

# EDUCATION WEEK

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## Teacher Tenure: An Innocent Victim of Vergara v. California

By David Finley

"Rotten Apples" was the inflammatory cover line for *Time* magazine's November 2014 cover story on the contentious *Vergara v. California* decision, which struck down a series of teacher-protection laws in the state. The *New York Times* editorial board also weighed in on the case, as did **U.S. Secretary of Education Arne Duncan**. *Vergara* attracted national attention because incompetence in the teaching profession is a concern to public education everywhere. But I wonder if we all missed the bigger concern, regardless of our position on the outcome.

The two-month trial of the state's "evil" tenure laws ended in June of last year. The charge: protecting the significant number of grossly ineffective teachers that have infiltrated the state's public education system, according to the plaintiffs. Superior Court Judge Rolf M. Treu found the statutes that protect teachers, as currently written, to be in violation of the California state constitution. Education reformers across the nation were euphoric over the decision. Similar suits against state tenure laws have been filed in New York, with others planned for Connecticut, New Jersey, and Oregon. If common sense prevails, they will not be successful. Frankly, I think the litigation is a waste of time and taxpayers' money.

As a long-tenured public school educator, I know that tenure laws have no bearing on the problem of bad teachers. Incompetence in the profession extends far beyond the classroom door, deep into the bowels of public education. It is a systemic problem, and pursuing the elimination of tenure to solve it is a fool's errand.

The education profession is a two-party system: teachers and administrators. Both are equally responsible for student learning. But in the *Vergara* trial, teachers alone took the rap for incompetence. In court testimony, **administrators admitted their responsibility for removing ineffective teachers**. But they also defended themselves, claiming that the mandated two-year probationary period is too brief and "forces" administrators to make premature tenure decisions. This defense is not only nonsense, it defies logic.

In his 16-page ruling, Judge Treu used the terms "grossly ineffective" and "incompetent" nearly 20 times to describe teachers. In the case summary, the lawyers for the plaintiffs used the terms "grossly ineffective" almost 30 times. There were no other adjectives used in referencing teachers. Make no mistake: *Vergara* was focused squarely on "grossly ineffective, incompetent teachers."

Consider the synonyms for "gross": flagrant, glaring, outrageous, and obvious. Bungling, helpless, incapable, inept, pathetic, worthless, and useless—are all synonyms for ineffective and



incompetent. Am I the only educator to ask why any principal would need two years to make a tenure decision about a teacher who is this incapable of doing his or her job?

The late Madeline Hunter, a former professor of mine at the University of California, Los Angeles, and an author and internationally recognized figure in public education for nearly two decades, once said, in reference to determining teacher competence, that if you hear someone playing the piano, it doesn't take long to figure out if it's Liberace or the boy next door practicing.

The validity of Ms. Hunter's statement was unwittingly confirmed by an expert witness for the *Vergara* plaintiffs. Jonathan P. Raymond, the superintendent of the Sacramento public schools from 2009 to 2013, gave testimony that included his experience of observing a teacher. "My first day as superintendent, ... I observed a teacher, an amazing teacher. ... I mean the energy and the connection that she had with children on just the first day [was] remarkable." He was so impressed that he wanted his son in her classroom.



—Jonathan Bouw for Education Week

As a new superintendent visiting district classrooms, he could not have been in her room more than 15 minutes. He had no knowledge of how she had been evaluated formally or the results of her students' standardized tests. Yet, based on this brief observation, he was able to identify her as a virtuoso in the classroom. Had she been the novice, practicing her piano lesson, it would have been obvious, as well. If a superintendent was able to determine the quality of this teacher in 15 minutes, why would a principal need two years?

I am not asserting that a teacher can be evaluated effectively in 15 minutes. But based on my four decades in public education—more than three of them as a school principal—and conducting several hundred formal teacher evaluations, I am asserting that indicators of teacher competence reveal themselves very quickly. Signs of incompetence, much less gross incompetence, do not suddenly materialize. Individuals who struggle so profoundly in the classroom are generally unable to improve enough to suddenly take command of instruction. Two years is more than ample time for a principal to reach this conclusion.

**“There seems to be a conspiracy among politicians and the media whereby teachers get thrown under the bus, while administrators are given a free ride.”**

This matters for the *Vergara* case when you consider the following:

In his ruling, Judge Treu said, "All sides of this litigation agree that competent teachers are a critical, if not the most important component of success of a child's in-school experience." Under oath, then-Los Angeles Superintendent John Deasy testified that having highly effective teachers was the most important factor in accomplishing the mission of his school district: improving student learning.

The critical importance of teacher effectiveness was established at the trial, with both sides in agreement. Therefore, I would argue, the evaluation of teachers in an effective and timely manner—in other words, ensuring that only effective teachers gain tenure—is the single most important factor in the evaluation of principal effectiveness. If all principals performed effectively, there would be no grossly ineffective teachers in California classrooms, or anywhere else, for that matter.

Alas, this is not the case. It was determined at trial that between 1 percent and 3 percent—roughly 8,200—of California's 275,000 teachers are grossly ineffective. Yet, only 2.2 teachers, on the average, are dismissed for unsatisfactory performance per year.

Although intended to support the case against tenure laws, these statistics are actually an indictment against those responsible for evaluating teachers effectively. If it is true that more than 8,200 grossly ineffective teachers occupy California classrooms, it is also true that during their probationary periods, they each had a grossly ineffective principal. So where does the buck stop? Is it not true that district-level administrators are responsible for ensuring that every school has a highly effective principal? If accountability is the battle cry of education reform, should the term not apply to education professionals at all levels?

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Why is it that the body politic and the media are so intent on vilifying classroom teachers while totally ignoring education administrators? Is it not the responsibility of those who hold the keys to power within the profession to ensure that every student, in every school, in every classroom is taught by a quality teacher? There seems to be a conspiracy among politicians and the media whereby teachers are thrown under the bus, while administrators are given a free ride.

*Vergara* served an important purpose by bringing public attention to the damage inflicted upon children by incompetent teachers. Unfortunately, incompetent administrators, who are equally culpable, escaped the scrutiny of the court. Instead, teacher tenure became the innocent victim of this high-profile case.

Judge Treu hoped to solve the problem of incompetent teachers by striking down the state's tenure codes. In reality, the root cause is an intrinsic one, found within the structure of our K-12 school systems. Eliminating tenure laws to solve the problem is akin to putting a Band-Aid on a bad headache.

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*David Finley recently retired after 43 years in education. He taught for eight years and was an elementary school principal for more than 30 years, serving in both affluent and high-poverty districts. He lives in Scottsdale, Ariz.*