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SPECIAL REPRINT

Why tenure matters to all of us

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- **WHY IS THIS WOMAN ATTACKING DUE PROCESS?**

NYSUT comes out swinging in tenure fight

By SYLVIA SAUNDERS
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In the court of law — and the court of public opinion — NYSUT is taking aggressive steps to fight back against the so-called education reform groups that are trying to take away teachers' due process rights like tenure. The bottom line: For more than a century, tenure has allowed New York's teachers to do their jobs and advocate effectively for students, while protecting good teachers against unfair firing.

NYSUT swiftly filed a motion in state Supreme Court for the right to be heard in two lawsuits challenging New York state's due process laws that establish tenure. One of the suits was filed by the Partnership for Educational Justice, a group headed by former television host Campbell Brown, that has ties to StudentsFirst, the Success Academy Charter Schools and Wall Street billionaires. The suits are now combined.

The attorney general's office is defending New York state. NYSUT was granted the right to intervene on behalf of seven representative teachers — including three New York State Teachers of the Year — who affirm that their ability to teach and advocate for their students would be jeopardized without the common-sense safeguards tenure provides.

"Tenure helps safeguard children's rights to an effective education because it provides teachers freedom to advocate for their students without fear of reprisal," said NYSUT President Karen E. Magee, who frequently advocated

“Because of tenure, teachers can and do speak up for what their students need — and against overtesting, outdated textbooks and cuts to academic programs.”

— KAREN E. MAGEE, NYSUT PRESIDENT

for resources for her students with special needs during her 30 years of teaching in Harrison.

"Because of tenure, teachers can and do speak up for what their students need — and against overtesting, outdated textbooks and cuts to academic programs. Teachers can — and do — join parents in advocating for students without the fear they can be unfairly fired for doing so."

NYSUT is also mounting intense efforts to educate members and the public about the tenets of due process and why it is essential to public education.

The first-ever Communications Ambassadors Network, composed of exemplary educators, recently attended a day-and-a-half briefing by NYSUT legal, research and educational services and communications staff on the current threats to tenure and ways they can set the record straight in the public arena.

"There's a lot of misinformation out there," said Magee. Contrary to what the critics claim, she said, tenure is working in New York state. The process has been reformed to be faster and more cost-efficient.

While Campbell Brown continues to say in interviews that it takes more than 800 days to fire a bad teacher, the truth is most cases are resolved within five months. Teacher-supported reforms made to the law in 2012 require cases that go to a hearing to be completed within 155 days, Magee noted.

NYSUT's motion states Brown and her supporters are trying to "eviscerate laws that have been carefully designed and continually and rationally refined by the Legislature, over the course of more than a century, to attract and retain qualified, dedicated public school teachers, and to protect them from arbitrary dismissal, in the interest of promoting the best possible education for New York's school children. The evisceration of these laws would not only damage the professional and legal interest of school teachers, but would impair the right of New York's school children to a sound, basic education."

The court papers note tenure must be earned; it is not automatic. In fact, New York's three-year probationary period for

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PHOTOS BY MARTY KERINS JR.

From top: Zakiyah Ansari, advocacy director of the Alliance for Quality Education, addresses NYSUT's newly designated communications ambassadors, including Stacey Caruso-Sharpe, Amsterdam TA; and Donna Kart, Wappingers Congress of Teachers, and John O'Gorman, Fairport TA.

Due process defenders: Law safeguards quality teachers

Affidavits from seven NYSUT members — all highly accomplished educators — are an integral part of NYSUT's motion to intervene in *Wright v. New York*, a lawsuit brought by Campbell Brown's Partnership for Educational Justice to challenge the state's tenure law. They are:



Seth Cohen, an earth science teacher in Troy, a parent and president of the Troy Teachers Association. Troy is an impoverished district forced by budget cuts to eliminate about 80 teaching positions over the last four years. Many Troy students do not have Internet access or a computer at home, making it difficult for them to complete assignments.

From Cohen's affidavit: "None of the problems my school district faces will be rectified by taking away or diminishing the professional safeguards that I and my colleagues were promised when we became public school teachers, and which we earned through years of dedicated service."



Daniel Delehanty, is an Advanced Placement social studies teacher in the Rochester City School District. Delehanty achieved National Board Certification in 2011, a symbol of teaching excellence and mastery of his craft.

From Delehanty's affidavit:

"As a teacher of U.S. history, I cover many controversial topics in my classroom. For example, one debate-style lesson dealt with gun control. The student-led debate of the pros and cons of gun control resulted in a parent complaint to the superintendent requesting my termination. Without the tenure law safeguards, my career could have been jeopardized by a single parental complaint."



Ashli Skura Dreher, a National Board Certified special education teacher at Lewiston-Porter High School, a parent, and 2014 New York State Teacher of the Year. Her district is reeling from the loss of 79 staff members and being forced to use substantial reserve funding to partially offset the loss of state aid.

From Dreher's affidavit:

"Over the years, I have been a staunch advocate for my students with special needs, both inside and outside the classroom ... My students are the beneficiaries of my many years of hard work and professional development. I could not have attained this mastery without the job security afforded by the tenure and seniority laws."



Kathleen Ferguson, an elementary teacher in Schenectady, where 80 percent of the district's nearly 10,000 students are considered economically disadvantaged. She is the 2010 Schenectady City Teacher of the Year and the 2012 New York State Teacher of the Year. Ferguson currently teaches an inclusion class where nearly half her students have special needs.

From Ferguson's affidavit:

"The safeguards afforded to me under New York's tenure laws are important to me. These safeguards allow me to practice my profession in the best interests of the children I teach, with reasonable assurance that I will not be arbitrarily fired or punished."



Israel Martinez, a Spanish and French teacher, a parent and coach in the Niagara Falls School District, an impoverished community in which about 70 percent of students are economically disadvantaged. His district is facing many challenges in providing a sound, basic education, including the inability to fill teaching positions lost due to attrition and retirement and the virtual elimination of the modified sports program.

From Martinez's affidavit:

"Without (tenure law) safeguards, in the event of economic layoffs, more senior and highly compensated teachers could be targeted, as could teachers who have spoken out for students or about problems in the school district."



Richard Ognibene Jr., chemistry teacher at Fairport Senior High School and 2008 New York State Teacher of the Year. Ognibene is an adviser to the Gay Straight Alliance, which meets regularly to discuss social issues, including how to make the school more welcoming for lesbian, gay, bisexual and transgender students.

From Ognibene's affidavit:

"I am dedicated to the children I teach and to my profession. [Tenure] is particularly crucial to me as a public school teacher. Under recent U.S. Supreme Court precedent, when I speak on behalf of my students in my capacity as a public school teacher, I may have no protection under the First Amendment."



Lonnette Riley Tuck, social studies teacher in White Plains, a graduate of the Thurgood Marshall School of Law in Houston, Texas, and a former judge advocate general in the U.S. Navy. Her district is facing the growing needs of students, including hunger and language barriers.

From Tuck's affidavit:

"I am an outspoken advocate for my profession and my students. I have attended numerous board of education meetings and attended rallies. Additionally, I have faced criticism from parents who were disgruntled over the grades I gave to their children, notwithstanding the fact that the grades were appropriate."

TENURE a chronology

1897

The first tenure laws are enacted for New York City teachers.

1945

Law is amended to extend some basic due process rights to virtually all public school teachers, but administrators could still bring tenured teachers up on a catch-all charge of “conduct unbecoming a teacher” and turn the matter over to a school board hearing panel.

1977

Law is strengthened to give panels power to issue binding decision. Prior to this law, more than 70 percent of tenure panel decisions were overturned by the school board.

1994

Legislature approves NYSUT-recommended changes to provide fairer and faster disciplinary process. Includes provisions for discovery hearings; for complete disclosure of penalties sought by school boards; and to give hearing officer fairer choice of penalties.

2010

Law is amended to provide that all teachers, including tenured teachers, must be evaluated annually. Any teacher who receives two consecutive ratings of “ineffective” could be subject to expedited 3020-a charges.

1937

Law is expanded to cover Union Free School Districts.

1970

Law is amended to replace partisan school board hearing panels with independent panels selected by district and teacher.

1980

Legislature extends tenure protection to those employed by any school district with fewer than eight teachers.

2008

Law is amended to provide for the automatic loss of one’s teaching license and employment as a teacher (whether tenured or not), without a 3020-a hearing, based upon the conviction or plea of guilty to certain sex offenses.

2012

Process for disciplining tenured teachers is streamlined. A 3020-a case hearing may take no longer than 125 days after charges are filed; a decision must be made within 30 days after the hearing concludes. Proceedings must be completed (from the bringing of charges to final decision) within 155 days.

NYSUT comes out swinging in tenure fight

← *Continued from page 2*

teachers is considerably longer than what is required under New York law for other public servants who also have due process rights.

In addition, New York state’s teaching standards and credentialing requirements are among the highest in the nation. Unlike in many states, New York teachers are required to earn a master’s degree within five years of certification.

NYSUT, in its court documents, says teachers and their union have

a “real and substantial interest” in the outcome of the anti-tenure case because dismantling tenure would jeopardize their teaching as well as their basic terms and conditions of employment.

Brown, who never went to public school and never taught in one, blames tenure for low student achievement in needy districts. The truth is teachers in the wealthiest districts have the identical due process and seniority rights as teachers in the poorest districts — yet students in wealthy districts have much higher graduation and college acceptance rates.

Of course the real factor

contributing to these differences in achievement is poverty, Magee said.

“Students in our poorest districts have the greatest needs but are given the least resources, with our richest districts spending 180 percent as much on education as our poorer districts do. Rather than blaming tenure, critics might better focus on the real causes, such as inadequate funding, unreasonable class size and attendance issues,” Magee said.

The only “guarantee” inherent in tenure, she said, “is that teachers who earn it — like those who are bravely standing up and representing their colleagues — are not subject to arbitrary firing based on discrimination,

nepotism, patronage, favoritism or ever-shifting political winds.”

Joining Magee in the motion to intervene are Seth Cohen, a Troy earth science teacher; Daniel Delehanty, an Advanced Placement social studies teacher in Rochester; 2013 state Teacher of the Year Ashli Skura Dreher, a Lewiston-Porter High School special education teacher; 2012 state Teacher of the Year Kathleen Ferguson, a Schenectady elementary teacher; Israel Martinez, a Spanish and French teacher in Niagara Falls; 2008 state Teacher of the Year Richard Ognibene, a Fairport chemistry teacher; and Lonnette R. Tuck, a White Plains social studies teacher.

Tenure upholds my right to speak up for my profession, my students

By **BILL DOURDIS**

The student newspaper's final issue was stuffed into district office mailboxes. It was June 1992, and Frank Sinatra would have sung "It Was a Very Good Year."

The following morning offered a much different tune.

Called into the principal's office, I was slapped with 3020-a charges that could get me fired. I was tenured, with 22 years as a teacher and faculty adviser for the student newspaper.

It started with a phone call from a board of education member who didn't like the political cartoon titled "Circus of Education" atop page 2 in the paper. It depicted board members and an administrator as animals surrounding a clownish ringmaster.

The principal tried to confiscate copies of the newspaper before they were mailed. The newspaper's editor-in-chief was threatened: Make this right or you won't receive a diploma. He ranked fourth in a class of more than 400, was a National Merit Finalist and was headed to Cornell to study law.

I stuck to my guns. I was determined to be a role model for the students, to stand up for journalistic principles. I insisted the newspapers not be destroyed and said we'd reprint pages before the papers were mailed to each student's



household, substituting the cartoon with an innocuous exam schedule. We had advertisers' contracts to honor. We made the changes, but the 3020-a charges remained.

The 3020-a hearing featured three experienced administrators schooled in education law, with a presiding chairperson. The essence of the district's case: I failed to consult with the principal on a questionable topic. The 3020-a states that if I knew I was supposed to and didn't, I was insubordinate. If I didn't know to consult with him, I was incompetent. Seemed like a two-edged sword to me. Seemed like win-win for the district.

My astute NYSUT lawyer argued this wasn't a simple black-and-white case. The student editor had attended school board meetings for almost two years while double-dipping for his social studies Participation in Government class. The student newspaper echoed "the Wappingers Circus" idea from those posed by two local newspapers in 92 recent incidences on their front and editorial pages. We simply repeated what the grown-ups had said and what we had learned first-hand.

I had not checked with the principal. Guilty. I had instead checked with a reporter for the local newspaper, the college department head where I had attended many Journalism Days for editors and advisers, the Student Press Law

what is due process?

- **The RIGHT to know the charges against you.**
- **The RIGHT to see, confront and rebut the evidence.**
- **The RIGHT to an impartial decision-maker.**
- **The RIGHT to legal counsel.**

Center in Washington, D.C., and with Bob Freeman, director of the Committee on Open Government, which is authorized by New York state to offer advisory opinions on the state's Freedom of Information Law. In other words, I consulted experts on the topic of free speech.

Ultimately I was found not guilty by 2-1. The district appealed to the state education commissioner on the dissenting vote. Again, I was exonerated.

Upholding my right to stand up and speak up for my profession and for my students defines tenure. Cherish its value.

I could have lost the final third of my teaching career if my due process rights weren't protected by tenure. The verdict restored me to my classroom and my journalism elective. Since then, I taught at least 1,500 more students about the power of the printed word, constitutional rights, canons of journalism and how to avoid censorship. I walked it, and I talked it.

I was, however, "disqualified" as faculty adviser to the school newspaper, but my loyal, local union asked if I'd edit our active teachers' newsletter. I've told their story as well as my own ever since.

Bill Dourdis is a member of the Wappingers Congress of Retired Teachers. He is editor of the award-winning WCRT newsletter, PostScript.

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To learn more about your due process rights, visit www.nysut.org/tenure

When the talk turns to tenure

We've all been there. You're standing in the grocery line, on the sidelines at the soccer game or seated next to an opinionated brother-in-law at a family dinner and the conversation turns to tenure.

"Tenure guarantees a job for life," they'll grumble. Or, a colleague in the faculty room says "good teachers don't need tenure."

Don't suffer silently: Consider it a teachable moment and use some of these answers to help set the record straight.

You say: Unions don't grant tenure — administrators do. Too many school boards and superintendents attack tenure rather than hold their own managers accountable for hiring and supervising teachers and, if necessary, removing those who don't make the grade. Tenure is granted by the board of education on recommendation of the superintendent.

When they say: "Tenure's automatic."

You say: New York's teaching force is among the best credentialed in the nation. Teachers must complete numerous educational and mentoring requirements, pass licensing exams and earn a master's degree to obtain a professional certificate. After obtaining a professional certificate, teachers must complete 175 hours of professional development every five years and undergo annual professional performance reviews.

When they say: "Tenure determines the quality of teachers."

You say: Tenure is about due process, not about guaranteeing jobs for life. In New York, teachers serve a three-year probationary period, when school officials have an obligation to evaluate those teachers' job performance. If, after three years, the local school board votes to grant a teacher tenure, it simply means that a teacher has the right to a fair hearing on charges that could end a career.

When they say: "Tenure guarantees a job for life."

You say: Tenure's not about protecting "bad" teachers; it's about safeguarding good teachers. Tenure ensures good teachers can speak up for what students need. Because tenure exists, teachers can speak out freely about overtesting, cuts in academic programs, elimination of art, music and language and inappropriate placements for students with disabilities.

Because of tenure, teachers can engage their students in a free exchange of ideas. It prevents school boards from arbitrarily dismissing teachers for holding political, religious or social views with which they disagree. It protects academic freedom the way the First Amendment protects freedom of the press.

It's not hard to imagine teachers being dismissed because they failed the daughter of an influential businessman or because the school board president's nephew needed a job.

When they say: "Good teachers don't need tenure."

You say: A district can bring charges at any time against a tenured teacher or teaching assistant for insubordination, conduct unbecoming a teacher, inefficiency, incompetence, physical or mental disability, neglect of duty, failure to maintain certification or immoral character. Many checkpoints are in place to allow teachers who can't make the grade to voluntarily exit or be counseled out of the profession. NYSUT conservatively estimates that almost one-quarter of New York state teachers exit the profession in the first five years — many because of the rigorous requirements and challenging workload.

When they say: "Because of tenure, you can't fire a bad teacher."

You say: Attacking tenure is a smokescreen for failing to tackle the real reason why students struggle: poverty. Students in poorer districts have the greatest educational needs, yet receive the fewest resources. The richest districts spend 180 percent as much on education as poorer districts do.

If the wealthy elite truly cared about advancing student achievement, they would partner with parents and teachers to focus on what really helps students the most: recruiting and retaining quality teachers and providing equitable funding for all schools.

When they say: "Tenure is the cause of low student achievement."

You say: Due process, a right enjoyed by all Americans under the Fifth Amendment to the U.S. Constitution, calls for a presumption of innocence and the right to a fair hearing. Tenure is not unique to teaching. School building administrators have it, too. State and local workers, including police and firefighters, as well as private-sector union members, have due process protections similar to tenure. And, they earn those protections in less time than teachers.

When they say: "No one else gets 'due process.'"

You say: Student safety is paramount and it is safeguarded under the state's tenure laws. Teacher-supported changes to the law in 2008 mean that any teacher, tenured or not, will automatically lose both job and teaching license if guilty of certain sexual offenses — without recourse to a hearing.

When they say: "Tenure protects sex predators."

You say: The process has been reformed to be faster and more cost efficient, with most cases now resolved within five months.

When they say: "It takes more than 800 days to fire a teacher."

Who is Campbell Brown?

And why is she telling lies about you?

Campbell Brown has become the new darling of the wealthy elite who are trying to demonize teachers and undermine public education under the guise of “reform.” A former cable television host, Brown has become the mouthpiece for the shadowy Partnership for Educational Justice (Brown refuses to say who her backers are) — a group believed to be connected to deep-pocketed privateers and profiteers who want to

privatize public education and weaken unions. Its first mission? Eliminate tenure and your due process rights through the New York state courts. Brown is not an educator, has never attended public school nor is a parent of a public school student. Her statements about public education made on TV and quoted in print lack any semblance of legitimacy and are patently false. So who is she really speaking for? Here's a snapshot of Brown and her cronies:



Campbell Brown, former CNN host and founder of Partnership for Educational Justice, sits on the board of Eva Moskowitz's Success Academy Charter Schools. She is married to Dan Senor.



Michelle Rhee, former CEO and founder of Students First, also founded The New Teacher Project that has ties to Campbell Brown.



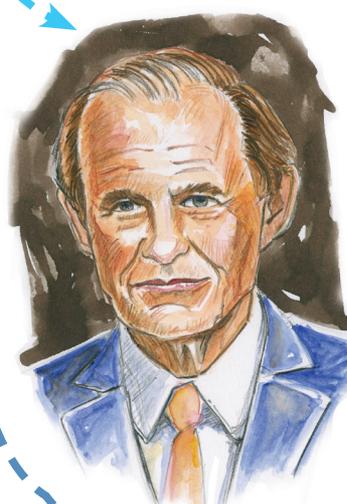
Joel Klein, former New York City schools chancellor, heads Rupert Murdoch's NewsCorp's education division. He's on the boards of StudentsFirst and StudentsFirstNY. A massive email scandal in 2010 revealed that Klein, as chancellor, bestowed Moskowitz special support for her charter network.



Hedge fund billionaire Paul Tudor Jones is on the board of StudentsFirstNY. The group's other Wall Street connections include Daniel Loeb and David Tepper. Jones wants to “save” public education by privatizing it, according to *Forbes*, and has financed Eva Moskowitz's ad campaigns.



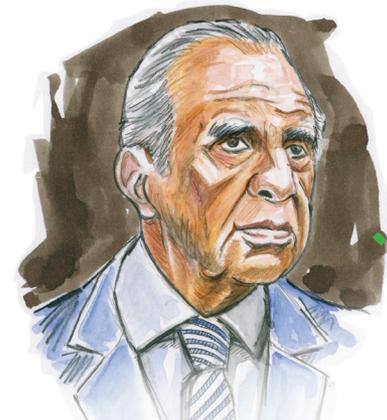
Dan Senor, hedge fund manager and a director of StudentsFirstNY, is married to Campbell Brown. His boss, billionaire Paul Singer, is a backer of Eva Moskowitz's Success Academy.



High-profile lawyer David Boies is the board chairman of Brown's Partnership for Educational Justice and is guiding the group's legal strategy to bring lawsuits against states with strong tenure and seniority protections.



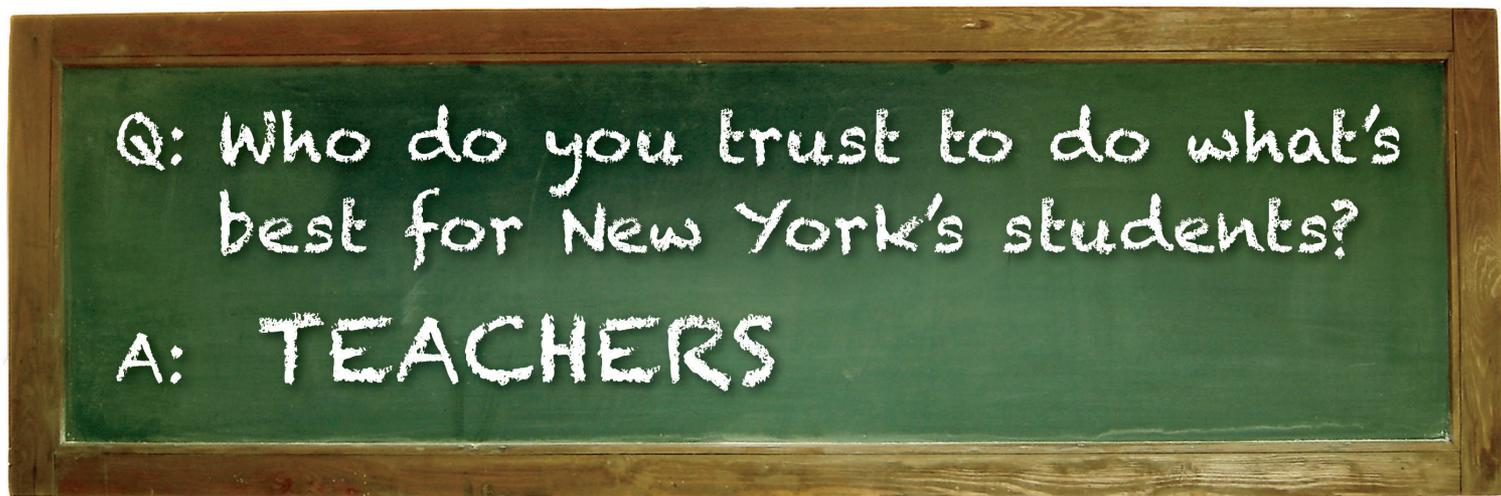
Eva Moskowitz, a former New York City councilwoman, founded Success Academy Charter Schools in 2006 with backing from hedge fund managers Joel Greenblatt and John Petry, current members of the schools' board that is chaired by hedge fund manager Daniel Loeb. Moskowitz sits on the board of StudentsFirstNY.



Carl Icahn, corporate raider and founder of four New York charter schools, is on the board of StudentsFirstNY.



David Welch, Silicon Valley millionaire who bankrolled the California lawsuit to eliminate tenure in that state, is rumored to be backing Brown's New York lawsuit. At the very least he is giving her advice, the *Wall Street Journal* reports.



That was the number one answer given in a recent *Times Union*/Siena College poll of upstate New Yorkers. The public trusts teachers *more than anyone else* when it comes to putting their students' interests first.

And they should.

New York's teachers are consistently rated among the best and most highly educated teachers in the nation. They face a demanding uphill climb to earn the right to teach our children. Aspiring teachers must earn a college degree, complete a minimum of 40 days of student teaching, and pass multiple certification exams. They must pass rigorous background checks and successfully complete required training on child abuse prevention, school violence issues and ensuring the dignity of all students.

That only gains them an *initial* certification to teach. They must then also complete additional courses. Have a mentor for one year. Succeed as a classroom teacher for three years before being eligible for due process rights. And earn a master's degree within five years.

Teachers must also complete 175 hours of professional development *every five years* to maintain their certification.

Few states require as much of their teachers as New York does.

No wonder New York state is widely recognized for its exemplary teaching force and earns high marks for its rigorous standards and credentialing requirements — typically ranking among the nation's top ten.

You are right to trust your teachers, New York. They've earned it.



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