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Tenn. Teachers' Union Takes Evaluation Fight Into the Courtroom

Lawsuit calls system arbitrary, flawed

By [Stephen Sawchuk](#)

At a time when teachers' unions are pushing back on newly redesigned evaluation systems, the debates are starting to find their way into the courts.

The latest action comes in Tennessee, where the state union filed a federal lawsuit March 21 calling the portion of the state's teacher-evaluation system based on test scores arbitrary, flawed, and in violation of teachers' constitutional rights. Last year, a Florida union also sued over that state's system.

The lawsuit this month is the second in the Volunteer State to challenge performance bonuses based on such calculations, and it may signal a rash of challenges nationwide.

"The legal terrain is not settled, and it has to be settled in almost every state separately because so much of this is driven by state law," said Douglas N. Harris, an associate professor of economics at Tulane University in New Orleans, who has studied "value added" calculations like those used in Tennessee. "That's one reason I think this is only the beginning."

Both the state's Republican governor, Bill Haslam, and its education commissioner, Kevin Huffman, are named in the suit, as is the Knox County board of education. The case was filed in the U.S. District Court for the Eastern District of Tennessee, in Knoxville.

Spurred by a bonus that a Knox County teacher didn't receive as a result of the test-score calculations, the suit has ambitious aims. Among other objectives, it asks the court to prevent the state from using test scores in any employment decision--whether evaluations, pay, or dismissal--until the "arbitrary classifications" in the system are corrected.

"Potentially, teachers could lose not only the bonus, but also other forms of compensation, perhaps lose their jobs, certainly lose their eligibility for tenure," said Gera Summerford, the president of the Tennessee Education Association, an affiliate of the 3 million-member National Education Association.

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Officials at the state education department would not comment on pending litigation. In past appearances, though, Commissioner Huffman has attributed the state's recent gains on the National Assessment of Educational Progress in part to improved instruction spurred by the evaluation system.

Different Classifications?

In general, value-added models use statistical formulas to generate estimates of how much a particular school or classroom teacher contributed to student learning, as measured by standardized-test scores. Tennessee's version is known as TVAAS. It is included as one factor in a teacher-evaluation system that was rolled out, **somewhat bumpily**, in the 2011-12 school year.

Under state rules, a teacher with five or fewer tested students is graded on a "schoolwide" measure, based on the progress of all students in the school. Those teachers with six or more tested pupils receive an individual value-added estimate based on those students' progress.

In the case of plaintiff Mark Taylor, an 8th grade science teacher, the value-added score was based on just the 22 students in his regular science class. They represented fewer than 16 percent of the total number of students he instructs, because he also has four sections of students who take an advanced course that does not conclude with a standardized exam.

The value-added system gave Mr. Taylor the lowest possible score for that part of the evaluation. As a result, "the plaintiff was denied a bonus under [the district pay program] even though the observation component of his evaluation ... showed that he was exceeding expectations," the complaint reads.

The union says that the state has "no rational basis" for basing the measurement on only a fraction of a teacher's students, and that the "arbitrary and irrational" categorization of teachers into groups with different evaluation rules violates teachers' due-process and equal-protection rights under the U.S. Constitution.

In an interesting wrinkle, the lawsuit cites as evidence comments made by the developer of TVAAS, the North Carolina-based researcher William Sanders. Mr. Taylor's parents were apparently acquainted with Mr. Sanders through Sunday school classes, and queried him by email whether TVAAS results based on one course were appropriate to use for evaluation purposes.

"For an overall evaluation of the effectiveness of the teacher to facilitate student academic progress, of course not," Mr. Sanders replied, according to copies appended to the complaint.

The union's aggressive stance against the system marks a turnaround of sorts. In 2010, the TEA endorsed the **state's bid** in the federal Race to the Top competition, which explicitly linked students' test scores to teacher evaluations. The support helped the state win some \$500 million in the grant competition, but the union now says it didn't predict that the changes would lead to so many difficulties.

"When I talk to teachers around the state, the number of things [that] can go wrong with TVAAS is the number of teachers in the state," Ms. Summerford said. "It just seems like all these things keep bubbling up that show us the problems it has that we didn't anticipate."

She expects the TEA will file more lawsuits against the use of TVAAS as other teachers' experiences come to light.

The issue of overtesting has, in the meantime, become a general theme for the union. It has

launched a statewide campaign, "Teach the Students, Not the Tests," and in recent months also has put its weight behind legislation to prevent teacher licenses from being granted or revoked based on TVAAS data. (See story, this page.)

National Echoes

The Tennessee lawsuit has echoes elsewhere, as teachers' unions step up their criticism of the use of test scores in evaluations.

In January, Randi Weingarten, the president of the American Federation of Teachers, **repudiated her earlier position** that such scores could be one factor in evaluations.

And last year, the NEA's Florida affiliate **filed a lawsuit** focused on the value-added segment of that state's evaluation system. By using a schoolwide value-added formula, the state was grading many teachers on the performance of students they didn't teach, or in subjects they didn't teach, the union argued. State lawmakers **made some legislative alterations** to the system shortly after.

As for Tennessee, even if the court agrees with the union's arguments, new forms of teacher evaluation are probably here to stay, said Mr. Harris, the Tulane professor.

"Value-added was the spark that started these changes to the evaluation systems, but you don't need the spark to keep the fire going," he said.

Supporters of value-added methods, meanwhile, argue that the estimates, while imperfect, are better than many other gauges of teacher quality. Most traditional proxies, such as completing credentialing requirements or holding a master's degree, bear an inconsistent relationship to students' academic progress, they note.

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