THE DEVELOPMENT AND EVOLUTION OF STATUTORY TENURE AND DISMISSAL PROCEDURES FOR PUBLIC SCHOOL TEACHERS IN ILLINOIS

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Tenure is an employee's property right in an employment relationship that guarantees the employee continued employment absent good and sufficient cause to terminate the relationship. The property interest is accompanied by procedural and substantive protections which require that the educational employer demonstrate the cause for termination by substantial evidence before an impartial body.

Tenure in higher educational settings dates back to the 17th Century. It was then designed to protect academics with unorthodox ideas and scientific explorers from church leaders so that they could expand their knowledge with constraints by religious authorities. The same considerations applied as tenure in higher education caught on in North America in the 19th Century. Tenure is thought to encourage robust academic research and high academic achievement through a rigorous tenure application process and protection of researchers' freedom to pursue ideas that might stir controversy.

Tenure in K-12 educational settings is barely over a century old. Before tenure and collective bargaining, teachers were mostly employed at-will under annual contracts with no procedural or substantive due process protections. Tenure with procedural protections began to develop at the dawn of the progressive era in the late 19th century amidst a struggling but ascendent labor movement. It did not reach its nadir until the 1950s. Tenure evolved into a system of employment protections for teachers that not only limited the circumstances in which the employment relationship could be permanently severed but also impacted temporary layoffs, recall rights, promotions, salaries, and other terms and conditions of employment. Tenure also became the predicate for specific progressive discipline and performance remediation requirements. Its development and evolution have been characterized by fits, starts and regressions, many of them inspired by public concerns about student achievement and the quality of their preparation for participation in society and the workforce.

I. *The Development of the First Tenure Laws for K-12 Teachers in Illinois.*

Like many progressive efforts, corrupt and exploitative employment practices combined with moves to professionalize and improve practices convinced the public that merit-based

employment decisions were beneficial to workers, employers and the people they served.[1] Consequently merit-based requirements were incorporated in civil service laws in the late 19th and early 20th centuries. Tenure for public school teachers is the child of those civil service laws. The labor movement of the progressive era was its engine.

Though the National Education Association advocated for granting K-12 teachers tenure nationally as early as 1883 and the state of Massachusetts began to issue multi-year teacher contracts at the end of the 19th century, the first tenure law for K-12 teachers was not enacted until New Jersey did it in 1909. Chicago teachers got statutory tenure in 1917 and the remaining Illinois teachers in 1941.

A. The Otis Law. Chicago teachers were granted statutory tenure by the Illinois General Assembly via the "Otis law" in 1917.[2] The Otis law and tenure protections for Chicago teachers have their seeds in a reform effort instigated by Chicago Mayor Carter Harrison who formed a commission to study problems of a Chicago school system challenged by high expectations from both the business community and the general public, huge student growth, and the economic and social problems experienced by its students.

That commission recommended a series of reforms that would reign in a dispersed and unwieldy bureaucracy and consolidate authority in a single superintendent with the power to make and implement educational decisions and to hire and fire teachers and other staff. Efforts to enact those recommendations into law initially failed, largely due to the lobbying efforts of the Chicago Federation of Teachers.[3] Still, a canny superintendent,

[1] Allen, I. M. (1926). Improving the Professional Status of Teachers. *The Elementary School Journal*, *26*(6), 430–440. http://www.jstor.org/stable/994500.
See also, Kersten, Thomas A (1997). Teacher Tenure: Illinois School Board Presidents' Perspectives and Suggestions for Improvement. *Planning and Changing,* Vol. 37, No. 3&4, 2006, pp. 234–257

[2] 1917 *Illinois Session Laws* pp. 730-732.

[3] The Chicago Federation of Teachers ("CFT") organized female elementary school teachers in Chicago in 1897. It began as an advocate for teacher pensions and expanded to advocate for teacher salaries and other working conditions. Its leaders formed the American Federation of Teachers in 1899 and CFT became its first local union, Local 1. CFT also joined the Chicago Federation of Labor. CFT left AFT and CFL in 1915 due to the Chicago Board of Education's so-called "Loeb Rule," which prohibited teachers' union membership. It continued to exercise influence with the Chicago teachers through the 1930's and played a central role in combating the depression-era practice of paying teachers in script or with warrants. CFT's influence waned thereafter as the Chicago Teachers Union outgrew it in membership and influence. After the CTU became the exclusive representative of Chicago teachers and paraprofessionals in 1966, CFT disbanded in 1968. *See*, West, Lucy F. "Historical Sketch of Chicago Teachers Federation" in Chicago Teachers' Federation records, 1864-1968 (bulk 1897-1968) Descriptive Inventory for the Collection at the Chicago Historical Society, 2000. *See also*, Hagopian, Jesse. "A History of the Chicago Teachers Union," *International Socialist Review*, Issue #86 at https://isreview.org/issue/86/peoples-history-chicago-teachers-union/index.html (2024).

Edwin C. Cooley, and the Board of Education, both of which had a prickly relationship with the Chicago Federation of Teachers fueled by anti-union sentiment, achieved much the same result through administrative fiat.

But Cooley and the Board of Education overreached. The Board promulgated a rule, known as the Loeb Rule, which prohibited teachers from joining a union. The Board and Cooley promptly fired 38 teachers who had joined labor unions, including all Chicago Federation of Teachers' officers.[4] The Otis law was the public's backlash to Cooley and CBOE's overreach. It gave teachers guaranteed continued employment absent "cause" for dismissal after three years of teaching. "Cause" was not defined. The law required the Board of Education to remove a tenured teacher by a majority vote of all members upon hearing written charges from the superintendent or a Board committee. It required the superintendent to serve the charges on the teacher and gave the teacher the right to be present with counsel and to offer evidence in opposition to the charges. The Board's decision was final with no statutory right of appeal. The law was spare in its terms, comprising only three paragraphs.[5] It was a humble beginning to what would come to comprise several sections of the Illinois Compiled Statutes.[6]

B. The 1941 Statute for Non-Chicago Teachers. The rest of Illinois K-12 teachers would have to wait for the same statutory benefit until 1941 when the General Assembly passed a law granting "contractual continued service" or tenure governing them. The National Education Association ("NEA") and the Illinois Education Association ("IEA") overcame many challenges in achieving tenure rights for teachers outside of Chicago, primarily from skeptics among principals, superintendents, and school boards and even teachers. To win them over, they began an education and advocacy campaign in the 1920's that continued through the 1930's. Their efforts got a boost from abusive school board practices during the 1930s, incremental increases in the number of states that offered statutory tenure to school teachers, and the experience of local Illinois school boards that began to offer teacher

[4] Tarvardian, Arthur Norman, "Battle Over the Chicago Schools: The Superintendency of William Mcandrew" (1992). Dissertations. 3242. https://ecommons.luc.edu/luc_diss/3242

[5] *Id.* at pp. 731-732.

[6] *See*, 105 ILCS 5/24A-1 *et seq.*; 105 ILCS 5/34-8.1; 105 ILCS 5/34-84; 105 ILCS 5/34-85.

contracts for up to three year periods (though without the procedural protections).[7]

The IEA-NEA arguments advanced in support of tenure centered not just on fairness to the individual school teacher but also on improving the quality and efficiency of service among Illinois school teachers.[8] Those arguments ultimately prevailed. The Illinois General Assembly passed SB193 and a compromise for small rural school districts in SB192. The governor signed them into law.[9]

The 1941 tenure law was much more comprehensive than the Otis Law. It accomplished several things:

1) established a two consecutive year probationary period after which the teacher would enter a period of contractual continued service or tenure which would endure until the end of the school term in which the teacher attained the age of 65;

2) required school districts to notify a probationary teacher in writing of a decision to dismiss them and the reasons therefor at least 60 days before the end of his/her probationary period;

3) gave school boards the discretion to extend the probationary period for a third year for a probationary teacher who did not have three full years of teaching experience;

4) authorized school boards to honorably dismiss a teacher in contractual continued service if the teacher's position was discontinued or eliminated or there was a decrease in teachers;

5) required school board to recall honorably dismissed teachers if their positions were reinstated within one year;

6) authorized school boards to dismiss teachers in contractual continued service for the following reasons: "incompetency, cruelty, negligence, immorality or other sufficient cause and whenever in the opinion of the board a teacher was not qualified to teach, or whenever in the opinion of the board the interests of the schools required it."

7) Authorized school boards to dismiss tenured teachers using the following procedures:

   a) a majority vote of the full board to dismiss the teacher;

   b) notice in writing to the teacher of the dismissal and the specific charges approved by a majority of the board on which its dismissal decision was based;

   c) giving the teacher an opportunity to request a hearing before the Board at which the teacher was allowed to be present,

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[7] Huvaere, Dorene J. "Tenure for Illinois Teachers: An Analysis of the Philosophical Arguments Surrounding the Adoption of the 1941 Tenure Law for Public School Teachers in the State of Illinois" (1997), *Dissertations. 3719.* https://ecommons.luc.edu/luc_diss/3719

[8] *Id.*

[9] 1941 *Illinois Session Laws*, Vol. 1 at pp. 1159-1162.

cross-examine witnesses and provide a defense within 60 days of the board's approval of the charges and dismissal;

d) a decision by the board after considering the evidence at the requested hearing;

e) a right of appeal to a three-member appeal committee, composed of non-residents of the school and district, one of whom must be a school board member, one a public school teacher, and finally, a chairman who shall be neither a school board member nor a teacher;

f) an appeal committee decision that may include reversal of the dismissal decision if the evidence did not show a lawful reason or cause for dismissal or if there was no "substantial evidence" to support a lawful cause for dismissal.

II. *The Evolution of Illinois Tenure Laws..*

Statutory tenure laws have evolved considerably since the 1917 Chicago tenure statute and 1941 state-wide tenure law. The alignment of the two laws has varied over time, though they are more closely aligned today than they have been in at least three decades.

Changes to the tenure laws have been prompted by a variety of movements and crises that encompass five eras, which I identify as follows:

1. 1883-1920 - The Progressive Era of the late 19th and early 20th Century which gave birth movements to grant public school teachers tenure rights and the laws adopted by various states, including Illinois' 1917 Otis Law.

2. 1920-1965 - The ascendancy of the teachers' labor movement from the 1920's and 1960's, which helped tenure laws spread and tenure rights expand.

3. 1965-1979 - The constitutional rights movements that expanded 14th Amendment due process rights to administrative hearings during the 1960's and 1970's and saw more exacting requirements in the laws governing dismissal proceedings for tenured teachers and in other administrative settings..

4. 1980-2015 - The School Reform movements, which encompass four distinct periods:

    a. 1980-1990 - The Nation at Risk reforms, which prompted Illinois to adopt the 1985 teacher performance evaluation laws and the 1988 Chicago Reform Law.

    b. 1990-2010 - The urban schools reforms, which focused on urban schools and resulted in the 1995 Chicago Reform Law, Mayoral control and Chicago Public Schools Renaissance 2010 Program.

    c. 2002-2012 - The student growth reforms which focused on measuring student achievement and growth, its connection to

teacher performance and quality and included several major laws including the No Child Left Behind Law, the USDOE Race to the Top Grant, Illinois' 2010 Performance Evaluation Reform Act and its 2011 School Reform Law.

5. 2012 - present. School reform backlash advanced by a invigorated teachers' labor movement and helped along by the 2020 COVID-19 pandemic that led to the 2020-2023 repeals of several aspects of the 1995 Chicago Reform Law and modifications to Performance Evaluation Reform Act.

For purposes of examining the evolution of teacher tenure in Illinois, it is useful to discuss the four main features of tenure rights separately, though the evolution of each overlap considerably. Those aspects are: probationary periods, layoff and recall rights, dismissal limitations, and dismissal procedures.

A. Probationary Periods Necessary for Tenure. Tenure is an earned right. It is not simply bestowed on all teachers. It is earned by a teacher's satisfactory performance over a period preceding tenure known as the probationary period. The length of probationary periods has changed a number of times. Chicago began its experience with tenure with a three-year probationary period. The 1995 reform law changed the period to four years.[10] Teachers outside of Chicago began with a two-year probationary period before an award of tenure. In the 2011 educational reform law, the legislature increased the probationary period for non-Chicago teachers from two to four years and tied the award of tenure for all Illinois teachers to performance-based evaluations.[11] To achieve tenure, the law required teachers to attain at least proficient performance ratings in the fourth year and in the second or third year.[12] It also contained provisions for an accelerated award of tenure after three years for teachers who were rated excellent each year and after two years for teachers who had achieved tenure in another school district and were rated excellent in the first two years at their current school district.[13] In 2023, the legislature reduced the probationary period for all Illinois teachers from four to three years.[14]

B. Layoff (Honorable Dismissal) and Recall Rights of Tenured Teachers. Tenure laws impact on teacher layoff and recall rights have developed and evolved much differently in Chicago than in the rest of

[10] P.A. 89-0015 (1995).
[11] P.A. 97-0008 (2011).
[12] *Id.*
[13] *Id.*
[14] P.A. 103-0500 (2023).

Illinois. It's important to consider their evolution separately.

1. Chicago Teachers. Until 1995, tenured teachers were subject to honorable dismissal or layoff when there were insufficient positions within the district for which they are qualified. That typically happened because student enrollment declined or a particular program was reduced or closed. But at least before 1988, under agreements made with the Chicago Teachers Union, Chicago tenured teachers in Chicago who were laid off were not dismissed; instead, they became "supernumerary teachers" at their same rate of pay and were placed into vacant permanent teaching positions within their certification at local schools without the consent or input of that local school's principal. If there were insufficient positions within their certification, they remained as supernumerary teachers indefinitely and were assigned to schools as extra teachers regardless of the school principal's wishes.

As part of a 1988 law reforming local school governance of Chicago Public Schools ("CPS"), school principals were granted greater authority over hiring at their schools. The school board could no longer fill a permanent teaching vacancy with a supernumerary teacher without the principal's consent. Instead, principals became obligated to give supernumerary teachers "first consideration" for filling those positions.[15] Hundreds of supernumerary teachers were never hired by school principals but remained on CPS payroll at full teacher salaries as extra teachers..

In the 1992-1994 legislative sessions, the law was amended twice again. The supernumerary designation was replaced by a new designation known as the "reserve teacher." The law gave reserve teachers enhanced rights but also took away the right to indefinite employment at full teacher salary. Instead, reserve teachers could be permanently placed in positions only when a school principal failed to fill it within 60 days of becoming vacant. If there were no such position, the reserve teacher was offered the opportunity to obtain credentials for an additional certification within 30 months. If neither of these options were taken, the Board laid off/ honorably terminated the reserve teacher after 25 months as reserve teachers.[16]

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[15] P.A. 85-1418 (1988).
[16] P.A. 88-511 (1993); 1993 *Illinois Session Laws*, Vol. III at pp. 4560 et. seq. (1993)

This changed in the 1995 Chicago School Reform Law when Chicago Public Schools came under Mayoral control. The 1995 law eroded the tenure rights of laid off teachers by (1) eliminating the right of displaced tenured teachers to become reserve teachers and prohibiting the new Chicago Reform Board of Trustees from bargaining over the effects of teacher layoff, and (2) eliminating seniority-based order of layoffs. That reform also authorized the Board to unilaterally promulgate rules for layoff and recall.[17] The Board did promulgate a layoff policy but it did not promulgate a recall policy for tenured teachers.

The Chicago Board's authority to honorably dismiss tenured teachers under the 1995 amendments was challenged when it honorably dismissed hundreds of tenured teachers in 1999. The laid off teachers sought mandamus relief in the Circuit Court of Cook County where they argued that the Board's powers under the school code were limited by the school code's tenure and tenured teacher dismissal provisions. The Illinois Supreme Court rejected those arguments and held that the Board had the right to layoff tenured teachers.[18]

It was not until 2010 that the lack of a recall policy for Chicago Teachers was challenged. The Board of Education laid off 1250 tenured teachers for economic reasons in the summer of 2010. It adopted a resolution that modified its layoff policy and provided that the layoff would be conducted based on school, certification, and within certification by performance rating. Again, it did not promulgate a rule providing for recall of laid off tenured teachers. The result was that tenured teachers in Chicago were laid off based on their performance - not their tenure or seniority - and they had no right to be recalled.

The Chicago Teachers Union challenged the layoff and lack of recall rights in federal court. The US District Court sided with the Union and held that the Illinois School Code mandated that the Board promulgate a rule for recall of tenured teachers. The court reversed the layoffs and ordered the Board to bargain with the union for a recall policy.[19] On appeal, a divided panel of the Seventh

[17] P.A. 89-15 (1995); 105 ILCS 5/34-18(31).

[18] In Land v. Board of Education of the City of Chicago, 202 Ill. 2d 414 (2002).

[19] Chicago Teachers Union v. Board of Education of the City of Chicago, No. 10 C 4852, slip op. (N.D. Ill. Oct. 4, 2010)

Circuit Court of Appeals held that the Board of Education's failure to adopt a recall policy violated the teachers' due process rights. On petition for rehearing *en banc*, the panel vacated its opinion and certified three questions to the Illinois Supreme Court, namely whether 105 ILCS 5/34-18(31) or 105 ILCS 5/34-84, either independently or in combination gave tenured teachers a substantive right to recall or a right to certain procedures for rehire after layoff.[20] A 4-2 Illinois Supreme Court answered all three questions in the negative and held that laid off (honorably dismissed) tenured teachers did not have a right to recall or procedures for rehire and that nothing in the law compelled the Board of Education to adopt such rules.[21]

The 1995 reform law for Chicago Public Schools affected tenure rights in other substantial ways. The law gave the Board of Education emergency powers to "reconstitute" a poor performing local school. Reconstitution resulted in the layoff, honorable termination and replacement of all employees at the under-performing school.[22] It also enabled the Board of Education to close schools for performance reasons, which resulted in the displacement of students as well as employees.[23] Both actions resulted in the layoff or honorable dismissal of tenured teachers without recall rights.

In 2012, the Chicago Board of Education and the Chicago Teachers Union negotiated performance based layoff and recall rules for tenured teachers. They are included in their collective bargaining agreement still today.[24]

2. Layoff and Recall Rights of Non-Chicago Teachers. Non-Chicago Teachers have had statutory recall rights when honorably dismissed since the 1941 tenure law and the order of layoff and recall was based on tenure status and seniority. The Performance Evaluation Reform Act opened the door to a performance-based order of layoff and recall system, which aligned it conceptually with the Chicago system, though the details differ greatly. The 2011 Illinois School Reform Law required non-Chicago school districts to assign teachers into one of four performance

[20] Chicago Teachers Union v. Board of Education of the City of Chicago, 662 F.3d 761 (7th Cir. 2011)

[21] Chicago Teachers Union v. Board of Education of the City of Chicago, No. 2012 IL 112566, ___Ill.2d__ (2012); https://www.illinoiscourts.gov/resources/ee7e8915-7ebc-42f1-bbc3-b2ef3e9245c8/file (2024).

[22] P.A. 86-0015 (1995); 105 ILCS 5/34-8.3; 105 ILCS 5.34-8.4.

[23] *Id*.

[24] *See*, CTU/CBOE 2019-2024 collective bargaining agreement at Appendix H. https://contract.ctulocal1.org/cps/h

based groups for purposes of layoffs and recall. Group 4 consisted of the highest performing tenured teachers and Group 1 consisted of non–tenured or unrated teachers. Within certification, teachers in Group 1 would be honorably dismissed first, followed by teachers in Group 2 etc. In this way, tenured teachers with the lowest ratings were dismissed while those with the highest ratings were retained regardless of their seniority or length of service. Recall remains a statutory right for non-Chicago teachers but order of recall is also by performance, in the inverse order in which the teachers were laid off.[25]

C. Causes for Dismissal of Tenured Teachers.

1. The definition of "cause". The Otis Law did not enumerate specific reasons for which a Chicago tenured teacher could be permanently dismissed but simply the Board to have "cause" to dismiss the teacher.[26] The statutes governing non-Chicago teachers included specific causes for dismissal but also includes the undefined "other sufficient cause":

> incompetency, cruelty, negligence, immorality or other sufficient cause and whenever in the opinion of the board a teacher was not qualified to teach, or whenever in the opinion of the board the interests of the schools required it.[27]

In 1949, the non-Chicago teacher statute was amended to prohibit dismissal of teachers based on marriage and then again to prohibit dismissal based on disability.[28]

Courts have defined cause under the Chicago statute and "other sufficient cause" under non-Chicago statute as "that which law and public policy deem as some substantial shortcoming which renders a teacher's continued employment detrimental to discipline and effectiveness" or "something which the law and sound public opinion recognize as a good reason for the teacher to no longer occupy his position."[29] What will constitute "cause" sufficient to justify a tenured teacher's dismissal is inextricably intertwined with the school code's requirement that the conduct must be irremediable or, if not, preceded by a warning or notice to remedy prior conduct of the same kind. That requirement was part of the 1941 tenure law governing non-Chicago teachers and was added to the dismissal sections of the Chicago statute much later.[30] The requirement and when

[25] P.A. 97-8 (2011); 2011 *Illinois Session Laws* Vol. 2 at pp. 2647 *et seq*.; 105 ILCS 5/24-12(b).

[26] 1917 *Illinois Session Laws* at pp. 273 - 277.

[27] 105 ILCS 5/10-22.4.

[28] P.A. 79-954 (1975); 1975 *Illinois Session Laws* p. 2871.

[29] *See*, Raitzik v. Board of Education of City of Chicago,356 Ill. App. 3d 813, 831 (2005); McCullough v.Illinois State Board of Education, 204 Ill. App. 3d 1082, 1087 (1990).

[30] 1941 *Illinois Session Laws* at pp. 1161.

conduct is deemed irremediable are discussed below.

2. Remediable and Irremediable Conduct - Progressive Discipline (Notices to Remedy or Warning Resolutions) for Conduct-based Dismissals. Current law requires that all tenured teachers receive a warning to remedy conduct that is deemed "remediable" before charges are filed or a hearing on dismissal charges is held.[31] The warning is called a "notice to remedy" by non-Chicago school districts Chicago and a "warning resolution" by Chicago Public Schools. Dismissals based on performance from the requirement of a warning in all school districts because performance-based dismissals have a separate statutory remediation opportunity.[32]

The warning requirement begs the question of what is and what is not "remediable" conduct. The Illinois Supreme Court promulgated a test in 1977 when it upheld the Pleasantview Consolidated School District, No. 663's 1973 dismissal of Karen Gilliland, a tenure teacher, for incompetence, cruelty, negligence and the best interests of the school.[33] In upholding Gilliland's dismissal, the court held that "the test in determining whether a cause for dismissal is irremediable is whether damage has been done to the students, faculty or school, and whether the conduct resulting in that damage could have been corrected had the teacher's superiors warned her. . . Uncorrected causes for dismissal which originally were remediable in nature can become irremediable if continued over a long period of time."[34]

Examples of misconduct found to be irremediable and no prior warning required include[35]:

1) Failure to report bullying and suspected sexual abuse;[36]
2) Absence without leave (refusing to accept assignments at the termination of a leave);[37]
3) Physical abuse and verbal abuse of students;[38]

[31] 105 ILCS 5/24-12(d)(1); 105 ILCS 5/34-85(a).
[32] *Id.*
[33] Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622, 67 Ill. 2d 143 (1977).

[34] *Id.*, *citing*, *Yesinowski v. Board of Education* 28 Ill. App.3d 119, 123 (1975);*Glover v. Board of Education* (1974), 21 Ill. App.3d 1053, 1057 (1974); *Robinson v. Community Unit School District No. 7*, 35 Ill. App.2d 325, 332 (1962).
[35] Paron, Janice L., "A Historical Study of the Dismissal of Tenured Teachers in Illinois, 1941-1989" (1991). Dissertations. 2898. https://ecommons.luc.edu/luc_diss/2898. *See also,* Alan M. Kaplan, "A Question of Remediability: Standards of Conduct for Illinois Public School Teachers," *29 DePaul L. Rev. 523* (1980) Available at: http://via.library.depaul.edu/law-review/vol29/iss2/9
[36] In Re: Dismissal of Emilio Rodriguez, (Crystal 2014) Dismissal%20Decision%20-%20Emilio%20Rodriguez.pdf; In Re: Dismissal of Lissa Small (Ponticelli, 2016) at https://www.isbe.net/EdDismissDocs/Lissa%20Small%20-%202016%20Teacher%20Dismissal%20Decision.pdf
[37] In re: Dismissal of Sondra Rabin (Clauss, 2014) at https://www.isbe.net/EdDismissDocs/2014%20Teacher%20Dismissal%20Decision%20-%20Sondra%20Rabin.pdf
[38] In Re: Dismissal of Gertrude Watkins, (Tobin 1986) at https://www.isbe.net/EdDismissDocs/Gertrude-Watkins.pdf

The 1995 amendments to the Chicago-teacher dismissal statute defined broad categories of conduct that are irremediable in and of themselves ("irremediable *per se"*) and do not require a prior warning to justify dismissal:

> No written warning shall be required for conduct on the part of a teacher … which is cruel, immoral, negligent, or criminal or which in any way causes psychological or physical harm or injury to a student as that conduct is deemed to be irremediable.[39]

The Chicago caveat to the warning requirement appears to both codify the Gilliland definition of irremediable conduct and to expand on it, especially with respect to cruel, negligent, criminal, or immoral conduct as it does not require proof that those types of teacher misconduct cause any harm.

Based on that amendment, courts and hearing officers have held that teachers who engaged in the following conduct engaged in conduct that is irremediable *per se* that did not require a written warning:

1) reported to work under the influence of marijuana;[40]
2) misappropriated merchandise of nonprofit organization by falsely representing herself as an agent of the public schools'[41]
3) failed to supervise special needs students enabling students to engage in sexual activity on school property and gave false statements to an investigator;[42] and,
4) fraudulently enrolled her nonresident children in a city school so they could receive tuition-free education.[43]

While the 1995 amendment would seem to make proof of irremediability less onerous, hearing officers in dismissal cases have sometimes worked hard to remove certain conduct from the irremediable *per se* construct to avoid what they deemed too harsh a result.[44] What is and what is not

[39] P.A. 89-15 (1995); 1995 *Illinois Session Laws* at p.515.

[40] Younge v. Board of Education of the City of Chicago, 338 Ill. App. 3d 522, 534 (2003)

[41] Ahmad v. Board of Education of the City of Chicago, 365 Ill. App. 3d 155, 165-67 (2006)

[42] Ball v. Board of Education of the City of Chicago, 2013 IL App (1st) 120136, ¶¶ 31-32

[43] Jones v. Board of Education of the City of Chicago, 2013 IL App (1st) 122437.

[44] *See e.g.*, In Re: Dismissal Charges against Mark Kelley, (Cohen, 2017) at p.14, https://www.isbe.net/EdDismissDocs/Mark%20Kelley%20-%202017%20Teacher%20Dismissal%20Decision.pdf. (Teacher who pleaded guilty to minor criminal offense did not engage in criminal conduct because he was not convicted of a crime, due to a sentence of supervision). Note that the School Board accepted the Hearing Officer's recommendation in the Kelley case. *See also*, In Re: Dismissal Charges Agn against Vera Ball, (Alexander, 2010) at pp.14-15 https://www.isbe.net/EdDismissDocs/2010%20Teacher%20Dismissal%20Decision%20-%20Vera%20Ball.pdf (Teacher who left students unsupervised enabling two of them engage in sexual acts on school property did not engage in irremediable negligent conduct even though the conduct was negligent and a student was harmed because harm to student was not forseeable). Note that the School Board dismissed Ms. Ball and its decision was upheld by the

irremediable conduct continues to evolve through case law, and sometimes with surprising results.

3. Remediation Of Poor Performing Tenured Teachers. The National Commission on Excellence in Education published in "A Nation at Risk: The Imperative for Educational Reform."[45] It painted a dire picture of the state of public education and recommended a number of reforms, including evaluation and development of teachers' to enhance their effectiveness. It also recommended removal of teachers who were not competent teachers.

Teachers have always been subject to dismissal for poor performance or incompetency but what does and does not constitute competency or poor performance is difficult to measure and discern. To address that concern and address the recommendations of Commission on Excellence in Education,, Illinois enacted a statutory system of tenured teacher performance evaluation in 1985.[46] It required tenured teachers to undergo periodic performance evaluation by principals. Under its provisions, when a tenured teacher was rated unsatisfactory, the law required that the teacher be afforded a period of time in which to remediate his/her performance. The amount of time differed for Chicago teachers, who were given 45 school days to improve, or non-Chicago teachers, who received a full school year to improve.[47] A failure to improve to a satisfactory level during the remediation period results in dismissal charges, a dismissal hearing and potential dismissal.[48] A 1997 amendment to the statute lengthed the remediation period for Chicago teachers from 45 to 90 school days and shortened it for non-Chicago teachers from one year to 90 school days.[49]

The US Department of Education grant program known as Race to the Top (RTTT), which was intended to incentivize school districts to help improve tenured teacher performance by tying it to student growth, prompted the Illinois General Assembly to make significant amendments to tenured teacher performance evaluations in all Illinois school districts. The purpose of the grant was to make student performance a significant factor in how

Illinois Appellate Court, *See*, Ball v. Board of Education of the City of Chicago, 2013 IL App (1st) 120136).

[45] Gardner, David et al. "A Nation at Risk: The Imperative for Educational Reform," USDOE (Washington, DC April 1983) at p. 38. https://files.eric.ed.gov/fulltext/ED226006.pdf (2024).

[46] P.A. 84-972 (1985); 105 ILCS 5/24A-1 et seq.

[47] *Id*.

[48] 105 ILCS 5/24A-5.

[49] P.A. 90-0548 (1997).

administrators viewed their teachers' performance. The Performance Evaluation Reform Act of 2010 required Illinois school districts to develop new teacher performance evaluation plans that incorporated at least two measures of student growth as significant factors in the teacher's overall performance. It also revamped performance rating tiers so that there are now four categories - excellent, proficient, needs improvement, and unsatisfactory. Teachers in the "needs improvement" category must undergo professional development. As before, teachers in the unsatisfactory category must be placed in remediation but teachers were required to attain a proficient rating (a two rating jump) by the end of the remediation period or be subject to dismissal.

The new evaluation systems required significant training of principals, superintendents, and board members.[50] In a supplementary reform law, the General Assembly required hearing officers hearing tenured teacher dismissals to also undergo training on the new performance evaluation systems.[51]

CPS developed its system in 2012 and it became effective in the SY 2013-14. Other school districts adopted their plans at a later time. The effectiveness of the new systems across Illinois is as yet unknown. Studies of effectiveness require multiple years of experience under similar circumstances. COVID-19 shutdowns caused multi-year suspension of teacher evaluations so it is unlikely that we will get a clear picture of their effectiveness for some time.[52] But at least two studies have raised concerns about potential racial bias in performance ratings.[53]

D. Dismissal Procedures

An essential feature of tenure is the procedural protections it affords prior to a permanent termination of employment relationship. The Otis law and the 1941 non-Chicago teacher tenure law both

[50] P.A. 96-0861 (2010); 105 ILCS 5.24A-1 et seq.; 105 ILCS 5/24A-5.

[51] P.A. 97-0008 (2011); 105 ILCS 5/24-12(d)(3); 105 ILCS 5/34-85(a)(2).

[52] There has been considerable research in the Chicago system, which was one of the first system's implemented. The University of Chicago's Consortium for school research studied it for several years beginning with its implementation in 2013. It reported a high level of teacher and administrator satisfaction with the system five years after it was implemented. See, Sartain, Lauren et al. "Teacher evaluation in CPS:Perceptions of REACH Implementation Five Years In," (Univ. of Chicago March 2020) at https://consortium.uchicago.edu/sites/default/files/2020-03/Teacher%20Evaluation%20in%20CPS%20Perceptions-Mar2020-Consortium.pdf

[53] Stein, Matthew P. et al. "What explains the Race Gap in Performance Ratings? Evidence from the Chicago Public School," in Educational Evaluation and Policy Analyis, (December 2020) https://www.aera.net/Newsroom/What-Explains-the-Race-Gap-in-Teacher-Performance-Ratings-Evidence-from-Chicago-Public-Schools

provided for a pre-dismissal hearing, notice of charges, the right to counsel and the right to present evidence before dismissal. But as initially promulgated, boards of education brought the charges, conducted the hearing, and made the decision. By the mid-1970's, the board's multiple hats in dismissal proceedings prompted at least a few parties to raise constitutional due process questions and challenges about the potential conflicts of interest and lack of impartiality.[54] Those challenges were rejected by the US Supreme Court, the Illinois Appellate Court and the Illinois Supreme Court[55] but not before the Illinois General Assembly took away the hearing and decision-making authority from school boards and vested them in an independent hearing officer. It also afforded the teacher and the school board a right to appeal the hearing officers' decision to the circuit court under the Illinois Administrative Review Law.[56] It made those changes for non-Chicago teachers in 1975 and for Chicago teachers in 1978.

The 1995 amendments to the Chicago tenured teacher dismissal law gave the Chicago Board of Education back its decision-making authority over tenured teacher dismissal while maintaining the hearing officer to conduct the hearing on the charges and to make recommended findings of fact and recommendations as to whether the teacher should be dismissed to the Board, which the Board may accept, modify or reject.[57] The Chicago Board of Education frequently modifies, amends, or outright rejects hearing officers' recommendations.[58]

The state also restored decision making authority to non-Chicago school district boards of education in tenured teacher conduct-based dismissal cases in the 2011 reform law.[59] Since that time, those boards have also rejected hearing officer recommendations a number of times.[60]

The 2011 reform law also changed the appeal rights for Chicago teachers and the Chicago Board of Education. While appeals are still governed by the Administrative Review Law, the appeal

[54] *See*, Pickering v. Board of Education, 391 U.S. 563, 578 fn2 (1968).

[55] Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U.S. 482 (1976); Withrow v. Larkin, 421 U.S. 35 (1975); Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622, 67 Ill. 2d 143, 154-156 (1977); Hagerstrom v. Clay City Community Unit School District No. 10, 343 NE2d 249, 36 Ill.App.3d 1 (1976).

[56] P.A. 80-1308 (1978); 1978 *Illinois Session Laws* at pp. 915.

[57] P.A. 89-15 (1995); 1995 *Illinois Session Laws* at p. 514; 105 ILCS 5/34-85(a).

[58] A review of those recommendations and Board actions indicates that the Board has rejected hearing officer recommendations in at least 19 cases since 2011.

[59] P.A. 97-8 (2011); 2011 *Illinois Session Laws* at p. 2659.

[60] A review of non-Chicago tenured teacher dismissal cases indicates that school boards have rejected hearing officer recommendations at least 6 times since 2011.

must now originate in the Illinois Appellate Court First District rather than in the Circuit Court of Cook County.[61]

Hearing procedures have also changed with respect to student witnesses. The changes were prompted by 2019 reforms made to how student sexual abuse charges were investigated and prosecuted by school districts.[62] In 2019, the tenure teacher dismissal law was amended to require that hearing officers accommodate students and witnesses under the age of 18 in sexual misconduct or physical abuse cases.[63] The possible accommodations or alternative hearing procedures included remote testimony, testimony outside the presence of the accused teacher, and/or non-public testimony.[64]

That provision was amended again with new and modified provisions that became effective on January 1, 2024. The amendment does a number of things, namely:

1) `makes the witness accommodation applicable to all school districts, not just Chicago;
2) removes the limitation that accommodations were only required in cases of sexual misconduct or severe physical abuse;
3) makes it applicable if the student or witness was under 18 at the time of the incident rather than at the time of hearing;
4) requires the hearing officer to permit the student or other witness to testify outside the physical presence of the teacher via
    a) video conference with the cameras and microphones of the teacher turned off, or
    b) pre-recorded testimony, including, but not limited to, a recording of a forensic interview conducted at an accredited Children's Advocacy Center.
5) requires the hearing officer shall give such testimony the same consideration as if the witness testified without the accommodation.[65]

It's far too early to tell how these amendments have or will affect teachers and school board dismissal decisions.

[61] P.A. 97-8 (2011); 2011 *Illinois Session Laws* at p. 2685.

[62] Those reforms were prompted by a Chicago Tribune investigative series and an ensuing US Department of Education Office for Civil Rights' investigation into how Chicago Public Schools investigates and resolves student sexual misconduct complaints. Jackson, David et al. "Betrayed: Chicago Public Schools Fails to Protect its Students," *Chicago Tribune*, July 27, 2018 at https://graphics.chicagotribune.com/chicago-public-schools-sexual-abuse/index.html (2024).

[63] P.A. 101-531 (2019); 2019 *Illinois Session Laws* at pp.8138-8139; 105 ILCS 5/34-85(a)(5.5)(2019),

[64] At least one hearing officer interpreted this section strictly and refused to apply it in a case that did not involve specific allegations of sexual misconduct or severe physical abuse. In Re: Dismissal Charges against Gregory Janacek (Sonnenborn 2019) at pp. 4-5 https://www.isbe.net/EdDismissDocs/Janacek-Gregory.pdf

[65] P.A. 103-354 (2023); 2023 *Illinois Session Laws* at pp.___; 105 ILCS 5/24-12(d)(6.5)(2024); 105 ILCS 5/34-85(a)(5.5)(2024).

III. Conclusion

Tenure laws for Illinois public school teachers have see-sawed since the late 19th century, sometimes giving or enhancing and sometimes altering or diminishing the benefits of tenure. The changes have been inspired by various movements and public crises. All of them purport to provide better opportunities for students and teachers through higher quality teaching by teachers. There are plenty of movements afoot throughout the country at this writing, some to abolish tenure rights, some to strengthen them, some to subject them to parental rights. How Illinois tenure laws will change cannot be known but it is certain Illinois tenure laws will continue to evolve through case law and statutory changes.