



Using VAM

in high-stakes employment decisions



As states increasingly apply value-added modeling to teacher evaluations, including termination, districts should proceed with caution.

By Mark Paige

Incorporating student test results into teacher evaluations was virtually unknown just a few years ago. But that practice is now swiftly moving into state education regulations across the country, thanks to the influence of Race to the Top (RttT) funds. Very quickly, states are enacting new teacher evaluation systems that require student performance to account for some percentage of a teacher's annual evaluation. In Florida, 50% of a teacher's evaluation must be based on student performance scores and, in Michigan, student growth must be a "significant factor." Even states that are unencumbered by RttT, such as Wisconsin, have begun to develop teacher evaluation that incorporates value-added modeling (VAM).

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In spite of the rush to embed VAM in state legislation, the validity of value-added modeling is far from proven. That has given rise to substantial debates about using VAMs in high-stakes employment decisions. Some researchers advise caution or avoidance (Hill, 2009). Others contend that VAMs are seaworthy enough to be used in termination decisions and, given the need to improve teacher quality, should be used (Hanushek, 2009).

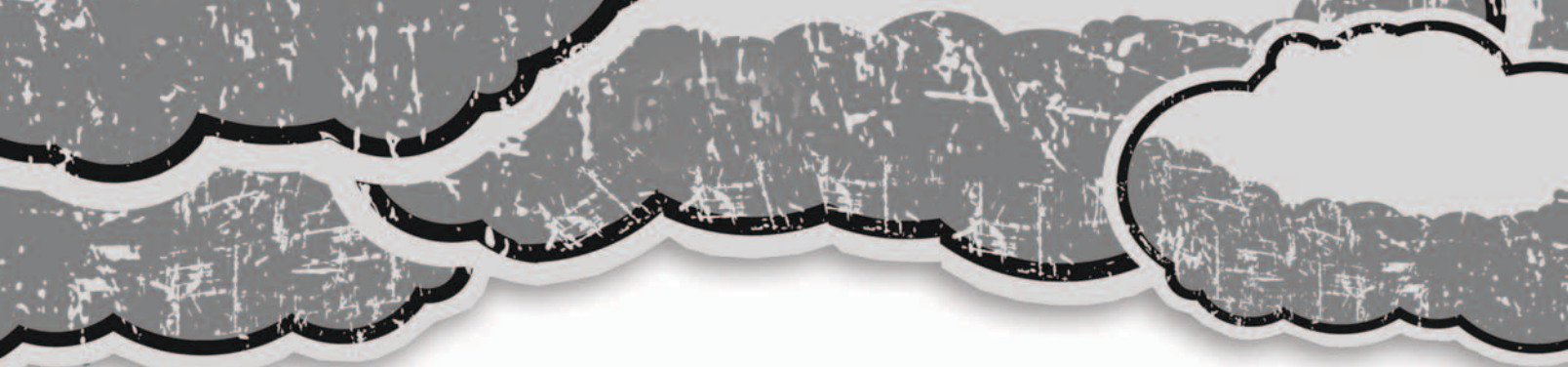
What is sure is that using VAMs in high-stakes employment decisions such as firing a tenured teacher for poor performance will be challenged in the courts. The only question is when and where the court challenges will begin. District leaders should be aware of the interaction and potential legal pitfalls that may arise if VAMs are used to inform not only teacher evaluation but high-stakes employment decisions.

VAMs and tenure laws

While there is some difference among states, termination of a tenured teacher usually triggers a state's tenure law. Typically, tenure laws require that districts give the teacher some form of notice, a hearing, and a decision based on facts. Using VAM to support a tenured teacher's termination may be problematic from a number of perspectives. First, the research on the relationship between VAM and teacher effectiveness is murky. So, using VAMs as evidence of a teacher's poor performance is difficult. A teacher could argue that using VAMs to support a performance-based nonrenewal only clouds the picture, rather than clears it up. For instance, one study reported a disconnect between a teacher's value-added score and expert observations. Teachers with high-scoring, value-added measures didn't necessarily have solid instructional skills when observed by experts (Hill, Kapitula, & Unland, 2011). Thus, as a district tries to meet a burden to demonstrate that the tenured teacher was not performing, VAM may actually frustrate that position.

VAMs and collective bargaining agreements

Employment termination can arise for reasons unrelated to performance, such as a reduction in



force (RIF) which typically occur for budgetary reasons and follow the terms set forth in a collective bargaining agreement between the teacher union and the district.

Typical collective bargaining agreements require that seniority be a factor in making employment decisions. However, by statute, states are trying to limit using seniority in such situations. In Florida, for example, schools are prohibited from relying on seniority as a sole factor, and teacher evaluations must be considered when making a RIF decision. Accordingly, the trend is to give discretion to teacher evaluations. Therefore, because teacher evaluations now tend to include student performance, VAMs necessarily are a point of discussion.

However, even in this context VAMs seem to cause more confusion than clarity on the point of teacher effectiveness. In other words, VAMs may even mask effective instruction (Hill, Kapitula, & Umland, 2011). If a layoff decision is based heavily on a teacher evaluation, which includes reliance on a VAM rating, expect considerable debate and, likely, a grievance. In the face of this confusion, the result will be that school officials may naturally rely on the one variable that is concrete: seniority.

VAMs, employment decisions, and the courts

The risks in using VAM to support a contested employment decision in court may outweigh any benefits. First, courts generally defer to an administrator's subjective opinions and evaluations about teacher performance. For example, in *Missick v. City of New York* (2010), a court found in favor of the district where the district conducted seven observations of the teacher. Moreover, multiple evaluators observed the teacher and reached the same conclusion that the teacher was not performing satisfactorily. The court noted that the observations were consistent and procedurally sound. The *Missick* case supports the general idea that courts don't want to become "super school boards" or administrators on education policy matters. Loosely translated: If school administrators can document solid observations about teacher performance, courts are inclined to accept their judgment.

Second, at least one court has echoed the valid-

ity of concerns about using student test scores to measure teacher effectiveness. One court noted that standardized test scores vary considerably based on class demographics (*Weston v. Ind. Sch. Dist. No. 35*, 2007). This comment is remarkably similar to those made in the education literature concerning VAMs ability to account for the myriad of variables that affect student learning and teacher instruction. To be sure, this court recognized the importance of test data as some form of the assessment of a teacher's performance. However, the court went on to rely heavily on testimonial evidence from students and parents regarding the teacher's effectiveness. Moreover, the court noted that the district did not take action against teachers with student test scores that were lower than those of the terminated teacher. Thus, if a district over-relies on test scores, it must be careful to be consistent with respect to how it treats other teachers who are similarly situated.

Policy recommendations


A number of policy recommendations flow naturally from this brief outline of the law of teacher evaluation as it incorporates VAM.

#1. Use extreme caution or avoid VAMs when substantiating a high-stakes employment decision.

First and foremost, use VAMs with extreme caution in substantiating high-stakes employment decisions, such as termination. As discussed, in the cases of tenured teachers, the statistical validity issues surrounding VAM (e.g., the question as to whether it can truly measure a teacher's effectiveness on student growth) could potentially frustrate a district's decision to terminate a tenured teacher.

#2. Keep your eye on the ball: Continue focusing on developing evaluation systems based on high-quality observations.

The literature in education and case law supports a policy focus on high-quality observations. High-quality observations can reveal teacher instructional capacity that VAMs miss (Hill, 2009). Moreover, in



the context of litigation, courts naturally defer to school administrators' subjective opinions. Courts recognize that school administrators are the proper authority to assess a teacher's effectiveness, and they are hesitant to second-guess opinions substantiated by evaluations that are supported by rigorous observations (*Missick v. City of New York*, 2010).

#3. Be consistent.

The *Weston* case is instructive on this point. Again, that court called attention to the fact that the district had not terminated teachers with lower student test scores than the teacher in that case. The lesson is that district administrators, when they cite student test scores as a reason for termination, must be able to defend it when compared to others. That does not mean they should avoid student test scores when justifying a termination. But it does mean a district must have a rational purpose for overlooking other nonterminated teachers' test scores. This might come in the form of high-quality observations or other measures.

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#4. Collaborate with teacher unions.

Teacher unions should be part of the process of developing a teacher evaluation system that relies upon VAMs. This makes sense for a number of reasons. First, teachers should have a voice in how they're evaluated. They have expertise. They have knowledge. And, importantly, involving them improves the evaluation system's applicability. When teachers are included in the process, they're invested in the agreed-upon system. Second, the bargaining

process gives a forum for union and management to clarify the role of VAMs in making high-stakes employment decisions. For example, they can construct contract language that deals with the issue that arose in *Weston* — where the court noted that the district did not terminate other teachers with poorer test scores. Management-friendly language might indicate that VAMs may be one of several factors a district may use in justifying a decision. Thus, when enveloped in other factors, such as high-quality observations, VAM differentiation between teachers can more easily be explained. This accords with what the courts prefer. Courts are interested in the subjective opinions of administrators. Regardless, it limits the argument in *Weston* because it places unions on notice that VAMs may be used in a high-stakes employment decision.

Conclusion

Without question, value-added measures are here to stay. Because teacher evaluation plays such an important role in high-stakes employment decisions, VAMs will get increasing scrutiny as districts begin to make those decisions. Using VAMs in these cases should be approached with extreme caution because of statistical reliability issues as well as complications that are sure to arise where VAMs meet the law of teacher evaluation and termination. **◀**

References

- Hanushek, E. (2009). Teacher deselection. In D.H. Goldhaber, (ed.) *Creating a new teacher profession* (pp. 165-180). Washington, DC: Urban Institute Press.
- Hill, H., Kapitula, L., & Umland, K. (2011). A validity argument approach to evaluating teacher value-added scores. *American Educational Research Journal*, 48 (3), 794-831.
- Hill, H. (2009, Fall). Evaluating value-added models: A validity argument approach. *Journal of Policy Analysis and Management*, 28, 700-709.
- Missick v. City of New York*. 707 F.Supp.2d. 336 (E.D.N.Y. 2010).
- Weston v. Ind. Sch. Dist. No. 35 of Cherokee Cty.*, 170 P.3d 539 (2007).