

## EDUCATION WEEK

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# Unfairly Fired Teachers Deserve Court Protection

By **W. James Popham & Marguerita K. DeSander**

We believe that thousands of American teachers will lose their jobs in the next few years because of the recently designed, more demanding evaluation systems now found in most of our states. These new teacher-evaluation procedures were triggered by a pair of federal initiatives that mark a sea change in job security for the nation's teachers.

Most U.S. teachers, however, don't seem too worried about these looming dismissals because they believe that teachers who are fired as a result of unsound evaluation systems can readily get those dismissals reversed in court. But they're mistaken.

In the Obama administration's 2009 Race to the Top initiative and in the subsequent No Child Left Behind waiver program allowing states to avoid federal sanctions under the NCLB law, state education authorities were urged to establish more-rigorous teacher-evaluation programs. These new evaluation systems were to be based on multiple kinds of evidence, such as classroom observations and administrators' ratings, but would also need to include students' test scores as a "significant factor."

Thus, states were allowed to fashion their own teacher-evaluation systems, but in accordance with such federal guidelines as the insistence that evaluative results would contribute to personnel decisions. Although school districts sometimes made minor adjustments in state-determined evaluation procedures, the federal demand for more-stringent evaluations typically trumped local preferences.

The trouble is that many of these recently fashioned evaluative systems contain serious shortcomings. For instance, they often rely too heavily on traditional achievement tests, such as off-the-shelf nationally standardized tests or, more often, standardized tests developed specifically for a given state. These annually administered accountability tests, although useful for other educational purposes, are unaccompanied by any evidence that they are able to distinguish between well-taught and badly taught students.

Other teacher-evaluation procedures use classroom-observation systems requiring an excessive

number of judgments to be made by observers during abbreviated classroom visits. When classroom-observation procedures call for observers to rate a teacher's classroom performance on 40 or 50 separate dimensions, and do so during a handful of 30-minute classroom visits, the resultant observation data are often of little value.

So, let's suppose that Teacher X in District Y of State Z has been unfairly dismissed because of a flawed teacher-evaluation system. For those who think that unjustly fired teachers will be protected by our court system, and many do, the picture is not rosy. The nation's courts have historically refused to substitute their judgment for that of a school board in cases where a teacher (whether tenured or probationary) has been terminated for substandard job performance. This has been true if the termination is based on even a scintilla of evidence.



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The only exception occurs when the fired teacher is a member of a legally protected class of citizens (for instance, a designated racial group) who can demonstrate that the termination was based on bias or discrimination.

The burden of proof would then be on the terminated teacher to demonstrate that the teacher-evaluation procedures being used were either intentionally designed to adversely affect a protected group or, if unintentional, still resulted in such an adverse impact. In either case, the burden of proof is significant and difficult to satisfy.

Both federal and state courts have categorically declined to weigh in on the quality of evaluative procedures measuring the performance of teachers. The role of the courts has always been to review the record to determine whether law, policy, and procedures established by the state and local authorities have been followed and, along the way, that due process was not denied.

The courts will not rule on the appropriateness of a teacher-evaluation system, or the evidence-collection procedures incorporated in that system, if the procedures are applied in a fair and consistent manner to all teachers affected. Thus, even an inadequate evaluation system will avoid the rigor of court scrutiny when it is applied equally to all teachers.

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Rigorous teacher-evaluation systems, if properly conceived and appropriately implemented, will have a positive impact on teachers' instructional ability and, as a result, on their students' learning. But not all of today's teacher-evaluation procedures are defensible.

If the nation's teachers realize that our courts can't protect them from unsound teacher evaluations, perhaps they will dig into the details of their state and local teacher-evaluation procedures. Then, possibly with the support of relevant advocacy groups, any significant shortcomings can be brought to the attention of state authorities. The stakes are too high to allow shoddy teacher-evaluation procedures to exist.

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