

## Proposition 74: Waiting Period for Permanent Teaching Status and Dismissal Procedures

Proposition 74 on the Nov. 8, 2005 ballot would change employment terms for certificated school employees, such as teachers, school librarians, counselors, nurses, and instructional specialists. Because the largest population affected is teachers, most discussions of the ballot measure—also known as the teacher tenure or Put Kids First initiative—focus on them. The two proposed changes intend to make it easier to dismiss ineffective teachers, but some observers question whether the changes would be fair or effective.

### The initiative proposes two changes in the teacher dismissal process

The first change would increase teachers' probationary time—or the waiting period before they receive permanent status—from two years to five. This would give districts more time to decide whether a teacher should have permanent status, thus making it easier to dismiss those with three to five years of experience. During the probationary period, a district can dismiss certificated employees without explaining its reasons or can simply choose not to renew their employment. After that time, teachers are given permanent status and the district must go through the multiple steps of due process to dismiss them. (Permanent status is often referred to as “tenure,” which can imply lifelong job security. But even with permanent status, a district can still dismiss teachers for a variety of reasons including unsatisfactory performance, unprofessional or inappropriate conduct, dishonesty, or criminal acts.)

By law, districts must evaluate teachers annually during their probationary period; but after that time, evaluations can be conducted less often. By extending the probationary period to five years, the proposition would require districts to evaluate teachers for five consecutive years rather than two.

The second change would modify the processes required to dismiss an underperforming teacher who has permanent status. Currently the Education Code specifies that to fire a teacher, the district must file written charges with the local school board, which then must vote on whether to pursue a dismissal. The board must provide employees with a written statement specifying instances of poor behavior or performance and give them 90 days to correct their faults. An employee contesting the dismissal is entitled to a hearing by the Commission on Professional Competence. Either side can appeal the commission's decision to the Superior Court and then to the Court of Appeals. (For cases relating to misconduct or criminal acts, the process is significantly streamlined.)

Proposition 74 would modify two aspects of this dismissal process. It would enable districts to release a permanent teacher based on two consecutive negative evaluations—waiving the requirement to document multiple incidents of poor performance—and would elim-

inate the 90-day improvement period. All other due process rights, including the hearing and appeal structure, would remain in place.

### Proponents say changes will save time and money in dismissing inadequate teachers

Proponents of the initiative claim that it will help districts dismiss ineffective teachers more expediently and economically. They say that extending the probationary period to five years allows districts more time to observe teachers in the classroom and mentor struggling ones before determining whether to grant them permanent status. By law, districts must determine employment renewals for teachers by March each year. Currently, with a two-year probationary period, administrators must judge teacher performance on only one year and a few months of experience. They may be more likely to dismiss beginning teachers of whom they are unsure because they otherwise risk having unsuitable teachers gain permanent status, which makes it more difficult to dismiss them.

Proposition 74 would also simplify the current dismissal process for permanent teachers, which proponents say is time consuming and can take up to two years. They also say that districts often face significant administrative and legal costs if they want to release a permanent teacher, with costs that can range from thousands to hundreds of thousands of dollars. These factors can deter a district from dismissing a veteran teacher. In lieu of dismissal, some districts may transfer underperforming teachers to other schools or to a position in which they have contact with fewer children. Proponents say that while the process for removing a permanent teacher is streamlined under Proposition 74, teachers' due process rights—including clear documentation, a hearing before an impartial judge, and appeal rights—are still protected.

In addition, proponents argue that two negative consecutive evaluations in most other professions would be adequate grounds for dismissal. Historically, however, unionized employees have enjoyed greater job protections.

### Opponents argue that changes may leave dismissal processes open to abuse

Opponents of the initiative argue that whether you are for or against the concept of “tenure,” this initiative will do little to change it. Teachers will still receive permanent status—it will just be delayed. And it has always been possible to dismiss incompetent teachers. Opponents maintain that the changes could leave the dismissal process open to abuse and deter teachers from entering or staying in the profession. In addition, it would add to the already full workload of administrators by increasing the frequency of evaluations.

According to the opponents, the increase from two years to five is arbitrary because little research exists to show that this change will improve student achievement. Only two states—Indiana and Missouri—require educators to teach for five years before gaining permanent status, according to the Education Commission of the States. The majority of states have a three-year probationary period. Some educators feel that two to three years is sufficient to determine whether a teacher will be successful in the profession, and they question whether lengthening the probationary time would help them much in identifying ineffective teachers. In addition, they argue that the changes are unfair to hard-working teachers if even a teacher with five years of excellent evaluations could be dismissed without an explanation. This decrease in job security could deter individuals from entering the profession, they say.

The proposed changes may make the teaching profession less attractive in other ways as well, they argue. Teachers without permanent status may be hesitant to speak up at staff meetings or seek help from their principals for fear of seeming difficult or less than exemplary. In addition, because teachers switching districts must start the probationary period again, the five-year requirement could mean that those who move would need a significant period of time to receive permanent status.

Opponents also say that the other change proposed—modifying the dismissal process—could lead to abuse. For example, a principal could give a poor evaluation and fire a teacher because of politics or a personality conflict. Clear documentation of when and how a teacher performed poorly over time is a safeguard against unscrupulous practices, they argue.


Opponents also question whether the proposed changes would significantly contribute to removing poor teachers from the classroom. The law already allows permanent employees to be fired for unsatisfactory performance. They argue that principals who choose not to document and pursue the available avenues would not be likely to fire someone based on negative evaluations either.

## What are the implications for districts and schools?

Proponents and opponents both make assertions about the changes Proposition 74 would make—with one side claiming that it could improve the teaching force and the other side saying it could deter teachers from entering the profession. But both sides are only speculating. No one knows for sure how a five-year probationary period or changes in dismissal requirements would actually affect the quality of the teaching force.

Even the number of teachers the proposition would affect is unclear. According to the Office of Administrative Hearings, which oversees the officers running dismissal hearings in California, only 13 teacher cases were heard and decisions issued during the past year and only 106 over the past 10 years. Proponents might say this proves that the dismissal process is so cumbersome and expensive that few districts are willing to pursue dismissals. Opponents would likely say that most teachers asked to leave do so without contesting the decision—proving that the proposed changes are unnecessary. Because the number of teachers who would be affected is unclear, it is also difficult to determine the financial implications of the proposition's changes.

But two implications of Proposition 74 are clear. First, the initiative does not explicitly define “unsatisfactory performance” other than that it consists of two consecutive negative evaluations. As a result, each district would have to develop its own definition within the constraints of its evaluation procedure. The definition could eventually become established by the courts because, according to lawyers consulted by the Legislative Analyst's Office, the judges of dismissal hearings or appeals would likely review and assess information not only on a teacher's performance, but also on the evaluation process and the district's definition of unsatisfactory performance.

Secondly, the evaluation process would be expected to carry more serious consequences. And because the evaluation process is part of collective bargaining, a layer of complexity is added. Teacher unions might negotiate for more meticulous and rigorous evaluations to safeguard teachers' rights, which could benefit teachers and students. But such negotiations could also lead to changes that actually make it more difficult to dismiss underperforming teachers. Evaluations identify teacher strengths and weaknesses and are used to help teachers improve as well as to determine who to counsel out of the profession. The way districts and teacher unions address and implement the evaluation process would directly affect the extent to which Proposition 74 would achieve its intended goals. 

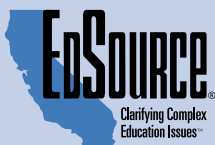
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## How can I find out more?

This proposition is being contested by the major education organizations in the state. See the Alliance for a Better California ([www.betterCA.com/Prop74](http://www.betterCA.com/Prop74)), the California Federation of Teachers ([www.cft.org](http://www.cft.org)), and the California School Boards Association ([www.csba.org](http://www.csba.org)).

As sponsor of Proposition 74, Gov. Arnold Schwarzenegger and his supporters present arguments in favor at [www.joinarnold.com](http://www.joinarnold.com). Other supporters include the California Business Round Table and the California Chamber of Commerce.

An impartial analysis is available from the Legislative Analyst's Office at [www.lao.ca.gov](http://www.lao.ca.gov). In addition, the Institute of Governmental Studies at UC-Berkeley has published an analysis at: [www.igs.berkeley.edu/library/htTeacherTenure.html](http://www.igs.berkeley.edu/library/htTeacherTenure.html)



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