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TEACHER CLASSROOM EFFECTIVENESS AND STUDENT LEARNING OUTCOMES: POLICY IMPLICATIONS

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Overview

In my September (2016) commentary dealing with teacher tenure, I offered the following observation:

“In communities across this country, especially as student statewide academic test scores for individual schools (elementary, middle, and secondary) are published in local newspapers, parent groups and tax payer organizations are demanding that incompetent (poorly performing, ineffective) teachers be quickly identified and summarily removed from public school classrooms. In their view removing ‘poorly performing and ineffective teachers’ from classrooms will improve instruction and boost student learning—especially in lower performing schools.” (CEPI *Education Law Newsletter*, 2016)

September’s commentary featured a California case where plaintiff students alleged that state tenure, dismissal, and seniority-based statutes created an oversupply of “grossly ineffective teachers” inevitably having a negative effect on minority students. Vergara, et al. v. State of California, et al. (Cal. App. 2016) In the California case, while some experts testified on the impact of teacher classroom effectiveness on student learning and achievement, other experts testified regarding the impact on student learning and achievement of a host of outside-of-school factors such as child poverty. Vergara (Cal. App. 2016)

Our October 26, 2016, the *Compass Point* (CEPI) publication featured a discussion of the high rate of teacher turnover in the public schools in each state. In addition to such continuing issues as salary, the growing emphasis being placed on statewide standardized student testing was another major factor cited as a reason to leave the profession and chose another line of work—especially as the results of student standardized tests are being linked to salary, job security, and the curriculum. The National Education Association (NEA) refers to today’s school environment as “high stakes” for teachers. (*Compass Point*, 2016)

Because both sources call attention to the linking of student statewide academic testing results to teacher instructional performance evaluation and assessment, this month’s commentary is intended as an extension and follow-up discussion.

Teacher Effectiveness and Student Learning: In Search of a Standard

As public education moved into the 1970s, the traditional form of judicial review persisted in deciding teacher dismissal cases where issues of teacher instructional competence, or the lack thereof, and student learning, were involved. Lacking specific standards of review to apply, judges focused on two aspects of each case. First, they looked to see if school system policies and procedures were followed. Second they ascertained if the actions taken by school officials were supported by sufficient data. (Vacca and Boshier, 2012) Judges had to be convinced that summative employment decisions were based on valid and reliable criteria—criteria directly related to teacher on-the-job performance and effectiveness. In other words, when challenged in court, school officials had to demonstrate that a rational relationship existed between the school district’s teacher evaluation system and a primary goal of improving classroom instruction.

Era of Transition and Change

A small number of state court decisions referred to as “educational malpractice” cases were decided in the mid-1970s. In these cases former student plaintiffs unsuccessfully claimed that a causal connection existed between “negligent instruction,” or “inadequate instruction,” or “instructional negligence,” or “negligent teaching” and their “failure to learn.”

Judges hearing this non-traditional type of negligence claim lacked meaningful standards to apply. The following judicial statement was typical: “the science of pedagogy itself is fraught with different and conflicting theories of how and what a child should be taught....” Moreover, said the court, “[s]ubstantial professional authority attests that the achievement of literacy in the schools, or its failure, are influenced by a host of factors which affect the pupil subjectively, from outside the formal teaching process, and beyond the control of its ministers.” Peter W. v. San Francisco Unified School District (Cal. App. 1976)

While, as a general rule, courts continue to view claims of *poor academic performance* as nonactionable, Sain v. Cedar Rapids Community School District (Iowa, 2001), the educational malpractice cases did raise important questions that school officials still ponder. Is there a *causal connection* between teacher instructional competence and effectiveness, or lack thereof, and levels of student learning outcomes and academic achievement? Is there a manageable and non-hypothetical standard for courts to apply? If there is such a standard, what is it?

The 1970s also marked a time when statewide student academic competency testing programs were enacted. It was during this period that the United States Court of Appeals for the Eighth Circuit upheld the dismissal of a classroom teacher whose students did poorly on standardized academic achievement tests. A significant factor in favor of school officials was that the improvement of student test scores was a primary objective of the school district and this teacher did not produce the results expected of her. Scheelhaase v. Woodbury (8th Cir. 1973) In my view, while Scheelaase is but one case from one jurisdiction, it was significant that a federal appellate court had accepted the use of statewide student academic test scores and improvement of student performance on these tests as criteria to apply when judging classroom teacher competence and effectiveness.

More than four decades ago, in Scheelhaase (1973), did the Eighth Circuit plant the seeds for a new standard of review? Would it come to pass that statewide testing standards and student achievement levels on these tests would serve as major criteria in measuring classroom teacher instructional effectiveness? Had the die been cast?

Cook, et al. v. Bennett, et al. (11th Cir. 2015)

Recently, I reviewed a decision from the United States Court of Appeals for the Eleventh Circuit in which teachers challenged a newly implemented state system of teacher performance evaluation. Student academic achievement test scores were included.

Facts

In 2011, the Florida legislature enacted the Student Success Act (SSA). The new law established new requirements for public school teacher’s performance evaluations. The SSA provided that at least 50

percent of a performance evaluation must be based on data and indicators of student growth assessed annually by statewide assessments.

A formula to measure individual student learning growth on the Florida Comprehensive Assessment Test (FCAT) was adopted by Florida's Commissioner of Education. The formula was called the FCAT value-added model (FCAT VAM)-which is based on students' FCAT scores in English and mathematics and accounts for a host of predictor variables (such as a student's prior test scores, attendance, and disability status). The FACT VAM outputs a *teacher's component* which measures an individual teacher's effect on student score, and a *common school component* which measures the potential impact of factors that are part of the school's environment, such as the principal or the neighborhood. A teacher's final evaluation score is calculated by adding the teacher component score with 50 percent of the common school component score.

Because students take the English FCAT exam in grades 3 through 10 and the mathematics exam in grades 3 through 8, the FACT VAM was designed to provide evaluation scores for teachers who teach FCAT courses and whose students have FCAT scores from at least two years. The earlier scores serve as a baseline data of student achievement and the more recent scores are used to evaluate the student's current teacher's performance. Thus, the model only works for teachers of English in grades 4 through 10 and mathematics in grades 4 through 8 (referred to as *Type A* teachers).

The rest of Florida's public school teachers fall into two categories:

- *Type B* teachers who teach students in grades 4 through 10, but in subjects other than English and mathematics, and, even though the teacher does not teach the subjects in which the scores were received, their students have at least two FACT scores that can be used in the FACT VAM formula.
- *Type C* teachers are those who teach students who either (1) are in grades below 4 or above 10, or (2) do not take standardized tests. *Type C* teacher's students do not have at least two FCAT scores that can be used in the FCAT VAM formula.

The SSA required schools to adopt the FCAT VAM for evaluating *Type A* teachers beginning with the 2011-2012 school year. School districts were instructed to select an equally appropriate formula for measuring student learning to use with *Type B* and *Type C* teachers. Most school districts, including the three district defendants in this case, lacked the necessary resources to develop alternative assessments or the necessary statistical models to derive student growth models equivalent to FCAT VAM. In absence of an equally appropriate formula the SSA required school districts to evaluate *Type B* teachers using "the growth in learning of the classroom teacher's students on statewide assessments." In practice these were the student's schoolwide FCAT scores in English and mathematics.

In absence of an equally appropriate formula, *Type C* teachers were evaluated using "measurable learning targets." The targets were based on the goals of the school improvement plan and approved by the school principal. In practice the evaluations were based on FCAT scores of students whom the *Type C* teacher did not teach. The Florida State Board of Education approved the school districts' evaluation procedures and assisted in calculating the FCAT VAM scores for *Type B* and *Type C* teachers.

District Court Action

Seven public school teachers and three local teacher associations filed suit in federal district against three county school districts, the Florida Commissioner of Education, and officials from the State Board of Education. In their law suit the plaintiffs challenged the constitutionality of the SSA and the district and state defendants' implementation of teacher evaluation policies that violated the teachers' rights to due process and equal protection.

Seeing a rational basis for the SSA, the district court granted defendants' motion to dismiss the facial challenge to the SSA. The court also granted defendants' motion for summary judgment, holding that a rational basis existed for the evaluation policies implemented under the Act. An appeal was taken to the Eleventh Circuit.

Court of Appeals Rationale and Decision

The Eleventh Circuit Court first dealt with issues of standing and mootness. Regarding standing the Court held that because "the evaluation scores affect the teachers' future employment outcomes, including their eligibility for raises, which are statutorily tied to performance evaluations," and since "this sort of injury is concrete, imminent, and directly traceable to the defendants' evaluation policies," and "the injury is redressable by injunctive relief," plaintiffs have standing to bring the law suit. Regarding mootness, the Court held that "[t]he changes in the Florida law and the districts' evaluation policies are insufficient to render the case moot, because it is not 'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" Thus, because "[t]he government has not carried its burden to show that the case is moot...we will consider the merits of the plaintiffs' appeal."

The Eleventh Circuit Court analyzed plaintiffs' substantive due process claim. Viewing the claim as not infringing on a "fundamental right," the Court applied the rational basis test. Under this test, said the Court, "the school districts' evaluation policies 'must be rationally related to a legitimate governmental purpose.'" The plaintiffs argued that the evaluation policies fail rational basis review because the policies "arbitrarily and illogically evaluate teachers based on test scores either of students or in subjects they did not teach." They claim that "the evaluation policies are not rationally related to, and in fact run counter to, the purpose for which the FCAT VAM was developed—that is, to attribute student learning growth to specific teachers by controlling for variables such as student demographics or school-wide factors like the principal."

On the other hand, said the Court, the defendants do not justify the evaluation policies in relation to the FCAT VAM's purpose. They argue "that the policies are rationally related to the purpose behind the Student Success Act itself, which is to 'increas[e] student academic performance by improving the quality of instructional, administrative, and supervisory services in the public schools of the state.'" As such, the plaintiffs have failed to carry their burden "to refute this justification of the law." Recognizing that using the FCAT VAM scores in the evaluation process might have some "unfair results," the Court concluded that it might be possible that using the scores would incentivize teaches to pursue more school-wide improvements, which would in turn improve student academic performance. The Eleventh Circuit agreed with the district court that the policies pass rational basis review.

Turning to the plaintiffs' equal protection claim and the legislation itself, and the fact that the Florida legislation and statutory scheme for teacher evaluations had been improved since its inception in 2014, the Court reiterated the rule regarding application of rational basis review. Legislation "is presumed to

be valid and will be sustained if the classification drawn is rationally related to a legitimate state interest... Rational basis review in the context of equal protection is equivalent to rational basis review in the context of due process.” Because the challenged evaluation procedures were rationally related to the purpose of improving student academic performance, the Court held that “plaintiffs’ equal protection claim also fails.”

Decision

Because the state and district defendants “could rationally believe that the challenged evaluation policies would improve students’ academic performance,” the Eleventh Circuit Court upheld, “the district court’s entry of summary judgment in the defendants’ favor.”

Policy Implications

Today’s public school systems exist in an environment of transparency and accountability for results—a data-driven school environment where such terms as “highly qualified teachers” and “research-based methodologies” dominate the scene. At the same time, local school systems are striving to accomplish the following goals:

- (1) to improve student academic growth and proficiency,
- (2) to achieve and maintain the state standardized test pass rate needed to accredit individual schools, and
- (3) to demonstrate that academic progress is being made in underperforming schools in their quest to reach full state accreditation.

Because today’s technology enables local school officials to establish a direct link between student learning outcomes and individual teachers, job security is a major concern. Thus, evaluations and assessment policies and procedures must ensure fairness and fair treatment of classroom teachers. In my opinion a relationship exists between increased feelings of job security in classroom teachers and an increase in the quality of instruction provided in classrooms.

Valuable information can be gleaned from the Eleventh Circuit Court’s rationale reviewed above. What follow are suggestions to keep in mind as local school officials reexamine existing teacher evaluation policies and consider the adoption of new ones—especially where states are moving in the direction of requiring the inclusion of statewide student academic testing results (outcomes) as criteria in evaluating teacher “instructional effectiveness.”

Local school system policies must make it clear that:

- Teacher evaluations and job performance assessments are directly related to the measurement of teacher on-the-job effectiveness in meeting the school system’s goal of improving student academic growth and proficiency.
- Teacher evaluations and on-the-job performance assessments include valid and reliable criteria for making judgments regarding on-the-job performance and instructional effectiveness.
- Teacher evaluation and on-the-job measurement procedures are rationally related to the specific purpose of judging teacher instructional effectiveness in carrying out the school systems goal of improving student academic growth and proficiency.

- Teacher evaluation and on-the-job assessments are intended as developmental and not punitive.

Two Final Thoughts

First, separate but appropriate evaluation and on-the-job assessment policies and procedures must be established for teachers who teach subjects not involved in statewide student academic testing. Second, the potential impact of factors that are a part of a student's outside of school environment (*e.g.*, socio-economic background) must be considered in making decisions regarding a classroom teacher's instructional effectiveness.

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Note: The views expressed in this commentary are those of the author.