



THE PUBLIC SECTOR

The ‘dance of the lemons’ in public education

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Vergara v. State of California is a highly controversial lawsuit seeking massive reform of the California public education system. It suffered a major and likely fatal defeat in April when the 2nd District Court of Appeal reversed the trial court’s holding that Education Code provisions regarding teacher tenure, dismissal, and layoffs were unconstitutional because they deprived low-income and minority students of their fundamental right to education.

Students challenge code provisions

The plaintiffs were nine California public-school students who claimed that certain statutes violated the Equal Protection Clause of the California Constitution. They sued a number of defendants, including the state of California and the Department of Education. The two largest teachers’ unions in the state later joined the case.

The plaintiffs argued that the statutes cause a disproportionately high number of grossly ineffective teachers to be continually assigned to low-income and minority students. They claimed that (1) tenure decisions are made too quickly (in less than 16 months); (2) once tenure is granted, it is practically impossible to terminate grossly ineffective teachers under the burdensome dismissal statutes; and (3) when layoffs are required, the “last-in, first-out” statute requires the termination of junior, competent teachers while more senior, ineffective teachers keep their jobs purely out of seniority. These systemic failings, the plaintiffs argued, violated students’ “equal protection” and fundamental right to an education.

Delivering a major victory to proponents of educational reform, the trial court ruled for the plaintiffs, upturning Education Code provisions regulating tenure, termination, and layoffs. The court of appeal, however, reversed.

The court held that the plaintiffs couldn’t show that the challenged statutes inevitably caused low-income and minority students to be disproportionately assigned to grossly ineffective teachers. Instead, their evidence highlighted that administrative decisions, which are guided by district policies, collective bargaining agreements, and teacher preferences, determined how teachers are assigned throughout a district. Such practices, not the Education Code, are

responsible for the “dance of the lemons” in which underqualified teachers are placed in schools predominately serving low-income and minority students, rather than being terminated. The plaintiffs showed only that the statutes could cause teacher assignments based on race and wealth, which was insufficient to show a constitutional violation.

Two differing views on what is best

Reformers supporting the students argue for disrupting the status quo—which isn’t working for millions of students—and equalizing the quality of education for every student, even if the cost is some teachers’ jobs. They argue that lax tenure laws, impractical termination procedures, and seniority-based layoffs make educators unaccountable and impede more substantial reforms for closing the achievement gap.

On the other hand, the defendants and teachers’ unions argue that the protections improve the educational system by protecting effective teachers from arbitrary dismissal. Also, tenure is a powerful way to attract quality candidates despite the relatively low pay and high stress associated with teaching jobs. Moreover, they argue, targeting laws through the judicial system is not the appropriate remedy for education reform. *Vergara v. State of California* (California Court of Appeal, 2nd Appellate District, 4/14/16).

Bottom line

The court implied that the plaintiffs might have succeeded if they had proven that the statutes inevitably caused a disproportionately high number of grossly inefficient teachers to be assigned to low-income and minority students. However, the court concluded that any imbalance of teachers in the schools populated by low-income or minority students was a management problem at the local level, not a state-wide problem caused by teacher job protection laws. This goes to show that parties bear an especially high burden in challenging the constitutionality of a statute.

Unless the California Supreme Court grants review (an unlikely prospect), this case will be a strong example of the reality that educational reform must occur at the local and legislative levels—a process that, if ultimately successful, will take decades to achieve—rather than through the court system.

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