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SPECIAL UPDATE

June 12, 2014

LA SUPERIOR COURT JUDGE FINDS TEACHER TENURE UNCONSTITUTIONAL: TEACHER TENURE DENIES STUDENTS THE RIGHT TO A GOOD EDUCATION

On Tuesday, Judge Rolf Treu of the Los Angeles County Superior Court announced his tentative decision to cease the enforcement of five statutes of the California Education Code. The Court held that the statutes, which all relate to teacher tenure, are unconstitutional under the equal protection clause of the California Constitution.

1. Statutes Challenged

The offending statutes have been summarized as follows:

- **Permanent Employment Statute:** The permanent employment law forces administrators to either grant or deny permanent employment to teachers after an evaluation period of less than 16 months – before new teachers even complete their beginner teacher induction programs and before administrators are able to assess whether a teacher will be effective long-term.
- **Dismissal Statutes:** (3 of the 5 statutes) The process for dismissing a single ineffective teacher involves dozens of steps, requires years of documentation, costs hundreds of thousands of dollars and still, rarely ever works. Out of 275,000 teachers statewide, 2.2 teachers are dismissed for unsatisfactory performance per year on average, which amounts to 0.0008 percent.
- **“Last-In, First-Out” (“LIFO”) Layoff Statute:** The “LIFO” law forces school districts to base layoffs on seniority alone, with no consideration of teachers’ performance in the classroom.

2. Plaintiffs’ Arguments

Plaintiffs argued that the California Constitution protects the fundamental right of students to equal education opportunity, and asked the court to examine both the text of the challenged statutes as well as the practical effects they have on students. Plaintiffs claimed that the statutes result in grossly ineffective teachers obtaining and retaining permanent employment, and that these teachers are disproportionately situated in schools serving predominantly low-income and minority students.

3. Defendants’ Arguments

Defendant State of California, which was joined in the suit by the California Teachers Association and the California Federation of Teachers, argued the student/plaintiffs had not established a “fundamental interest”

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equal protection claim, because the statutes: (1) do not classify students; (2) do not harm students in a direct and unattenuated manner; and (3) survive any level of scrutiny. Finally, the State/Unions argued that the student/plaintiffs had not established a “suspect class”, because the statutes were not enacted for the purpose of harming low-income or minority students, and do not cause disproportionate harm to such students.

4. Court’s Ruling

The Court stated that the challenged statutes “impose a real and appreciable impact on students’ fundamental right to equality of education and that they impose a disproportionate burden on poor and minority students. Therefore, the statutes were examined with “strict scrutiny,” and the State/Unions had the burden of establishing not only that the State had a compelling interest which justified the challenged statutes, but that the distinctions drawn by the laws are necessary to further their purpose.

Evidence was presented that: (1) the Permanent Employment Statute does not provide nearly enough time (less than 2 years) for an informed decision to be made regarding the tenure of a new teacher; (2) the Dismissal Statutes may result in a 10-year/\$450,000 process to dismiss an ineffective/tenured teacher; and (3) the LIFO Statute results in a lose-lose situation where an efficient, junior teacher would be laid off instead of an incompetent, senior one based simply on seniority.

Upon completing its examination of the statutes, the Court found all five of the statutes to be unconstitutional under the equal protection clause of the Constitution of California, and ceased the enforcement of all five statutes.

NOTE: In arriving at this decision the Court addressed the grave difference between the length of time it takes to dismiss a poor performing teacher, and the time needed to complete the discipline process against public employees. Evidence was presented that classified employees, fully endowed with due process rights guaranteed by *Skelly v. State Personnel Board*, had their discipline cases resolved with much less time and expense than those of teachers. The Court then asked the question: “Does a classified employee have a lesser property interest in his/her continued employment than a teacher, a certified employee?” The Court had heard no evidence that a *Skelly* hearing violated due process and asked the patently obvious question:” Why, then, the need for the current tortuous process required by the Dismissal Statutes for teacher dismissals?”

The Court ordered all of the injunctions stayed pending appellate review. We will keep you apprised.

Click this link to view the Tentative Decision.

http://www.zappialegal.com/images/Tentative_Decision_-_Teacher_Tenure.pdf

Vergara v. California (June 10, 2014) Los Angeles Superior Court Case No.: BC484642.

California Teacher Tenure Is Struck Down: Expect years of appeals (June 11, 2014) Los Angeles Times (Howard Blume, Stephen Ceasar)

<http://www.latimes.com/local/lanow/la-me-ln-unions-react-tenure-ruling-20140611-story.html>