

# Lawsuit: Stop evaluating teachers on test scores of students they never taught (2nd update)

By Valerie Strauss, Updated: April 15, 2013

*(Update: Lawsuit filed; statement from education commissioner added)*

A group of teachers and their unions filed a lawsuit on Tuesday against Florida officials that challenges the state's educator evaluation system, under which many teachers are evaluated on the standardized test scores of students they do not teach.

The seven teachers who filed the lawsuit include Kim Cook, who, [as this post explains](#), was evaluated at Irby Elementary, a K-2 school where she works and was named Teacher of the Year last December. But 40 percent of that evaluation was based on test scores of students at Alachua Elementary, a school into which Irby feeds, whom she never taught. Really.

The other teachers who filed the lawsuit all claim that they have been and/or will be evaluated on the scores of students they haven't taught and on subjects they don't teach. The lawsuit, also filed by the National Education Association and the Florida Education, claims that the evaluation of teachers based on test scores of students they don't teach or from subjects they don't teach is unfair and violates the Equal Protection and Due Process Clause of the Constitution.

Florida has been at the center of corporate-based school reform for years. As part of a continuing package of school reforms that began under Jeb Bush, who was governor from 1999-2007, the Florida Legislature passed a bill in 2011 that requires that a big portion of the annual evaluations of teachers and instructional employees be based on a specific formula that was created to measure growth in reading and math scores on the Florida Comprehensive Assessment System (FCAT) student exams. Teachers who are rated "unsatisfactory" for two out of three years can be fired, and as of July 2014, salaries will be based on performance evaluations.

Florida's FCAT reading tests are given to students in third through 10th grades grade, and the math exams, to third through eighth graders. Most teachers, of course, don't teach these subjects in these grades or in those subjects but are assessed by them anyway.

How?

Cook's students are too young to take the FCATs, so she is evaluated on the reading FCAT scores from fourth and fifth graders at Alachua County Elementary.

Then there's plaintiff Catherine Boehme, a certified biology teacher at West Florida High School of Advanced Technology in Escambia County. In 2011-12, half of her evaluation was

based on the scores of her students on the FCAT reading test. No biology on it. The same thing is set to happen this year.

In the absence of any common sense coming from Florida officials, the plaintiffs are hoping a judge will give them deserved relief. But this irrational evaluation system is not limited to Florida; other states, too, that have linked student test scores to teacher evaluations are in the same situation. Courts could soon be flooded with such lawsuits.

Late Tuesday, Florida Education Commissioner Tony Bennett released this statement:

The performance pay legislation signed into law in 2011 helps us recruit and retain quality teachers. There is currently another piece of legislation (HB 7141/SB 980) under consideration in the Legislature that would make improvements to the Student Success Act, including ensuring that teachers are evaluated only on the students and subjects they teach. The legislation would also provide that teachers could not be eligible for a performance pay system until an appropriate assessment for their students and subjects is in place. We look forward to working with teachers, administrators and Florida families as we continue ensure a fair and appropriate assessment that best rewards the success of our great teachers.