



# Teacher Due Process in focus: The truth about teacher “tenure”

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## Teacher Due Process – Kansas’ Fair Dismissal Law

*Due process for teachers is not “job protection” – it is mouth protection.*

*Our state’s fair dismissal laws provide to teachers the safety to say what they should and what they must.*

*It provides teachers the safety to hold all students to high standards – even the children of school board members; even the star athlete. It protects teachers from being forced to alter grades when a parent needs to be pacified.*

*It provides teachers the safety to tell parents and the community when conditions in our schools might be harmful to our students physically or educationally.*

Efforts to dismantle teacher due process protections are predicated on the false belief that teachers are granted lifetime employment protection. The truth is that in their first three years of practice, teachers may be dismissed without even being given reasons. After a school district has determined that the teacher is effective in his/her practice, that teacher is granted the right to be given legitimate rationale for termination and the right to a fair hearing to ensure that rationale is legitimate. **No teacher is ever granted a guarantee of continued employment regardless of classroom performance.**

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## The Education Commission of the States on teacher “tenure”

The Education Commission of the States (ECS), a network of state policy makers and education leaders says teacher “tenure” is not a job guarantee but **“a job security device protecting against termination of employment in cases where there are no grounds for termination or where the teacher has no opportunity to present a defense.”**

According to ECS, the fair dismissal procedure for K-12 teachers **“does not require continuing the appointment of an incompetent teacher,”** adding that **“all tenure laws provide for dismissal of incompetent teachers.”**

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## A good idea in Kansas since 1957

In 1957, the Kansas Supreme Court recognized that due process for teachers was a sound public policy and they wrote the following:

“...to protect competent and worthy instructors and other members of the teaching profession against unjust dismissal of any kind – political, religious or personal, and secure for them teaching conditions which will encourage their growth in the full practice of their profession, unharried by constant pressure and fear but it does not confer special privileges or immunities upon them to retain permanently their positions or salary, nor permit their interference with the control or efficient operation of the public-school system; and, notwithstanding it grants tenure to those who have taught the requisite period, it nonetheless empowers Boards of Education to discharge then for just cause in an orderly manner by the procedures specified.”  
*Million v. Board of Education*, 181 Kan. 230, 310 P.2<sup>nd</sup> 917 (1957)

### **Taking it apart:**

“...to protect competent and worthy instructors and other members of the teaching profession against unjust dismissal of any kind – political, religious or personal...”

“...secure for them teaching conditions which will encourage their growth in the full practice of their profession...”

“...it does not confer special privileges or immunities upon them to retain permanently their positions...”

“...empowers Boards of Education to discharge then for just cause in an orderly manner by the procedures specified.”



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## Important points to consider

In *Million*, the Kansas Supreme Court recognized that the 14<sup>th</sup> Amendment of the United States Constitution guarantees that the government, federal or state, may not take a citizen’s life, liberty or property without due process. That property includes a teacher’s contract of employment.

Removal of due process protections would relieve administrators and school boards of any need to participate in effective, quality evaluation of teachers or to provide any teachers with the supports that enhance professional practice.

Creating a system in which teachers are at-will employees establishes an unsound expansion of management power and authority that is not related to sound educational policy or student performance. The system of teacher evaluation now being field tested in the Kansas Educator Evaluation Protocol (KEEP) is rigorous and provides assurance that a teacher must demonstrate their competence and classroom effectiveness.

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## The truth about costs and timelines

- **Only a few dismissals actually go to hearing each year.** Most are settled without a formal hearing hence the costs are quite low for the school district. Some settlements do include a buy-out provision such as that used when an administrator with a multi-year contract is let go.
- **The costs for proving a reasonable system of employment stability is very small.** One cannot put a number to it because there is no way to aggregate those costs; there is simply no aggregate record. Because there are relatively few dismissals that even use the due process procedure each year, the cost for ensuring a work place that is free from the fear of unreasonable dismissal is negligible.
- **The timelines in due process hearings are determined by statutes.** In practice the dismissal process can be a few days to a few months depending upon whether or not the matter is appealed to Court.
- **Most cases are never taken to Court.** Exceptions are for the purpose of making the law clearer or to rectify a serious error in the hearing process. KNEA takes few cases to Court in large part because the process is now less arbitrary than it was before 1992. Prior to the enactment of the current due process procedures, the teacher’s only option was often an appeal before the Court.