill. Comp. Stat. 5/34.	None, but teachers may be dismissed for "failure to complete a one-year remediation plan with a 'satisfactory' or better rating." 105 Ill. Comp. Stat. 5/10-22.4.	None, but no written warning is required when the dismissal is related to remediation plan and the hearing officer must "consider and give weight to" all of the teacher's evaluations. 105 Ill. Comp. Stat. 5/24-12.	Dismissal is recommended for any teacher who after being rated unsatisfactory fails to complete any applicable remediation plan with a rating equal to or better than "satisfactory" or "proficient." 105 Ill. Comp. Stat. 5/24A-5.	The teacher and district participate in a selection process in which the state board of education provides a list of five impartial hearing officers who must be accredited arbitrators and have had a minimum of five years of experience in labor and education matters. 105 Ill. Comp. Stat. 5/24-12.	The hearing officer may limit the number of witnesses to be subpoenaed on behalf of the teacher or the board to no more than 10. If a decision is not rendered within three months of the close of the hearing, the parties can choose a new hearing officer to review the record and make a decision. 105 Ill. Comp. Stat. 5/24-12.	The circuit court where school board maintains an office hears the appeal; the court reviews all questions of law and fact presented by the entire record before the court. No new or additional evidence is permitted. 735 Ill. Comp. Stat. 5/3-110.
Indiana	Immorality, insubordination, neglect of duty, incompetence, justifiable decrease in the number of teaching positions, particular offenses listed in state law (IC 20-28-5-8(c)), and other good and just cause. IC 20-28-7-1. A semipermanent teacher may also be dismissed for substantial inability to perform teaching duties, a justifiable decrease in the number of teaching positions, or if the cancellation is in the best interest of the school. Ind. Code § 20-28-7-2.	None	None	None	The governing body of the school corporation considers the case. Ind. Code § 20-28-7-3.	None	Not available

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Iowa	Just cause. Iowa Code § 279.15.	None	None	None	The school board hears the case in the first phase. The teacher can then appeal to an arbitrator agreed upon by the board and the teacher. Iowa Code § 279.15-279.17.	None	The district court reviews the action for violations of constitutional or statutory provisions, an excess of the board or adjudicator's statutory authority, violations of a board rule or policy or contract, unlawful procedures, other errors of law, a decision unsupported by a preponderance of the competent evidence in the record, or unreasonable, arbitrary, or capricious abuse of discretion or a clearly unwarranted exercise of discretion. Iowa Code § 279.18.
Kansas	Good cause. <i>Lassiter v. Topeka Unified School Dist.</i> No. 501. 347 F.Supp.2d 1033. D.Kan., 2004.	None	None	None	The commissioner of education provides a list of qualified hearing officers for the parties to choose from, or the parties can mutually agree to make a request to the American Arbitration Association for an arbitrator to serve as the hearing officer. Kan. Stat. Ann. § 72-5438.	All relevant evidence shall be admissible, but the hearing officer may exclude any evidence if he or she believes the value of the evidence is "substantially outweighed" by the time it will take to admit. Kan. Stat. Ann. § 72-5442.	The district court hears the appeal. Kan. Stat. Ann. 72-5443.

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State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
Kentucky	Insubordination, immoral character or conduct unbecoming a teacher; physical or mental disability; inefficiency, incompetency, or neglect of duty. Ky. Rev. Stat. § 161.790.	None	None, but a teacher must receive a written statement identifying the problems or difficulties, which must be supported by a written record of the teacher's performance. Ky. Rev. Stat. § 161.790.	None	The commissioner of education nominates a three-member tribunal including one teacher, who may be retired, one administrator, who may be retired, and one "lay" person. Ky. Rev. Stat. § 161.790.	The hearing must begin within 45 days of the teacher requesting a hearing. Ky. Rev. Stat. § 161.790.	The circuit court reviews the action for violations of constitutional or statutory provisions; excess of the agency's statutory authority; support of substantial evidence on the whole record; declarations characterized by arbitrary, capricious, or abuse of discretion; and other procedural issues. Ky. Rev. Stat. § 13B.150.
Louisiana	Willful neglect of duty, incompetency, dishonesty, or immorality; or being a member of or contributing to any group, organization, movement, or corporation that is by law or injunction prohibited from operating in the state of Louisiana. La. Rev. Stat. Ann. § 17:443.	None	None	A teacher who receives an unsatisfactory rating is placed in an "intensive assistance program." If the teacher does not complete the program or continues to perform unsatisfactorily after a formal evaluation conducted after completing the program, then the local board can initiate termination proceedings. La. Rev. Stat. Ann. § 17:3902.	The school board considers the case. La. Rev. Stat. Ann. § 17:443.	None	A "court of competent jurisdiction" hears any appeals. La. Rev. Stat. Ann. § 17:443.
Maine	Just cause, found unfit to teach, or deemed unprofitable by the school board. Me. Rev. Stat. Ann. Tit. 20A, § 13201, § 13202.	None	None	None	The school board conducts the investigation and hearing. Me. Rev. Stat. Ann. Tit. 20A § 13202.	None	Not available.
Maryland	Immorality, misconduct in office, insubordination, incompetency, or willful neglect of duty. Md. Code Ann. Educ. § 6-202.	None	None	None	The county board may choose a hearing examiner to conduct the hearing. Md. Code Ann. Educ. § 6-203.	None	The State Board of Education hears the appeal. Md. Code Ann. Educ. § 6-203.

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State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
Massachusetts	Inefficiency, incompetency, incapacity, conduct unbecoming a teacher, insubordination, failure to satisfy teacher performance standards, or other just cause. Mass. Gen. Laws Chp. 71 § 42.	None, although a teacher may be dismissed for a failure to satisfy teacher performance standards set out by the school committee or developed by collective bargaining. Mass. Gen. Laws Chp. 71 § 42.	None	None	The Commissioner of Education and the American Arbitration Association recommend a list of arbitrators from which the parties can choose an arbitrator. Mass. Gen. Laws Chp. 71 § 42.	The arbitrator's decision must be issued within one month of the hearing's completion unless the parties agree otherwise. Mass. Gen. Laws Chp. 71 § 42.	The superior court hears the appeal. Mass. Gen. Laws Chp. 71 § 42.
Michigan	Reasonable and just cause. Mich. Comp. Laws § 38.101.	None	None	None	The teacher files an appeal with the tenure commission after receiving notice of dismissal. An administrative law judge who is an attorney licensed to practice law in the state and is employed by the department of education hears the case. Mich. Comp. Laws § 38.104 (3).	The hearing must conclude no later than 90 days after the teacher files a claim for an appeal. The judge must serve a preliminary decision no later than 60 days after the case's submission. The tenure commission makes a final decision. Mich. Comp. Laws § 38.104 (5).	The teacher can appeal the tenure commission's decision to the court of appeals. Mich. Comp. Laws § 38.104 (7).
Minnesota	To dismiss at the end of the year: inefficiency; neglect of duty or persistent violation of school laws, rules, regulations, or directives; conduct unbecoming a teacher that materially impairs the teacher's educational effectiveness; other good and sufficient grounds rendering the teacher unfit.  To dismiss immediately: immoral conduct, insubordination, or conviction of a felony; conduct that requires immediate removal; teaching without permission of the school board; gross inefficiency that the teacher has failed to correct after reasonable written notice; willful neglect of duty; or continuing physical or mental disability subsequent to a 12-month leave of absence and inability to qualify for reinstatement. Minn. Stat. §122A.40.	None	None	None	The school board hears the case or an arbitrator chosen by the parties if the teacher chooses. Minn. Stat. §122A.40.	None	Not available

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State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
Mississippi	Incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil, or other good cause. Miss. Code Ann. § 37-9-59.	None	None	A teacher who receives an unsatisfactory rating is required to have a professional development plan. If the teacher fails to perform after one year, the local administration can reevaluate the teacher's professional development plan and make any necessary adjustments. If the teacher fails to perform after the second year, the administration can recommend that the local school board dismiss the teacher. This policy only applies to teachers in low-performing schools. Miss. Code Ann. § 37-18-7.	The school board or a hearing officer appointed by the board hears the case. Miss. Code Ann. § 37-9-59.	None	The chancery court reviews the appeal for support by any substantial evidence, arbitrariness or capriciousness, or violation of some statutory or constitutional right of the employee. Miss. Code Ann. § 37-9-113.
Missouri	Physical or mental condition unfitting to instruct or associate with children; immoral conduct; incompetency, inefficiency, or insubordination; willful or persistent violation of or failure to obey the state's school laws or the district board of education's published regulations; excessive or unreasonable absence; or conviction of a felony or a crime involving moral turpitude. Mo. Rev. Stat. § 168.114.	None	None, but the teacher must be given 30 days notice of the causes that could result in a charge of incompetence or inefficiency. The superintendent or a representative of the superintendent must meet with the teacher to resolve the matter. Mo. Rev. Stat. § 168.116.	None	The board of education considers the case. Mo. Rev. Stat. § 168.118.	The school board can limit the teacher to 10 witnesses. Mo. Rev. Stat. § 168.118.	The circuit court of the county where the employing school district is located hears the appeal. Mo. Rev. Stat. § 168.120.

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State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
Montana	Good cause. Mont. Code Ann. § 20-4-203	None	None	None	The district trustees consider the case. Mont. Code Ann. § 20-4-204.	None	The teacher may appeal a dismissal decision to the county superintendent and the district court if the teacher's employment is not covered by a collective bargaining agreement. If the teacher is covered by a collective bargaining agreement, the teacher must appeal to an arbitrator. Mont. Code Ann. 20-4-204.
Nebraska	Incompetency, neglect of duty, unprofessional conduct, insubordination, immorality, physical or mental incapacity, failure to give evidence of professional growth, other conduct that substantially interferes with the continued performance of duties, failure to accept employment, reduction in force, revocation or suspension of license. Neb. Rev. Stat. §§ 79-824, 79-829.	Incompetency, "which includes, but is not limited to, demonstrated deficiencies or shortcomings in knowledge of subject matter or teaching or administrative skills" Neb. Rev. Stat. §§ 79-824.	None	None	The school board considers the case. Neb. Rev. Stat. § 79-832.	None	Not available.

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State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
Nevada	Inefficiency; immorality; unprofessional conduct; insubordination; neglect of duty; physical or mental incapacity; decrease in the number of positions; conviction of a felony or of a crime involving moral turpitude; inadequate performance; evident unfitness for service; failure to comply with reasonable requirements; failure to show improvement and evidence of professional training and growth; advocating for the overthrow of the government of the United States or of the state of Nevada; advocating or teaching communism with the intent to indoctrinate pupils; any cause that constitutes grounds for the revocation of a teacher's license; willful neglect or failure to observe and carry out the requirements of Title 34; dishonesty; breaches in the security or confidentiality of achievement and proficiency examination questions and answers; intentional failure to observe and carry out the requirements of a plan to ensure the security of examinations; aversive intervention or use of restraints on a pupil with a disability. Nev. Rev. Stat. 391.312.	"Inadequate performance" is a cause for dismissal but is undefined. Teachers may also be dismissed for a "failure to show normal improvement and evidence of professional training and growth." Nev. Rev. Stat. 391.312.	If an employee's conduct may lead to dismissal, the employee must receive notice of admonishment in writing—including a description of deficiencies and action necessary to correct those deficiencies—and be given "reasonable time for improvement" that should not exceed three months for the first admonition. Nev. Rev. Stat. § 391.313.	None	A hearing officer requested by the superintendent or mutually selected by the parties considers the case. Nev. Rev. Stat. § 391.3161	The hearing officer must complete the hearing within 30 days after the time of designation and file a written report no later than 15 days after the conclusion of the hearing. Nev. Rev. Stat. § 391.3193.	The district court considers the appeal. Nev. Rev. Stat. § 391.3194.

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State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
New Hampshire	Immorality, failure to satisfactorily maintain the competency standards established by the school district, or failure to conform to regulations prescribed. N.H. Rev. Stat. Ann. § 189:13.	None	The superintendent of the local school district must demonstrate in cases of nonrenomination because of unsatisfactory performance that the teacher received written notice that the unsatisfactory performance could lead to dismissal, and that the teacher had a reasonable opportunity to correct the problems and failed to do so. N.H. Rev. Stat. Ann. § 189:14-a.	None	The school board considers the case. N.H. Rev. Stat. Ann. § 189:14-a.	None	A teacher may appeal a board's decision by petitioning the state board of education or requesting arbitration under the terms of a collective bargaining agreement, if applicable, but may not do both. N.H. Rev. Stat. § 189:14-b.
New Jersey	Inefficiency, incapacity, unbecoming conduct, or other just cause. N.J. Stat. Ann. § 18A:6-10.	None	If the charge is "inefficiency," the board must provide the employee with written notice of the alleged inefficiency and allow at least 90 days for the employee to correct and overcome the inefficiency. N.J. Stat. Ann. § 18A:6-11.	None	The local board of education makes the initial determination to dismiss. N.J. Stat. Ann. § 18A:6-11.  The charge is then forwarded to the commissioner or a person appointed to act on the commissioner's behalf to make a final determination. If the commissioner determines dismissal is necessary, the case is then referred to the Office of Administrative Law. N.J. Stat. Ann. § 18A:6-16.	For those hearings conducted by the Office of Administrative Law, prehearing conferences must be completed within 30 days of referral. The hearing must be held within 30 days after discovery is completed. N.J. Stat. Ann. 52:14B-10.1.	Not available

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State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
New Mexico	Just cause N.M. Stat. Ann. § 22-10A-24.	None	None	If a teacher receives an unsatisfactory evaluation, the school district provides the teacher with professional development and peer intervention. If the teacher still fails to demonstrate essential competencies by the end of that school year, a district may choose not to contract with that teacher. N.M. Admin. Code § 6.69.4.10.	The local school board or governing authority hears the case. N.M. Stat. Ann. § 22-10A-24.	The employee can then appeal to an arbitrator in a de novo hearing. The independent arbitrator's decision is binding on both parties and is final and nonappealable except when the decision was procured by corruption, fraud, deception, or collusion, in which case it can be appealed to the district court in the judicial district in which the public school or state agency is located. N.M. Stat. Ann. § 22-10A-25.	
New York	Insubordination, immoral character or conduct unbecoming a teacher, inefficiency, incompetency, physical or mental disability, neglect of duty, failure to maintain certification. N.Y. Educ. Law § 3014	None	None	None	The parties select a single officer from a list of arbitrators to hear the case. If the case involves pedagogical charges, the teacher can opt for a panel consisting of a hearing officer, a panel member selected by the teacher, and a member selected by the board. N.Y. Educ. Law § 3020a.	The prehearing conference must be held within 15 days of hearing officer selection. The final hearing must be completed no later than 60 days after the prehearing conference with a decision issued no later than 30 days after the last hearing day. N.Y. Educ. Law § 3020a.	The New York State Supreme Court hears the appeal, and the court may vacate for reasons specified in state law. N.Y. Educ. Law § 3020a.

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State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
North Carolina	Inadequate performance, immorality, insubordination, neglect of duty, physical or mental incapacity, habitual or excessive use of alcohol or nonmedical use of a controlled substance, conviction of a felony or a crime involving moral turpitude, advocating the overthrow of the U.S. government or the state of North Carolina, failure to fulfill duties and responsibilities; failure to comply with reasonable requirements; any cause that constitutes grounds for revocating a career teacher's teaching certificate, failure to maintain a current teaching certificate, failure to repay money owed to the state; justifiable decrease in number of positions; or providing false information or knowingly omitting a material fact on an application for employment. N.C. Gen. Stat. § 115C-325.	None	Fact finder must give consideration to regular and special evaluation reports and published standards of performance from the school district when determining whether an employee's professional performance is adequate. Failure to give notice of inadequacy is considered conclusive evidence of satisfactory performance. N.C. Gen. Stat. § 115C-325.	The superintendent has authority in low-performing schools to dismiss a teacher after one negative rating. N.C. Gen. Stat. § 115C-333 (b)(1).	The employee can choose to have a hearing in front of a case manager jointly selected by the superintendent and employee or the employee may go straight to a hearing with the school board. The state board of education maintains a master list of no more than 42 qualified case managers. The case managers must be certified arbitrators and complete a special training course approved by the state board of education. N.C. Gen. Stat. § 115C-325.	The case manager is required to hold a full-evidence hearing and report within 10 days of being appointed. The report is provided to the superintendent and teacher. The superintendent makes a decision whether to continue to recommend dismissal to the board of education. If the teacher opts out of a case manager hearing and opts for a board hearing, limited evidence is considered including documentary evidence used to support or rebut dismissal recommendation, written statements by the superintendent and teacher, and oral arguments based on record before the board.	The superior court hears the appeal. N.C. Gen. Stat. § 115C-325.

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State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
North Dakota	To dismiss: immoral conduct, insubordination, conviction of a felony, conduct unbecoming the position, failure to perform contracted duties without justification, gross inefficiency not corrected after written notice, continuing physical or mental disability that renders the individual unfit or unable to perform duties. N.D. Cent. Code § 15.1-15-07.	None	None	None	For dismissals, an administrative law judge considers the case. N.D. Cent. Code § 15.1-15-08  For nonrenewal, the board of the school district considers the case. N.D. Cent. Code § 15.1-15-06.	None	For appeals of dismissals, the district court hears the appeal.  N.D. Cent. Code § 15.1-15-08.
Ohio	Good and just cause Ohio Rev. Code Ann. § 3319.16	None	None	None	The teacher may request a hearing in front of the board or a referee.  The teacher and board must jointly choose a referee from a list provided by the superintendent of public instruction. Referees are solicited from the state bar association. Ohio Rev. Code Ann. § 3319.16.	None	The court of common pleas hears the appeal; the court must "examine the transcript and record of the hearing and shall hold such additional hearings as it considers advisable, at which it may consider other evidence in addition to the transcript and record." Ohio Rev. Code Ann. § 3319.16.

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State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
Oklahoma	Willful neglect of duty, repeated negligence in performance of duty, mental, or physical abuse to a child, incompetency, instructional ineffectiveness, unsatisfactory teaching performance, commission of an act of moral turpitude, felony conviction, criminal sexual activity, sexual misconduct, or abandonment of contract.  Okla. Stat. Ann. Tit. 70 § 6-101.22.	None	None	In order to dismiss a teacher for poor performance, an administrator must give notice to the teacher in writing and make a "reasonable effort" to remediate. The teacher then has up to two months to improve. If the teacher does not correct the problems in the notice, the administrator can make a recommendation to the superintendent for dismissal or nonreemployment. Okla. Stat. Ann. Tit. 70 § 6-101.24	The district board considers the case. Okl. St. Ann. Tit. 70 § 6-101.26.	None	The teacher is entitled to a trial de novo in district court of country where school is located. Okl. St. Ann. Tit. 70 § 6-101.27.
Oregon	Inefficiency, immorality, insubordination, neglect of duty, physical or mental incapacity, conviction of a felony or a crime, inadequate performance, failure to comply with reasonable requirements to show normal improvement and evidence of professional training and growth, or any cause that constitutes grounds for the revocation of a teacher's teaching license. Or. Rev. Stat. § 342.865.	None	Administrators should consider regular and special evaluation reports and any written standards of performance adopted by the board in determining whether the professional performance of a contract teacher is adequate. Or. Rev. Stat. § 342.865.	None	A panel of three members from the Fair Dismissal Appeal Board considers the case; the panel consists of one member representing district school board members; one member unaffiliated with common or union high school districts, and one member representing teachers or administrators. Or. Rev. Stat. § 342.905.	The Fair Dismissal Appeals Board panel prepares and sends a written decision to the district teacher, the district superintendent, the district school board, and the superintendent of public instruction within 140 days of the filing of an appeal. Or. Rev. Stat. § 342.905.	Judicial review is available in accordance with the state administrative law. Or. Rev. Stat. § 342.905.

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State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
Pennsylvania	Immorality, incompetency, unsatisfactory teaching performance based on two consecutive ratings of the employee's teaching performance as unsatisfactory, intemperance, cruelty, persistent negligence in the performance of duties, willful neglect of duties, physical or mental disability that substantially interferes with the employee's ability to perform essential functions, advocating or participating in un-American or subversive doctrines, conviction of a felony or acceptance of a guilty plea, or persistent and willful violation of or failure to comply with school laws. Pa. Stat. Ann. Tit. 24 § 11-1122.	Incompetence is not defined in the statute. But unsatisfactory teaching performance is based on two consecutive ratings of the employee's teaching performance that are to include classroom observations no less than four months apart in which the employee's teaching performance is rated as unsatisfactory. Pa. Stat. Ann. Tit. 24 § 11-1122.	None	Two consecutive unsatisfactory ratings are required to dismiss a teacher for unsatisfactory teaching performance, but the law does not specify whether dismissal is required after receiving two negative evaluations. Pa. Code 351-26.	The board of school directors considers the case, or the case undergoes arbitration under the collective bargaining contract. Pa. Stat. Ann. Tit. 24 § 11-1127, § 11-1133.	None	The employee may appeal to the superintendent of public instruction within 30 days of the board decision. A hearing must be held within 30 days of receipt of the request for the appeal. Pa. Stat. Ann. tit. 24 § 11-1131.  An appeal is taken in accordance with the state's Administrative Procedures Act. Pa. Stat. Ann. Tit. 24 § 11-1132.
Rhode Island	Good and just cause R.I. Gen. Laws § 16-13-3.	None	None	None	The governing board considers the case, although the district may agree to arbitration in the collective bargaining agreement. R.I. Gen. Laws § 16-13-4.	None	The Department of Elementary and Secondary Education hears the appeal, and the teacher has the right of further appeal to the superior court. R.I. Gen. Laws § 16-13-4.
South Carolina	Failure to give instruction in accordance with the directions of the superintendent or exhibiting evident unfitness for teaching. Evident unfitness for teaching includes persistent neglect of duty, willful violation of rules and regulations of district board of trustees, drunkenness, conviction of a violation of a state or federal law, gross immorality, dishonesty, or illegal use, sale or possession of drugs or narcotics. S.C. Code Ann. § 59-25-430.	None	None	An annual contract teacher who has not successfully completed the formal evaluation process or the professional growth plan for the second time must not be employed as a classroom teacher in a public school for a minimum of two years. S.C. Code Ann. § 59-26-40.	The district board of trustees considers the case. S.C. Code Ann. § 59-25-470	None	Court of common pleas hears the appeal. S.C. Code Ann. § 59-25-480.

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State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
South Dakota	Just cause, including breach of contract, poor performance, incompetence, gross immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of any policy or regulation of the school district. S.D. Codified Laws § 13-43-6.1.	None	None	None	The school board considers cases of termination and nonrenewal. S.D. Codified Laws § 13-43-6.2, 6.7.	None	The circuit court hears the appeal. S.D. Codified Laws § 13-46-1.
Tennessee	Incompetence, inefficiency, neglect of duty, unprofessional conduct, and insubordination Tenn. Code Ann. § 49-5-511.	Incompetence is defined as "being incapable, lacking adequate power, capacity or ability to carry out the duties and responsibilities of the position. This may apply to physical, mental, educational, emotional or other personal conditions. It may include lack of training or experience, evident unfitness for service, a physical, mental or emotional condition making the teacher unfit to instruct or associate with children or the inability to communicate and respect from subordinates or to secure cooperation of those with whom the teacher must work."  Inefficiency: "being below the standards of efficiency maintained by others currently employed by the board for similar work, or habitually tardy, inaccurate or wanting in effective performance of duties." Tenn. Code Ann. § 49-5-501.	None	None	An impartial hearing officer selected by the board considers the case. Tenn. Code Ann. § 49-5-512.	None	The appeal goes first to the board of education, then the chancery court hears the appeal; the review is de novo on the record of the hearing conducted by the hearing officer and reviewed by the board. Tenn. Code Ann. § 49-5-512.

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State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
Texas	Necessary reduction in staff or good cause. Good cause is defined as “the failure to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts” in Texas. Tex. Educ. Code Ann. § 21.154, 21.156.	None	None	Unclear; teachers may be eligible for “separation” after not meeting all of the requirements of an intervention plan for teachers in need of assistance by the time specified. Texas Administrative Code 150.1004.	A hearing officer (an attorney) certified by the state considers the case. Tex. Educ. Code Ann. § 21.252.	The hearing must conclude within 60 days of commissioner’s receipt of request for the hearing. Both parties may choose to extend the date up to 45 days. Tex. Educ. Code Ann. § 21.257.	Appeal to commissioner of education; the commissioner considers the appeal solely on the basis of the local record and may not consider any additional evidence or issues. The district court hears appeals from the Commissioner’s decision. Tex. Educ. Code Ann. § 21.301 § 21.307.
Utah	Behavior exhibiting unfitness for duty through immoral, unprofessional, or incompetent conduct; committing any other violation of standards of ethical conduct, performance, or professional competence. Utah Code Ann. § 53A-8-104; § 53-6-501.	None	To terminate a contract for unsatisfactory performance, the unsatisfactory performance must be documented in at least two evaluations conducted at any time within the preceding three years. Utah Code Ann. § 53A-8-104.	None	The board or hearing officer selected by the board considers the case. Utah Code Ann. § 53A-8-105.	None	An “appropriate court of law” hears the appeal. Utah Code Ann. § 53A-8-105.
Vermont	To nonrenew a contract: just and sufficient cause. To dismiss: incompetence, conduct unbecoming a teacher, failure to attend to duties, or failure to carry out reasonable orders and directions of the superintendent and school board. Vt. Stat. Ann. Tit. 16, § 1752.	None	None	None	The board of school directors considers the case. Vt. Stat. Ann. Tit. 16, § 1752.	None	Not available

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State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
Virginia	Incompetency, immorality, non-compliance with school laws and regulations, disability as shown by competent medical evidence when in compliance with federal law, conviction of a felony or a crime of moral turpitude, or other good and just cause. Va. Code Ann. § 22.1-307.	Incompetency includes a “consistent failure to meet the endorsement requirements for the position or performance that is documented through evaluation to be consistently less than satisfactory.” Va. Code Ann. § 22.1-307.	None	None	The school board or teacher can elect to have a hearing in front of a three-member fact-finding panel jointly selected by the superintendent and teacher prior to the school board considering the case. Va. Code Ann. § 22.1-311; §22.1-312.	The panel hearing must occur “within 30 business days” after the panel is convened. Va. Code Ann. § 22.1-312. If a panel conducts the hearing, the panel must issue a written report with findings of fact and a recommendation to the board no later than 30 days after the hearing. Va. Code Ann. § 22.1-312. If the school board conducts the hearing, the board must give the teacher its written decision no later than 30 days after the hearing. Va. Code Ann. § 22.1-313.	The circuit court hears the appeal and may receive other evidence as the ends of justice require. Va. Code Ann. § 22.1-314.
Washington	Probable cause. Wash. Rev. Code § 28A.405.210.	None	None	A teacher who receives an unsatisfactory evaluation is put on an improvement program. If the teacher does not show improvement during the 60-day probationary period, this may constitute a finding of “probable cause” under the dismissal statute. Wash. Rev. Code §28A.405.100.	A hearing officer (lawyer or arbitrator) nominated by appointees of the teacher and school board or nominated by the presiding judge of the district considers the case. Wash. Rev. Code §28A.405.310.	The hearing officer must issue findings of fact, conclusions of law, and a final decision within 10 days of the conclusion of the hearing. Wash. Rev. Code § 28A.405.310.	The superior court in the county in which the school district is located hears the appeal “expeditiously.” Wash. Rev. Code §28A.405.340.

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State	Reasons for dismissal	Definition of incompetence or ineffectiveness	Procedures for dismissal due to ineffectiveness	Connection between unsatisfactory evaluations and dismissal	District-level fact finder	Special hearing rules or regulations	Appeals process
West Virginia	Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, conviction of a felony, or a guilty plea or a plea of nolo contendere to a felony charge. W. Va. Code § 18A-2-8.	None	A charge of unsatisfactory performance can only be made as a result of an employee performance evaluation. W. Va. Code § 18A-2-8.	A teacher who receives a written improvement plan will be given an opportunity to improve their performance through the plan. If the next evaluation shows that the teacher is still not performing satisfactorily, the evaluator may recommend dismissal. W. Va. Code § 18A-2-12 (h).	An administrative law judge conducts level-three hearings. W. Va. Code § 6C-2-4; W. Va. Code § 18A-2-8.	The administrative law judge must issue a decision within 30 days following the hearing. W. Va. Code § 6C-2-4.	The circuit court considers appeals. W. Va. Code § 6C-2-5.
Wisconsin	Inefficiency or immorality, willful and persistent violation of reasonable regulations, or other good cause. This only applies to teachers in certain districts under this section. Wis. Stat. § 118.23.	None	None	None	The governing body of the school system or school considers the case. Wis. Stat. § 118.23.	None	The governing board's decision is final. Wis. Stat. § 118.23.
Wyoming	Incompetency, neglect of duty, immorality, insubordination, unsatisfactory performance, or any other good or just cause. Wyo. Stat. Ann. § 21-7-110.	None	None	None	A jointly selected independent hearing officer who is "impartial, experienced in education, labor and employment matters and in the conduct of hearings" considers the case. Wyo. Stat. Ann. § 21-7-110.	The hearing officer must issue findings and recommendations within 20 days following the conclusion of the hearing. Wyo. Stat. Ann. § 21-7-110.	The district court considers the appeal, taken in accordance with the Wyoming Administrative Procedure Act. Wyo. Stat. Ann. § 21-7-110.

# Endnotes

- 1 Length of hearings, legal expenses, union opposition and many other barriers to removing teachers have been reported across the county for many years. For examples, please see: Jason Song, "Firing Teachers Can be a Costly and Tortuous Task," *LA Times*, May 3, 2009, available at <http://articles.latimes.com/2009/may/03/local/me-teachers3>; Jason Song, "School Board Members Acknowledge Swifter Firings are Needed," *LA Times*, May 13, 2009, available at <http://articles.latimes.com/2009/may/13/local/me-teachers13>; Scott Reeder, "Tenure Frustrates Drive for Teacher Accountability," Small Newspaper Group Springfield Bureau, available at <http://thehidden-costsoftenure.com/stories/?prcss=display&id=266539>; Stacy Brandt, "Firing Teachers Can be a Headache for Districts," *North County Times*, November 25, 2007, available at [http://www.nctimes.com/news/local/article\\_e6c5a19c-7770-553d-9cab-8763359f0208.html](http://www.nctimes.com/news/local/article_e6c5a19c-7770-553d-9cab-8763359f0208.html); William Gillespie, "Want to Fix Education? Fire Bad Teachers," *Business Lexington*, February 16, 2010, available at [http://www.bizlex.com/Articles-c-2010-02-16-91427.113117\\_Want\\_to\\_fix\\_education\\_Fire\\_bad\\_teachers.html](http://www.bizlex.com/Articles-c-2010-02-16-91427.113117_Want_to_fix_education_Fire_bad_teachers.html)
- 2 Steven Brill, "The Rubber Room: The Battle over New York City's Worst Teachers," *The New Yorker*, August 31, 2009, available at [http://www.newyorker.com/reporting/2009/08/31/090831fa\\_fact\\_brill](http://www.newyorker.com/reporting/2009/08/31/090831fa_fact_brill).
- 3 The White House Office of the Press Secretary, "Remarks by President Barack Obama to the U.S. Hispanic Chamber of Commerce on a Complete and Competitive American Education," March 10, 2009, available at [http://www.whitehouse.gov/the\\_press\\_office/Remarks-of-the-President-to-the-United-States-Hispanic-Chamber-of-Commerce](http://www.whitehouse.gov/the_press_office/Remarks-of-the-President-to-the-United-States-Hispanic-Chamber-of-Commerce); U.S. Department of Education, "Partners in Reform: Remarks by Arne Duncan to the National Education Association," July 2, 2009, available at <http://www2.ed.gov/news/speeches/2009/07/07022009.html>.
- 4 Stephen Sawchuk, "AFT Chief Vows to Revise Teacher-Dismissal Process," *Education Week*, January 12, 2010, available at [http://www.edweek.org/ew/articles/2010/01/12/18aft\\_ep.h29.html?tkn=WUPFDN0hFvRY7faLOP+zyoIf4I26KloGTDD](http://www.edweek.org/ew/articles/2010/01/12/18aft_ep.h29.html?tkn=WUPFDN0hFvRY7faLOP+zyoIf4I26KloGTDD).
- 5 Patrick McGuinn, "Ringing the Bell for K-12 Teacher Tenure Reform" (Washington: Center for American Progress, 2010); Robin Chait, "Removing Chronically Ineffective Teachers: Barriers and Opportunities" (Washington: Center for American Progress, 2010); Joan Baratz-Snowden, "Fixing Tenure: A Proposal for Assuring Teacher Effectiveness and Due Process" (Washington: Center for American Progress, 2009).
- 6 The Civil Rights Act of 1964 protects teachers at public schools from discrimination based on race, color, religion, sex and national origin. 42 U.S.C. et seq. (2000).
- 7 See David J. Strom and Stephanie S. Baxter, "From the Statehouse to the Schoolhouse: How Legislatures and Courts Shaped Labor Relations for Public Education Employees During the Last Decade," *Journal of Law and Education* 30 (2) (2001): 275-304.
- 8 Thomas A. Kersten, "Teacher Tenure: Illinois School Board Presidents' Perspective and Suggestions for Improvement," *Planning and Changing* 37 (3-4) (2006): 234-257.
- 9 For more information on the IMPACT system, see District of Columbia Public Schools, "IMPACT Guidebooks," available at <http://dcps.dc.gov/DCPS/In+the+Classroom/Ensuring+Teacher+Success/IMPACT+%28Performance+Assessment%29/IMPACT+Guidebooks/IMPACT+Guidebooks>.
- 10 Jason Song, "L.A. Unified Plans to Fire More Non-Tenured Teachers Than Usual," *LA Times*, February 10, 2010, available at <http://articles.latimes.com/2010/feb/10/local/la-me-lausd-teachers10-2010feb10>.
- 11 National Center for Education Statistics, *Schools and Staffing Survey*, "Public School District Data File," (U.S. Department of Education, 2007-08); McGuinn, "Ringing the Bell for K-12 Teacher Tenure Reform," Table 8.
- 12 McGuinn, "Ringing the Bell for K-12 Teacher Tenure Reform."
- 13 Louis Fischer, David Schimmel, and Leslie R. Stellan, *Teachers and the Law*, 7 ed. (Boston: Pearson Education, Inc. 2007).
- 14 Emily Cohen, Kate Walsh, and RiShawn Biddle, "Invisible Ink in Collective Bargaining: Why Key Issues Are Not Addressed" (Washington: National Council on Teacher Quality, 2008), 8.
- 15 Fischer, Schimmel, and Stellan, *Teachers and the Law*, p. 35.
- 16 Ibid.
- 17 Ibid.
- 18 Ibid. See also David L. Dagley and Carole A. Veir, "Subverting the Academic Abstention Doctrine in Teacher Evaluation: How School Reform Legislation Defeats Itself," *Brigham Young University Education and Law Journal* 123 (1) (2002). For example, Minnesota state law requires: "A contract must not be terminated unless the teacher fails to correct the deficiency after being given written notice of the specific items of complaint and reasonable time within which to remedy them." Minn. Stat. Ann. § 122A.40.
- 19 Dagley and Veir, "Subverting the Academic Abstention Doctrine in Teacher Evaluation: How School Reform Legislation Defeats Itself"
- 20 Cal. Educ. Code § 44938.
- 21 Dagley and Veir, "Subverting the Academic Abstention Doctrine in Teacher Evaluation: How School Reform Legislation Defeats Itself"
- 22 Consuelo G. Lopez and David J. Sperry, "The Use of Hearing Officers in Public Educator Termination Actions," *West's Education Law Quarterly* 4 (2) (1995): 210-238.
- 23 Brill, "The Rubber Room: The Battle over New York City's Worst Teachers"; Chait, "Removing Chronically Ineffective Teachers: Barriers and Opportunities."
- 24 For example, see Ohio Rev. Code Ann. § 3319.161.
- 25 Colo. Rev. Stat. § 22-63-302(5)(b).
- 26 For example, see Illinois Administrative Code 51, Title 23, Subtitle A, Chapter I, Subchapter b, Part 51: Dismissal of Tenured Teachers Under Article 24 and Dismissal of Tenured Teachers and Principals Under Article 34 of the School Code.
- 27 For example, see N.M. Stat. Ann. § 22-10A-28; Cal. Educ. Code § 44944.
- 28 Kan. Stat. Ann. § 72-5442.
- 29 Ariz. Rev. Stat. § 15-542 (b).

- 30 Colo. Rev. Stat. § 22-63-302 (7)(e).
- 31 Henry G. Stewart and Sally L. Adams, "Arbitration of Teacher Dismissals and Other Discipline Under the Education Reform Act," *Massachusetts Law Review* 83 (1998).
- 32 For example, Mo. Rev. Stat. 168.118 (7).
- 33 Ala. § Code 16-24-10(a).
- 34 Nev. Rev. Stat. § 391.3193.
- 35 Colo. Rev. Stat. § 22-63-302(7)(e).
- 36 Personal communication from Wanda Barrs, chair, Georgia State Board of Education, February 1, 2010.
- 37 Dagley and Veir, "Subverting the Academic Abstention Doctrine in Teacher Evaluation: How School Reform Legislation Defeats Itself."
- 38 National Center for Education Statistics, *Schools and Staffing Survey*, "Public School District Data File" (U.S. Department of Education, 2007-08); McGuinn, "Ring the Bell for K-12 Teacher Tenure Reform," Table 8.
- 39 Daniel Weisberg and others, "The Widget Effect: Our National Failure to Acknowledge and Act on Differences in Teacher Effectiveness" (New York: The New Teacher Project, 2009).
- 40 For example, Nevada state law lists nineteen possible reasons for dismissal (Nev. Rev. Stat. § 391.312) including "advocating [the] overthrow of the Government of the United States or the State of Nevada" while Washington requires only "probable cause" for dismissal (Wash. Rev. Code § 28A.405.210).
- 41 Ga. Code Ann. § 20-2-940.
- 42 National Council on Teacher Quality, *2009 State Teacher Policy Yearbook* (2010), Figure 124.
- 43 N.Y. Educ. Law § 3020-a(2)(c).
- 44 For example, see *Rogers v. Board of Educ. of City of New Haven*, 252 Conn. 753, 749 A.2d 1173 (Conn. 2000).
- 45 A principal in Los Angeles characterized dismissal for incompetence in the following way: "One of the toughest things to document, ironically, is [teachers'] ability to teach. . . . It's an amorphous thing." Song, "Firing Teachers Can be a Costly and Tortuous Task."
- 46 Personal communications from Mary Jo McGrath, founder and president of McGrath Systems, Inc., December 22, 2009, January 20, 2010.
- 47 Pa. Stat. Ann. Tit. 24 § 11-1122.
- 48 According to the National Council on Teacher Quality, only three states (Montana, Rhode Island, and South Dakota) and the District of Columbia have no law or policy on evaluation. National Council on Teacher Quality, *2009 State Teacher Policy Yearbook*, Figure 62.
- 49 *Ibid.*, Figure 121.
- 50 *Ibid.*, Figure 65.
- 51 Song, "Firing Teachers Can be a Costly and Tortuous Task."
- 52 Cal. Educ. Code § 44938.
- 53 Dagley and Veir, "Subverting the Academic Abstention Doctrine in Teacher Evaluation: How School Reform Legislation Defeats Itself."
- 54 Alaska Stat. § 14.20.149.
- 55 *Ibid.*
- 56 *Ibid.*
- 57 National Council on Teacher Quality, "Teacher Rules, Roles, and Rights (Custom Report)," available at <http://www.nctq.org/tr3/search.jsp>.
- 58 New York School Boards Association, "Accountability for All: 5 Ways to Reform the Teacher Discipline Process" (2007).
- 59 For example, see the process for selecting a hearing officer in Connecticut. Conn. Gen. Stat. § 10-151.
- 60 This practice can vary widely by state. For more information see National Council on Teacher Quality, "Teacher, Rules, Roles, and Rights (Custom Report)."
- 61 Emily Cohen, Kate Walsh and RiShawn Biddle, "Invisible Ink in Collective Bargaining: Why Key Issues Are Not Addressed" (Washington: National Council on Teacher Quality, 2008).
- 62 Contract between Los Angeles Unified School District and United Teachers Los Angeles 2006-2009, available at [http://www.utla.net/utla/LAUSD\\_CONTRACTS/2006\\_2009\\_Contract2.pdf](http://www.utla.net/utla/LAUSD_CONTRACTS/2006_2009_Contract2.pdf).
- 63 Jennifer Medina, "Progress Slow in City Goal to Fire Bad Teachers," *The New York Times*, February 23, 2010.
- 64 Personal communication from Mary Jo McGrath.
- 65 Personal communication from Andrew Rosen, executive director of employee relations, School District of Philadelphia, January 26, 2010.
- 66 For example, the current contract between the Washington, DC, Teachers' Union and District of Columbia Public Schools allows a teacher to "challenge an alleged violation of the evaluation procedure" through the union's grievance process. Collective Bargaining Agreement between the Washington Teachers' Union and District of Columbia Public Schools, available at <http://www.wtlocal6.org/pdf/contract.pdf>.
- 67 See e.g., Letter Agreement between New York Department of Education and United Federation of Teachers, April 15, 2010, available at <http://schools.nyc.gov/NR/rdonlyres/DE11FD24-AF3C-4323-AC6E-DFAC53D43B05/0/RubberRoomAgreement.pdf>.
- 68 Weisberg and others, "The Widget Effect: Our National Failure to Acknowledge and Act on Differences in Teacher Effectiveness."
- 69 14 DE Admin. Code 106A (8.2) (effective 7/11/2011).
- 70 Susan Moore Johnson and others, "A User's Guide to Peer Assistance and Review," *The Project on the Next Generation of Teachers* (Cambridge, MA: Harvard Graduate School of Education, 2008), available at <http://www.gse.harvard.edu/~ngt/par/parinfo/>.
- 71 *Ibid.*
- 72 Colorado State General Assembly Legislative Council, "Study of Teacher Evaluation and Dismissal: Recommendation for 1998" (1997).
- 73 *Ibid.*

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**Saba Bireda** comes to American Progress from Philadelphia, where she was a Philadelphia Bar Foundation Fellow with the Education Law Center. As a fellow, she worked on several education policy issues, including school climate and discipline, charter schools, teacher quality, and high school graduation exams. Her efforts included administrative and legislative advocacy, producing fact sheets and reports, and litigation. Bireda also gained legal experience as an associate in the corporate litigation department of Morgan Lewis and Bockius.

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