

Teacher Tenure Reform Note

The subjects of reforming teacher tenure and promoting teacher effectiveness have been high-profile issues across several states due to significant implications for both education and fiscal policy. Legislation passed in Louisiana, Maine and New Jersey are recent examples other states may wish to consider when examining the potentially controversial issues surrounding the process of changing or modifying existing tenure programs for public educators.

Louisiana

[HB 974](#), which became law in 2012, requires school superintendents to base all employment related decisions, including dismissal of teachers and administrators, primarily on performance and effectiveness. The bill limits tenure eligibility to teachers that have been rated “highly effective” for 5 years within a 6-year period starting September 1, 2012. It also requires that tenure be revoked if a tenured teacher receives an “ineffective” performance rating starting in the beginning of the 2013-2014 school year. Lastly, it prohibits a pay raise in the year following an “ineffective” performance rating received by a teacher or an administrator.

Maine

Maine’s [H 1376](#) , which became law in 2012, requires that each school administrative unit develop and implement a performance evaluation and professional growth system for educators. As under prior law, the school board determines the “method” of evaluation and the superintendent is responsible for implementing the school-board-adopted evaluation method. The evaluation and growth system must include multiple measures of effectiveness, including student learning and growth as well as other factors. Below is a summary of the Act developed by the Maine Office of Legislative Information:

This bill requires school administrative units to develop and implement comprehensive performance evaluation and professional growth systems for teachers and principals. The bill sets forth standards that must be met by the systems, including a requirement that multiple measures of effectiveness must be used in evaluations, that evaluators must be properly trained and that a system must include a process for using information from the evaluation process to inform professional development. The Department of Education is required to adopt rules regarding the requirements of the system. The requirement for development and implementation of the system is phased in with full implementation required in school year 2015-2016.

Effectiveness ratings must be treated as a significant factor in determining the order of layoff and recall when reductions in force occur. The bill provides that receipt of a rating of ineffective for 2 consecutive years constitutes just cause for nonrenewal of a teacher's contract. Any appeal or grievance of a rating or evaluation under the system is limited to matters of implementation, not professional judgment.

The bill establishes a new targeted funding component under the Essential Programs and Services formula, to be used for development and implementation of the required performance evaluation and professional growth system.

The bill requires the department to collect data on the success and retention of teachers who complete approved teacher preparation programs in the State. It also requires the State Board of Education to include in its certification rules a requirement that an applicant for a provisional teacher

certificate must complete a 10-week student teaching experience before attaining certification and a requirement that a person seeking an endorsement to teach either elementary or middle school must pass a rigorous test of mathematics and evidence-based reading instruction. Finally, the bill requires the State Board of Education to adopt rules setting forth a path to provisional certification for a person who has not completed a traditional teacher preparation program but who has a baccalaureate degree and demonstrates subject matter competency.

New Jersey

[S 1455](#), which became law in 2012, seeks to raise student achievement by improving instruction through the adoption of evaluations that provide specific feedback to educators, inform the provision of aligned professional development, and inform personnel decisions. The bill establishes a mentoring program to enhance teacher knowledge of, and strategies related to, the core curriculum content standards in order to facilitate student achievement and growth; identify exemplary teaching skills and educational practices necessary to acquire and maintain excellence in teaching. An analysis by the New Jersey Assembly Budget Committee issued a summary of the legislation:

As amended, this bill requires each school district to submit annually to the Commissioner of Education, for review and approval, an evaluation rubric that the district will use to assess the effectiveness of its teaching staff members. The district may use the model rubric which the commissioner is required to establish or it may use one that meets the minimum standards provided in the bill. A board of education must: adopt a rubric approved by the commissioner by December 31, 2012; implement a pilot program to test the rubric beginning no later than January 31, 2013; and beginning with the 2013-2014 school year, ensure implementation of the rubric for all educators in the district.

Under current law, all teaching staff members whose positions require that they hold a certificate issued by the State Board of Examiners receive tenure after completing three years of employment in a school district. This bill provides that all teaching staff members employed on or after the bill's effective date will become tenured after completing four years of employment in the school district. According to the provisions of the bill, teachers, principals, assistant principals, and vice-principals will have the following additional requirements for acquiring tenure:

- a teacher will be required to complete a district mentorship program and receive a rating of effective or highly effective in two annual summative evaluations within the first three years after the initial year in which the teacher completes the mentorship program; and
- a principal, assistant principal, or vice-principal will be required to be rated as effective or highly effective in two annual summative evaluations within the first three years of employment following the initial year of employment.

The bill provides that a teacher, principal, assistant principal, or vice-principal who is transferred or promoted to another position in the same district on or after the effective date of the bill must meet the current statutory requirement of two years of employment in the new position in order to acquire tenure in that position, but additionally the employee must be evaluated as effective or highly effective in two annual summative evaluations within the first three years of employment in the new position. In the case of any tenured teacher, principal, assistant principal, or vice-principal who has been rated effective or highly effective on his most recent annual summative evaluation, and who accepts employment in the same position in an underperforming school in another district, that person will be eligible for tenure after being evaluated as effective or highly

effective in at least one annual summative evaluation within the first two years of employment in the underperforming school.

In order to ensure the effectiveness of its teachers, the bill directs each public school to convene a school improvement panel. The panel will include the principal, or his designee, an assistant or vice-principal, and a teacher. The principal's designee must be an individual employed in the district in a supervisory role and capacity who possesses a school administrator certificate, principal certificate, or supervisor certificate. The teacher will be selected in consultation with the majority representative and must have a demonstrated record of success in the classroom. The panel will: oversee the mentoring of teachers; conduct evaluations of teachers, provided that the teacher on the panel will not be included in the evaluation process unless the majority representative has agreed to the contrary; and identify professional development opportunities for all instructional staff members.

Under the bill, each board of education must implement a mentoring program in which effective experienced teachers are paired with first-year teachers to provide observation and feedback, opportunities for modeling, and confidential support and guidance. The bill also provides that the board of education, the principal or the superintendent must provide teaching staff members with ongoing professional development and provide additional professional development for any teaching staff member who fails or is struggling to meet the performance standards established by the board for his job. When a teaching staff member is rated ineffective or partially effective, a corrective action plan must also be developed to address deficiencies outlined in the employee's evaluation.

Under the provisions of the bill the superintendent of schools is required to promptly file a charge of inefficiency whenever a tenured teacher, principal, assistant principal, and vice-principal is rated ineffective or partially effective in an annual summative evaluation and in the following year the employee is rated ineffective. A charge of inefficiency must also be filed when the employee is rated partially effective in two years or is rated ineffective in one year's annual summative evaluation and in the next year is rated partially effective, however in this case, upon a written finding of exceptional circumstances, the superintendent may defer filing the tenure charge until after the next annual summative evaluation.

The bill requires binding arbitration for contested cases involving the dismissal or reduction in compensation of tenured employees in the school district. These contested cases will no longer be referred to Administrative Law Judges, and the final determination on the case will no longer be made by the Commissioner of Education, which is the process under current law. The bill provides that the Commissioner of Education will maintain a panel of 25 arbitrators, with eight designated by the New Jersey Education Association, three designated by the American Federation of Teachers, nine designated by the New Jersey School Boards Association, and five designated by the New Jersey Principals and Supervisors Association. The bill includes a cap on the costs of the arbitration, with the arbitrator being limited to no more than \$1250 per day and no more than \$7500 per case. The costs and expenses of the arbitrator will be borne by the State. Arbitrators will be assigned by the commissioner randomly to hear cases.

The bill provides that for a charge of inefficiency filed against a teacher, principal, assistant principal, or vice-principal based on the rating given in an annual summative evaluation, as described above, the board of education must forward the charge to the commissioner within 30 days

of the filing, unless the board determines that the evaluation process has not been followed. If the charge is forwarded to the commissioner, the individual against whom the charges are filed will have 10 days to submit a written response to the charges to the commissioner, and the commissioner, unless he determines that the evaluation process has not been followed, is required to forward the case to the arbitrator within five business day following the period provided for the response to the charges. The hearing before the arbitrator must be held within 45 days of his assignment to the case, and he must render a decision within 45 days of the start of the hearing.

In rendering a decision on one of these cases, the arbitrator is only permitted to consider whether or not:

- the employee's evaluation failed to adhere substantially to the evaluation process;
- there is a mistake of fact in the evaluation;
- the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination, or other conduct prohibited by State or federal law; or
- the district's actions were arbitrary and capricious.

If the employee is able to demonstrate that any of these facts are applicable, the arbitrator must then determine if that fact materially affected the outcome of the evaluation and if it did not, the arbitrator is required to decide in favor of the board and the employee must be dismissed.

The provisions of this bill will take effect in the 2012-2013 school year, except that the provision of the bill that requires the State Board of Education to promulgate regulations to set standards for the approval of evaluation rubrics and sets forth the minimum requirements of the new evaluation rubric, will take effect immediately.