

## Teacher Tenure in Tennessee

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### Introduction

Since its inception in the early 1900s, teacher tenure has been a controversial education policy issue. Proponents argue that tenure keeps capricious and prejudiced administrators from dismissing teachers because of nepotism, local politics, or personal conflicts. Opponents argue that teacher tenure in elementary and secondary schools results in principals' inabilities to dismiss poor-performing teachers.

Both proponents and opponents find some support for their positions in research. The majority of teachers still believe that tenure is necessary, in part because of the challenges that are unique to teaching. But it also appears to inhibit the dismissal process and could cause complacency among some teachers.

Responding to calls for reform, some state legislatures have amended their tenure laws by requiring more frequent teacher contract renewals, extending new teachers' probationary periods, and tightening the dismissal process, among other changes.

**Tenure:** a status granted to a teacher, usually after a probationary period, that protects him/her from dismissal from a specific school district except in instances of incompetence, gross misconduct, or other specific reasons outlined in state laws. Tenured teachers charged with outlined reasons for dismissal receive due process.

### Tenure in Tennessee

When a teacher is granted tenure in a school district, usually after a certain number of probationary years of teaching, he/she cannot be dismissed from that district without due process, and can only be dismissed based on specific causes, usually outlined in state statutes. Tenure does not guarantee a teacher's job; tenured teachers can be fired, although in practice this rarely occurs.

Tenure laws are products of collective bargaining agreements between states and the two main teachers' unions – the American Federation of Teachers (AFT) and the National Education Association (NEA). All 50 states have teacher contract laws that include acceptable reasons for dismissing teachers. The majority of Tennessee's unionized school personnel are part of the Tennessee Education Association (TEA), an affiliate of the NEA. Tennessee has 55,000 NEA members, and local affiliates operate in every district in the state.<sup>1</sup> Only one school district – Campbell County Schools – has school personnel affiliated with the AFT.<sup>2</sup>

- Holds a valid professional license based on training covering the subjects or grades taught;
- Has completed a probationary period of three school years or not less than 27 months within the last five-year period, the last year to be employed as a regular teacher; and
- Is reemployed by a local board of education for service after the probationary period.<sup>4</sup>

Teachers in Tennessee, as in 31 other states, are eligible for tenure following a three-year probation period. Seven states have longer probation periods, eight have shorter, and three are not specified. After the probation period, the director of schools has two options: deny renewal of the teacher's contract or recommend the teacher for tenure to the local school board.<sup>5</sup> Local school boards in Tennessee make the decision to grant or deny tenure to a teacher.

No teacher is guaranteed continuity of employment in a particular assignment or school. A superintendent may transfer a teacher from one location to another within the school system, or from one type of work to another

#### Acquiring Tenure

The Tennessee General Assembly established tenure for teachers in 1951.<sup>3</sup> Under state law, a Tennessee public school teacher may be granted tenure if he/she:

- Holds a degree from an approved four-year college;

#### Contact:

Katie Cour, Senior Legislative Research Analyst  
(615) 401-7873 / [Katie.Cour@state.tn.us](mailto:Katie.Cour@state.tn.us)

Russell Moore, Assistant Director of Education Accountability  
(615) 401-7880 / [Russell.Moore@state.tn.us](mailto:Russell.Moore@state.tn.us)

for which the teacher is qualified and licensed, when necessary to the efficient operation of the school system.<sup>6</sup>

Tenured teachers who move to another system must serve the regular probationary period (three years) in the new system. However, the local board of education may waive this requirement and grant tenure status or shorten the probationary period at the superintendent's recommendation.<sup>7</sup>

#### Dismissing a Teacher

Tennessee law outlines the five acceptable reasons a tenured teacher may be dismissed:

- **Incompetence** – incapability of a teacher to perform because of mental, physical, professional, personal, educational, and/or emotional factors.
- **Inefficiency** – being below the standards of efficiency maintained by others currently employed by the board for similar work, or habitually tardy, inaccurate, or ineffective performance.
- **Neglect of duty** – gross or repeated failure to perform reasonably expected duties and responsibilities, or continued unexcused or unnecessary absence.
- **Unprofessional conduct** – includes immorality, conviction of a felony or crime involving moral turpitude, wilful failure or refusal to pay one's debts, disregard of the Tennessee Education Association code of ethics, or improper use of narcotics or intoxicants.
- **Insubordination** – may consist of: 1) failure to obey rules, regulations, and laws set by the state and local school boards, 2) failure to participate in in-service training, 3) treason, or 4) refusal to disclose participation in communist or other parties interested in the overthrow of the government.<sup>8</sup>

All charges that justify dismissal of a teacher must be made in writing, must specifically state the alleged offenses, and must be signed by the party or parties making the charges. If the board determines the charges justify dismissal, the superintendent must give the teacher a written notice of the decision, a copy of the charges, and a copy of the form from the commissioner of education advising the teacher of his/her legal duties, rights, and recourse.<sup>9</sup>

Upon receiving notice of the charges, a teacher has 30 days to request a hearing from his/her superintendent. In most districts, the local school board conducts the hearing.<sup>10</sup> However, the General Assembly granted Metropolitan Nashville Public Schools the right to have an administrative law judge, rather than the local board, conduct the hearings.<sup>11</sup> The district is currently

piloting this process. A tenured teacher has a right to judicial review of a board's dismissal decision.<sup>12</sup>

Exhibit 1 outlines the hearing dismissal process in Tennessee.

Local boards of education also have the authority to reduce the number of teaching positions or non-licensed positions because of a decrease in enrollment or "for other good reasons" that do not have to do with a specific teacher's abilities or performance. The law requires that a tenured teacher who has been dismissed as a result of such decisions be placed on a preferred list for reemployment in the first vacancy the teacher is qualified to fill.<sup>13</sup>

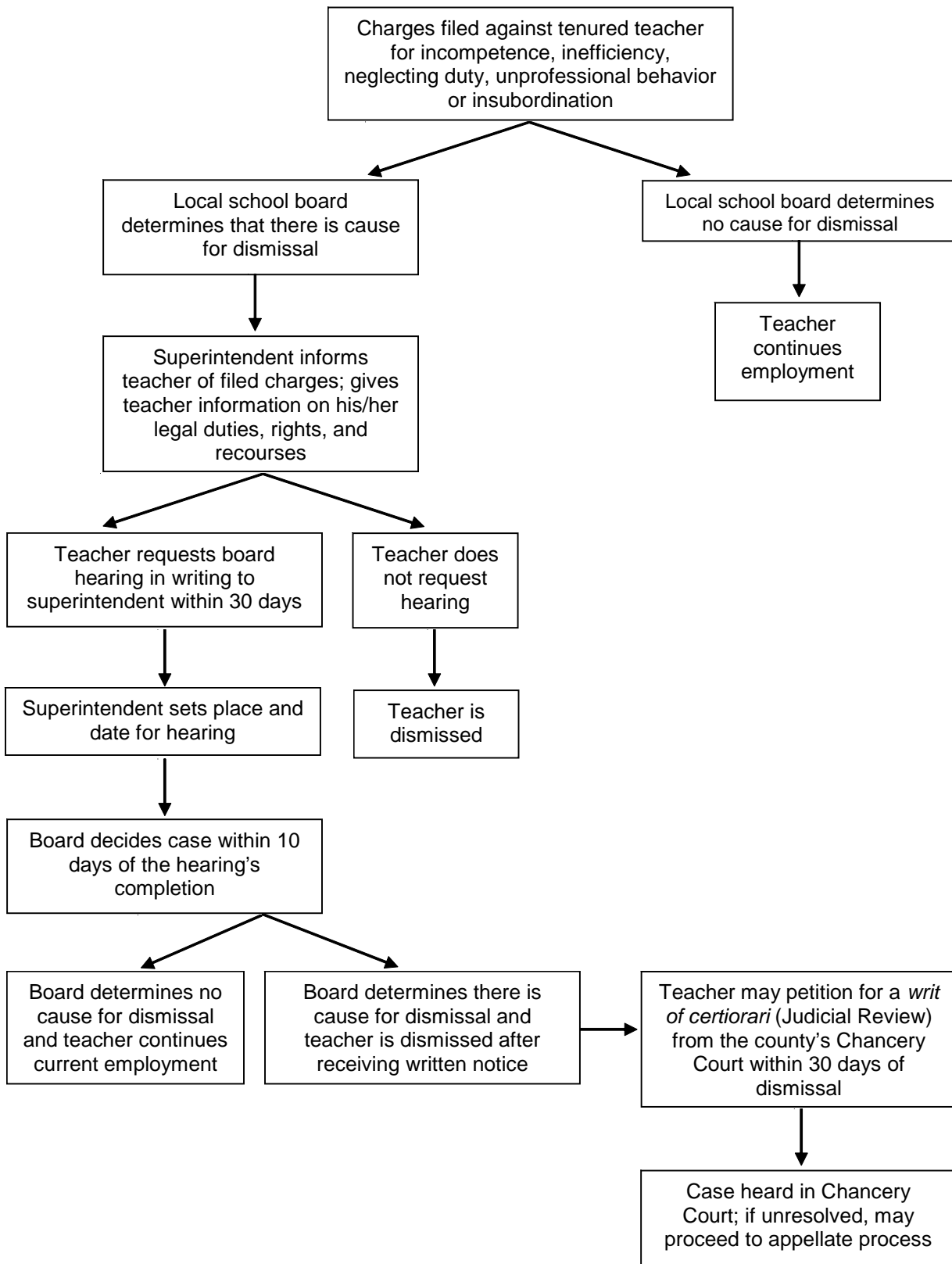
#### Uncertainties about number of dismissals, cost per dismissal hearing

The number of annual teacher dismissals and cost per dismissal hearing cannot be calculated with any precision. The Tennessee Department of Education retains no records of the number of dismissals. Despite a lack of concrete data, the estimated number of dismissal cases is fewer than 50 per year – less than one-tenth of a percent of Tennessee's total teaching force – according to the Tennessee Education Association (TEA) and the Tennessee School Boards Association (TSBA), with the majority of hearings occurring in the state's largest school systems.<sup>14</sup> Although only an estimate, this number suggests a very small percentage of Tennessee's teachers are ultimately dismissed from their teaching duties.

Calculating the cost per dismissal hearing is also problematic, and education stakeholders (TEA, TSBA, the Metropolitan Nashville Board of Education (Metro School Board)) contacted by the Office of Education Accountability were unable to provide an estimated cost per hearing. To determine the fiscal impact of a dismissal hearing, local districts should consider:

- Cost of attorneys' fees to defend the district's position against the teacher.
- Cost of school board members' time to hear the case. According to a Metro School Board member and TSBA officials, cases can last many days with several hours of meetings daily.<sup>15</sup>
- Cost of Chancery Court proceedings if the case is appealed.

**Exhibit 1: Hearing Process for Dismissing Tenured Teachers in Tennessee**



Source: Tenn. Code Ann. §§ 49-5-511 – 513.

## Tenure's Effect on Teaching: Stakeholder Views

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### Teacher Opinion

Tenure proponents argue that teaching warrants job security against prejudiced or capricious employers, who may not agree with a teacher's beliefs, teaching styles, or political opinions. Teachers tend to agree – the majority still thinks that tenure is necessary. However, it does not appear to be a strong incentive for potential teachers to join the profession.

The majority of teachers (58 percent in a *Public Agenda* survey) still believe that tenure protects them from district politics, favoritism, and the threat of losing their jobs to others who could work for less.<sup>16</sup> However, 43 percent of surveyed teachers were unsure of their views on tenure or did not think that competent teachers need to worry about tenure.<sup>17</sup>

Some tenure proponents assert that the profession must continue to provide tenure as an incentive to teach. However, an Education Sector survey reveals that 84 percent of surveyed teachers said that the “considerable job protection” perceived to be a part of the teaching profession was not a consideration in their decisions to become teachers.<sup>18</sup>

Some education stakeholders believe teachers' unions protect poor-performing tenured teachers, making dismissal challenging. Survey research shows some teachers share this belief - 47 percent of teachers surveyed for the *Stand by Me* study agree that “the union sometimes fights to protect teachers who really should be out of the classroom.”<sup>19</sup>

### Teacher Dismissal

Some opponents of tenure argue that dismissing tenured teachers is almost impossible, resulting in unqualified teachers remaining in the profession. Tenure laws clearly allow for the dismissal of incompetent teachers; however, the reputation of the process – that it is arduous and time-consuming – and of teachers' unions – that they will fight to protect poor-performing teachers – influences administrators' decisions to initiate the dismissal process. In addition, principals' lack of faith in the dismissal process can result in cursory and disingenuous teacher evaluations. Without accurate records of teacher performance, principals have little recourse when bringing charges against an incompetent or inefficient teacher.

Some superintendents and principals believe that the dismissal process consists of complicated obstacles and time-consuming formalities. A 2001 Public Agenda survey, *Trying to Stay Ahead of the Game: Superintendents and Principals Talk about School Leadership*, found 46 percent of surveyed superintendents and 41 percent of surveyed principals stated that they need more autonomy to remove ineffective teachers.<sup>20</sup>

School boards may also find the process arduous and time-consuming. The General Assembly recognized this when it passed Public Chapter 491 (2007) allowing Metropolitan Nashville Public Schools to employ an administrative law judge rather than the local school board to conduct dismissal hearings. The policy is in its pilot year. According to one member of the Metro School Board, the policy has been effective: “In a district this size, the number of terminations and likely appeals outstrips board members' time availability...these hearings typically require multiple sessions over many days. The former system of school board hearings demanded too much time from board members.”<sup>21</sup>

### Teacher Evaluation

Teacher dismissal hinges on evidence of incompetency, inefficiency, neglect of duty, unprofessional conduct, or insubordination. Accurate and honest teacher evaluations are integral to dismissal evidence. Some education stakeholders have argued that principals are not spending enough time on evaluations or are not being honest about teacher performance.<sup>22</sup> These issues may stem in part from administrators' perceptions that tenured teachers cannot be fired.

The state's current teacher evaluation tool – the Framework for Evaluation and Professional Growth – requires the development of a personal professional growth plan targeting each teacher's weak areas. However, a State Board of Education-required evaluation showed that the professional growth portion of the Framework was not valued as highly by both administrators and teachers.<sup>23</sup> In addition, just under half of survey respondents said the future growth plan had little to no use or were neutral on its usefulness in determining strengths and weaknesses of teachers.<sup>24</sup>

How often a teacher is evaluated is another factor to consider when judging the effectiveness of evaluations. Like most states, Tennessee does not require an annual performance evaluation for teachers; the state requires teachers to be evaluated at least once every five years. The National Council on Teacher Quality recommends that states require a formal evaluation of teachers on an annual basis, noting that a yearly evaluation is standard in most professions. Fourteen states, including Georgia, Florida, and Arkansas, require annual evaluations of their licensed teachers.<sup>25</sup>

Tennessee allows administrators to use data demonstrating teacher effects on student achievement as part of teacher evaluations.<sup>26</sup> But according to the Tennessee School Boards Association, few boards use teacher effect data as evidence in dismissal hearings; in fact, TSBA officials suggest that many board members are not aware teacher effect data is available for this purpose.<sup>27</sup>

Teachers who are transferred by the district to a different school or schools during their three-year probation period are another obstacle to producing consistent teacher evaluations. The chairman of the Metro School Board suggests that a three-year probation period before granting tenure is probably enough time to adequately evaluate a teacher who remains in the same school. However, some teachers work in several different schools during the three-year probation, making it more challenging to effectively evaluate their performance.<sup>28</sup>

A recent Education Sector survey of over 1,000 public school K-12 teachers reveals that the majority of teachers favor stronger and more frequent evaluations of their performance.<sup>29</sup> In fact, “almost eight in 10 teachers (79 percent) support strengthening the formal evaluation of *probationary* teachers so that they will get tenure only after they’ve proven to be very good at what they do.”<sup>30</sup> In addition, 58 percent of all teachers surveyed think that tenured teachers should be formally evaluated annually or at least every two years.<sup>31</sup>

## Tenure Reforms in Other States

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Some states have sought to reform their tenure laws and dismissal processes through a number of different methods, ranging from temporary tenure to stronger evaluations. Following is an overview of four tenure reform options and examples of states that have implemented them.

### Requiring Tenure Renewal

Tenure laws in most states provide job security after a teacher has finished a probation period. Renewable tenure requires teacher contract renewal after a certain period of time (e.g., annually or every five years). Renewal is contingent upon specific criteria, such as enrollment in professional development, evaluations, or gains in student achievement.

Georgia, Alabama, and Utah have adopted forms of renewable tenure. A Georgia teacher with two unsatisfactory evaluations in a five-year period will not have his/her contract renewed until improvements are made.<sup>32</sup> Alabama administrators may cancel teachers’ contracts if they “fail to perform duties in a satisfactory manner.”<sup>33</sup> And Utah teacher contracts are limited to five years, at which point they must be renewed. Contracts are renewed unless district officials have documented evidence of misconduct.<sup>34</sup>

The Tennessee School Boards Association and the Tennessee Organization of School Superintendents have expressed support for tenure renewal, in part because it could encourage teachers to continue skills development.<sup>35</sup> The Tennessee Education Association opposes changes to the law that would restrict tenure.<sup>36</sup>

### Lengthening Probation Periods for New Teachers

Most states require that all new teachers have a probation period of a certain number of years – usually two or three – before they are eligible for tenure. Some states have lengthened the number of years a teacher is on probation to allow for a longer evaluation period. In Tennessee, a teacher is eligible for tenure after a probation period of three years.<sup>37</sup>

Seven states have extended the probation period beyond three years:

- Connecticut (40 months if hired on or after July 1, 1996)
- Illinois (four years if hired in 1998 or after)
- Indiana (five years, and the teacher must be rehired for a sixth before he/she is eligible for tenure)
- Kentucky (four years, and the teacher must be rehired for the fifth)
- Michigan (four years if hired on or after June 11, 1993)
- Missouri (five years, and the teacher must be rehired for a sixth)
- North Carolina (four years).<sup>38</sup>

The National Council on Teacher Quality’s 2007 *State Teacher Policy Yearbook* recommends that states increase probationary periods to five years claiming that the extension “could help to improve the quality of the evaluation process leading to tenure.”<sup>39</sup> Currently only two states, Indiana and Missouri, meet this requirement.

### Tightening the Teacher Dismissal Process

Tenure opponents argue that the teacher dismissal process is arduous, expensive, and time-consuming. Some states have responded to these criticisms by making changes to the dismissal process, including who performs the hearing (e.g., independent reviewers). For example, Michigan has a Tenure Commission that streamlines the dismissal process of tenured teachers. Teachers may be dismissed by the school board for “reasonable or just cause” and may opt to have a hearing before the Tenure Commission, a board of review made up of five members (two teachers, one school board member, one non-teacher and non-board member, and one superintendent).<sup>40</sup>

States may also alter the length of time a hearing can last and the number of appeals allowed to further tighten the dismissal process.



### Strengthening Teacher Evaluations

Some states have improved the teacher evaluation process by linking professional development and evaluation results to contract renewal. Mississippi teachers in poor-performing schools who receive poor evaluations are required to follow a personal professional development plan. If a teacher fails to improve after two years of participating in the plan, he/she will be dismissed.<sup>41</sup> Delaware's evaluation requirements are similar, and the state has also included student performance on annual assessments as part of teacher evaluations.<sup>42</sup> Georgia and South Carolina also include student achievement as a required aspect of teacher evaluations.<sup>43</sup>

The National Council on Teacher Quality (NCTQ) has established state goals for teacher evaluation:

- States should require that all teachers receive a formal evaluation annually.
- States should work with districts to require all teachers who have received a single unsatisfactory evaluation to be placed on an improvement plan – whether or not they have tenure.
- States should work with districts to require that all teachers who have received two unsatisfactory evaluations within five years be formally eligible for dismissal – whether or not they have tenure.<sup>44</sup>

Only 14 states are meeting or nearly meeting these goals. Twenty-two states, including Tennessee, do not meet any of the goals.<sup>45</sup>

## **Summary**

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An employment status that protects teachers from dismissal except for specific reasons, tenure remains a controversial education policy issue. Tenure laws are products of collective bargaining between states and the nation's two main teachers' unions. All 50 states have such laws. The Tennessee General Assembly established tenure for teachers in 1951; state law defines the qualifications for tenure and acceptable reasons for dismissal.

Education stakeholders have strong feelings about tenure's impact on teaching, and research is mixed on whether tenure is a net positive or negative for the profession. The majority of teachers think it is necessary to provide job protection for their unique and challenging field. However, critics argue tenure makes it too difficult for school administrators to dismiss poor-performing teachers and insulates teachers from job loss, which may foster complacency.

Other states have reformed their tenure laws in recent years. Typical state reforms involve streamlining the teacher dismissal process, extending the probation period before a teacher can obtain tenure, requiring teachers to renew their tenure status on a regular basis, and strengthening teacher evaluations.

## Endnotes

- <sup>1</sup> "About TEA – Mission," Tennessee Education Association, accessed May 6, 2008, <http://www.teateachers.org>.
- <sup>2</sup> "Find a Local Affiliate," American Federation of Teachers, accessed July 23, 2008, <http://aft.org>.
- <sup>3</sup> Public Chapter 76 (1951).
- <sup>4</sup> Tenn. Code Ann. § 49-5-503(2).
- <sup>5</sup> Tenn. Code Ann. § 49-5-504.
- <sup>6</sup> Tenn. Code Ann. § 49-5-510.
- <sup>7</sup> Tenn. Code Ann. § 49-5-509.
- <sup>8</sup> Tenn. Code Ann. §§ 49-5-511(a)(2) and 49-5-501 (part definitions). Note: Superintendents can choose to suspend a teacher any time he/she deems necessary, pending investigation.
- <sup>9</sup> Tenn. Code Ann. § 49-5-511(a).
- <sup>10</sup> Tenn. Code Ann. § 49-5-512.
- <sup>11</sup> Public Chapter 491 (2007) (codified at Tenn. Code Ann. § 49-5-512(c)).
- <sup>12</sup> Tenn. Code Ann. § 49-5-513.
- <sup>13</sup> Tenn. Code Ann. § 49-5-511(b).
- <sup>14</sup> Interview with Jerry Winters, Legislative Liaison, and Brian McCarty, Director of Legal Services, Tennessee Education Association, Jan. 17, 2008; interview with Dr. Tammy Grissom, Executive Director, Randall Bennett, Deputy Executive Director and General Counsel, and Stephen Smith, Assistant Executive Director, Tennessee School Boards Association, Jan. 28, 2008; Tennessee Department of Education, "Report Card 2007: State Profile."
- <sup>15</sup> David Fox, Member, Metropolitan Nashville Board of Education, "Re: Tenure reform research for the state legislature," E-mail to the author, Jan. 29, 2008; interview with Grissom, Bennett, and Smith, Tennessee School Boards Association, Jan. 28, 2008.
- <sup>16</sup> Steve Farkas, Jean Johnson, and Ann Duffett, *Stand By Me: What Teachers Really Think About Unions, Merit Pay and Other Professional Matters, a Report from Public Agenda*, (New York, NY: Public Agenda, 2003) p. 22.
- <sup>17</sup> Ibid.
- <sup>18</sup> Ann Duffett, Steve Farkas, Andrew J. Rotherham, and Elena Silva, *Waiting to Be Won Over: Teachers Speak on the Profession, Unions, and Reform*, (Washington, D.C.: Education Sector, 2008) p. 20.
- <sup>19</sup> Farkas, Johnson, and Duffett, *Stand By Me*, p. 18.
- <sup>20</sup> Steve Farkas, Jean Johnson, Ann Duffett, and Tony Foleno, *Trying to Stay Ahead of the Game: Superintendents and Principals Talk About School Leadership, a Report from Public Agenda*, (New York, NY: Public Agenda, 2001) accessed April 3, 2008, <http://www.publicagenda.org>.
- <sup>21</sup> Fox, Metropolitan Nashville Board of Education, E-mail to the author, Jan. 29, 2008.
- <sup>22</sup> Interview with Winters and McCarty, Tennessee Education Association, Jan. 17, 2008; interview with Grissom, Bennett, and Smith, Tennessee School Boards Association, Jan. 28, 2008.
- <sup>23</sup> Dr. Trevor Hutchins and Dr. Sharon Yates, *An Evaluation of the Tennessee Framework for Evaluation and Professional Growth*, report to the Tennessee State Board of Education and the Tennessee Department of Education, presented April 21, 2006, p. 9.
- <sup>24</sup> Ibid., p. 31.
- <sup>25</sup> National Council on Teacher Quality, *State Teacher Policy Yearbook. National Summary*, (Washington, D.C.: National Council on Teacher Quality, 2007) p. 92, accessed March 17, 2008, <http://www.nctq.org>.
- <sup>26</sup> Tenn. Code Ann. § 49-1-606.
- <sup>27</sup> Interview with Grissom, Bennett, and Smith, Tennessee School Boards Association, Jan. 28, 2008.
- <sup>28</sup> Telephone interview with Marsha Warden, Chairman, Metropolitan Nashville Board of Education, Jan. 29, 2008.
- <sup>29</sup> Duffett et al., *Waiting to Be Won Over*, p. 4.
- <sup>30</sup> Ibid.
- <sup>31</sup> Ibid., p. 5.
- <sup>32</sup> "Focus on Legislation Affecting Teachers in SREB States," Southern Regional Education Board, June 16, 2000, accessed Feb. 28, 2008, <http://www.sreb.org>.
- <sup>33</sup> Ibid.
- <sup>34</sup> Utah Code Ann. § 53A-3-411.
- <sup>35</sup> Interview with Grissom, Bennett, and Smith, Tennessee School Boards Association, Jan. 28, 2008; interview with Keith Brewer, Executive Director, Tennessee Organization of School Superintendents, Feb. 12, 2008.
- <sup>36</sup> Interview with Winters and McCarty, Tennessee Education Association, Jan. 17, 2008.
- <sup>37</sup> Tenn. Code Ann. § 49-5-504.
- <sup>38</sup> "Teacher Tenure/Continuing Contract Laws: Updated for 2007," Education Commission of the States, Aug. 2007, Feb. 28, 2008, <http://www.ecs.org>.
- <sup>39</sup> National Council on Teacher Quality, *State Teacher Policy Yearbook*, p. 97.
- <sup>40</sup> Mich. Comp. Laws § 38.131.
- <sup>41</sup> Miss. Code Ann. § 37-18-7(3).
- <sup>42</sup> "Recent State Policies/Activities: Teaching Quality – Evaluation," Education Commission of the States, accessed Feb. 28, 2008, <http://ecs.org>.
- <sup>43</sup> Ga. Code Ann. § 20-2-210; South Carolina Department of Education, "ADEPT System Guidelines," June 2006, p. 29.
- <sup>44</sup> National Council on Teacher Quality, *State Teacher Policy Yearbook*, p. 97.
- <sup>45</sup> Ibid.



OFFICES OF RESEARCH AND EDUCATION ACCOUNTABILITY  
Suite 1700, James K. Polk Building ▪ 505 Deaderick Street ▪ Nashville, Tennessee 37243  
(615) 401-7911 ▪ <http://comptroller.state.tn.us/cpdivorea.htm>