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TENURE REFORM AMIDST ECONOMIC UNCERTAINTY: A NEW JERSEY MODEL FOR RETAINING QUALITY TEACHERS

by ALISHA HOWELL

Forty percent of New Jersey teachers who begin in a district, in a given year, never receive tenure in that district.¹ Despite this statistic, New Jersey legislators, educators, and organizations perceived a need for tenure reform within the public school system and collaborated to create the Teacher Effectiveness and Accountability for the Children of New Jersey Act (TEACH NJ) – which was signed into law on August 6, 2012.²

“There is a general public perception that it is difficult to remove ineffective teachers from their classrooms,” said Carol Ashley, Legal Professor of Education at Loyola University Chicago School of Law, “[c]hanging teacher evaluation procedures . . . is a district’s response to this perception.”³ As school systems across the country grapple with how best to remove ineffective teachers, TEACH NJ exemplifies ideas of prolonging tenure acquisition and revoking tenure due to poor evaluations.⁴

COMPONENTS OF THE NEW LAW

TEACH NJ ties tenure acquisition directly to teacher effectiveness, rather than solely the number of years a teacher has been in the profession; restricts tenure acquisition to new teachers who have received two consecutive years of positive evaluations; and increases the number of years of teaching required to attain tenure from three to four years.⁵

New Jersey’s model for retaining quality teachers under TEACH NJ encompasses (1) recognition of seniority, (2) reduction of test score importance to instructor performance; (3) strengthening administrative responsibility; and (4) lessening the cost of litigation associated with teacher termination.⁶

There is a catch, however. Although the law is in place, it is dependent upon an evaluation system that is currently not implemented, but instead is being tested in 30 pilot districts.⁷ In this backwards approach to education reform, New Jersey aims to use the successes and failures experienced by teachers in the pilot schools to heavily influence its forthcoming formalized evaluation criteria.⁸

Some questioned the effectiveness of TEACH NJ without an established evaluation plan and have urged the Senate Education Committee (to no avail) to stay the implementation of the law until the necessary entities agreed upon an evaluation system.⁹

CHANGES IMPOSED BY TEACH NJ & CHALLENGES AHEAD

The governor, as well as other politicians and some educators, strongly oppose the “Last In, First Out” (LIFO) policy - requiring newer teachers to be laid off before those with more teaching experience - because it fails to account teacher

performance.¹⁰ The New Jersey Education Association (NJEA), on the other hand, argues that experienced teachers must remain in schools to mentor younger teachers.¹¹ Further, NJEA believes a repeal of LIFO motivates districts to save money by dismissing effective senior teachers.¹² “When layoffs become necessary, [LIFO] protects effective teachers from being targeted [simply] because of their age or salaries,” said Steve Baker of the NJEA.¹³

Due to reduced enrollment, teachers in New Jersey’s largest district, Newark County, will face hundreds of layoffs over the next few years, and many remain frustrated by LIFO and advocate that principals should be able to retain and reward top teachers regardless of seniority.¹⁴ Others also foresee many stellar, but young teachers losing their jobs through the implementation of TEACH NJ, which they claim is not in the best interest of New Jersey students.¹⁵

Despite this reality, the governor, in an effort to gain NJEA’s support, ultimately abandoned plans to eliminate the LIFO policy.¹⁶ But a New Jersey lawmaker introduced a bill to eliminate the policy just days after TEACH NJ became law.¹⁷

Beyond disagreement with the LIFO policy, teachers and parents are likely to disagree with government entities on the importance of standardized test scores in determining a teacher performance, as well. In New Jersey, the governor heavily stressed tying teacher performance to standardized test scores.¹⁸ NJEA argues that regardless of a teacher’s motivation and experience, systemic and environmental issues negatively affect student performance on standardized tests and in the classroom and that quality teachers should not be punished for this reality.¹⁹

Some New Jersey parents, concerned that there is too much focus on helping students succeed on standardized tests rather than providing a well-rounded curriculum, also voiced their concerns.²⁰ As Baker stated, “There is no test score short-cut. To improve test scores, there must be comprehensive curriculum taught in the classroom.”²¹

To ease these concerns, the new law provides that teacher evaluations will not be predominantly determined on standardized test scores, and will include other factors such as teacher and district- developed assessments.²² “In schools with large proportions of at-risk students, it may be fairer to measure teacher effectiveness based on whether students make a year’s worth of academic

growth rather than if they meet statewide [standardized] test averages,” said Ashley.²³

However, critics continue to stress TEACH NJ fails to address the large achievement gap between affluent students and low-income students on standardized tests.²⁴ In the 2010-2011 school year, low-income students scored 31 points lower than their peers on the New Jersey Assessment of Skills and Knowledge (NJ ASK) test in language arts, and 24 points below their peers in math.²⁵

Who evaluates teacher performance is another critical component to retaining quality teachers. TEACH NJ provides that an in-district principal or other administrator, rather than teachers, must conduct evaluations.²⁶ “This action could influence principals to be more adamant and involved in the mentoring and success of their teachers,” said Ashley.²⁷

Lastly, the financial burden of increased litigation as a result of the new law is an issue that NJEA brought to the forefront to ensure fair due process for teachers charged with ineffectiveness at a reasonable cost to taxpayers.²⁸ To meet this goal, TEACH NJ requires that all legal actions associated with tenure be dealt with in arbitration proceedings, and not the courts.²⁹ Before TEACH NJ the removal of a teacher could take years and cost over \$100,000.³⁰ Now, through arbitration a dismissal proceeding is limited to 100 days and capped at \$7,500.³¹

LOOKING TO THE FUTURE

New Jersey lawmakers and educators view TEACH NJ as an important step toward education reform, but certainly not the ultimate goal.³² Since the implementation of the Act, merit pay reform in Newark, which financially awards highly effective teachers up to \$12,500 annually in bonus pay, became a reality.³³ The governor anticipates this reform will lead to further academic improvement in the state’s lowest performing schools.³⁴ The future of LIFO, however, still hangs in the balance.

Although the long-term effects of TEACH NJ have yet to be seen, it has set a starting point for critical education reform.

NOTES

- 1 Interview with Steve Baker, Associate Director for Public Relations, New Jersey Education Association (Nov. 15, 2012).
- 2 John Mooney, *Compromise, Caffeine and Trade-Offs: Behind NJ's New Tenure Reform Bill*, WNYC.ORG (Aug. 7, 2012), <http://www.wnyc.org/articles/new-jersey-news/2012/aug/07/compromise-caffeine-and-trade-offs-behind-njs-new-tenure-reform-bill>.
- 3 Interview with Carol Ashley, Legal Professor of Education, Loyola University School of Law (Oct. 5, 2012).
- 4 Jarrett Renshaw, *Gov. Christie Hails Signing of Tenure Reform Bill as 'A Great Day for Good Teachers'*, STAR-LEDGER (Aug. 7, 2012), http://www.nj.com/news/index.ssf/2012/08/gov_christie_hails_signing_of.html.
- 5 Office of the Governor, *Governor Chris Christie Signs Revolutionary Bipartisan Tenure Reform Legislation Into Law* (Aug. 6, 2012), <http://www.state.nj.us/governor/news/news/552012/approved/20120806c.html>.
- 6 *Id.*
- 7 *Id.*
- 8 Baker, *supra* note 1.
- 9 New Jersey School Board Member - Laura Waters, *Tenure Reform Testimony: LIFO and Teacher Evaluations*, NJ Left Behind Blog (Mar. 6, 2012), <http://njleftbehind.blogspot.com/2012/03/tenure-reform-testimony-lifo-and.html>.
- 10 Teresa Shumay, *NJ's Christie Signs Teacher Tenure Reform Into Law*, THE FOUNDRY BLOG – HERITAGE FOUND. (Aug. 7, 2012), <http://blog.heritage.org/2012/08/07/njs-christie-signs-teacher-tenure-reform-into-law>
- 11 New Jersey Education Association, *Talking Points on the New Tenure Law* (Aug. 2012), <http://www.njea.org/njea-media/pdf/TenureLawTalkingPoints2012.pdf?1351020826564>
- 12 Baker, *supra* note 1.
- 13 *Id.*
- 14 Star Ledger Editorial Board, *Education Reform Not Done in N.J.; Next Up, 'Last In, First Out'* (Aug. 10, 2012) http://blog.nj.com/njv_editorial_page/2012/08/education_reform_not_done_in_n.html; New Jersey's 10 Largest School Districts, http://www.all4ed.org/about_the_crisis/schools/state_and_local_info/NewJersey/10_largest_districts (last accessed Nov. 27, 2012)
- 15 Star Ledger Editorial Board, *supra* note 14.
- 16 Shumay, *supra* note 10.
- 17 Jessica Calefati, *Monmouth County Senator Calls for More N.J. Tenure Reform*, THE STAR LEDGER (Aug. 9, 2012), http://www.nj.com/politics/index.ssf/2012/08/monmouth_county_senator_calls.html.
- 18 Barbara Keshishian, *NJEA: Meaningful Reform is More Than Evaluation, Tenure*, NEW JERSEY STAR-LEDGER (Nov. 6, 2011), <http://www.njea.org/njea-media/pdf/2011KeshishianStarLedger.pdf?1340983670431>.
- 19 *Id.*
- 20 *Id.*
- 21 Baker, *supra* note 1.
- 22 P.L. 2012, ch. 26, Sen. No. 1455: Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act, http://www.njleg.state.nj.us/2012/Bills/AL12/26_.PDF.
- 23 Ashley, *supra* note 2.
- 24 Townsquare News Network, *Chris Christie Signs Changes to NJ Teacher Tenure* (Aug. 6, 2012), <http://statehouseteps.com/chris-christie-to-sign-changes-to-nj-teacher-tenure-law/>; Sal-

vador Rizzo and Jessica Calefati, *Critics Say Education Reform Bill Signed by Gov. Christie Doesn't Fix State's Biggest Issues* (Aug. 20, 2012), http://www.nj.com/news/index.ssf/2012/08/trenton_applauds_latest_educat.html.

25 Tom Hester, *N.J. School Test Results Show Low-Income Urban Students Continue to Struggle* (Feb. 1, 2012), <http://www.newjerseynewsroom.com/state/nj-school-test-results-show-low-income-urban-students-continue-to-struggle>.

26 New Jersey Education Association, *The New Tenure Law: How will it affect you* (Sept. 28, 2012), http://www.njea.org/njea-media/pdf/TenureLawQ-A_2012.pdf?1351020826563

27 Ashley, *supra* note 2.

28 Office of the Governor, *supra* note 5.

29 New Jersey Education Association, *supra* note 26.

30 Office of the Governor, *supra* note 5.

31 *Id.*

32 Joe Greene, *Gov. Christie Wins Teacher Tenure Battle But Still Wants More* (Aug. 7, 2012), <http://www.newjerseynewsroom.com/state/chris-christie-wins-battle-to-reform-teacher-tenure-laws-still-wants-more-change>; Rizzo and Calefati, *supra* note 24.

33 Office of the Governor, *Bringing Performance Pay For Newark Teachers Marks Yet Another Milestone In Governor Christie's Effort To Deliver On The Promise Of A High-Quality Education For Every New Jersey Student* (Nov. 16, 2012), <http://www.nj.gov/governor/news/news/552012/approved/20121116a.html>.

34 *Id.*