

**TEACH
+PLUS**

Opportunities for Teachers,
Results for Urban Students

Valuing Performance and Honoring Experience:

Teacher Solutions for a Post-Vergara Profession

LOS ANGELES TEACHING POLICY FELLOWS

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INTRODUCTION

On June 10, 2014, Los Angeles Superior Court Judge Rolf Treu ruled in favor of the plaintiffs in Vergara v. California and struck down the state's education statutes of Tenure, Dismissal, and "Last In, First Out" (LIFO)-based Layoff, arguing that they harm low-income students and students of color by "handcuff[ing] schools from doing what's best for kids." This landmark ruling offers a once-in-a-lifetime opportunity to develop better and fairer education policies that will greatly increase equitable opportunities and improve outcomes for California's 6.2 million public school students.

*The evidence is compelling.
Indeed, it shocks the conscience.*

- Los Angeles Superior Court Judge Rolf Treu

The ruling serves as an important catalyst for all stakeholders to address the role of teacher performance in the areas of tenure, dismissal, and layoff policies. We must act now to make innovative, bold changes in statewide legislation around these key statutes.

OPPORTUNITY TO DO RIGHT BY KIDS AND TEACHERS

Within this context, it is imperative that teachers play a central role in the development of legislation that will be needed to address the problems identified by the Vergara ruling. Simply put, teachers cannot leave policy change solely up to the legal system or non-educators. As experts in the classroom, teachers have a unique understanding of the opportunities, risks, and challenges that could arise from proposed solutions to the problems identified by the lawsuit.

This brief shares recommendations from a group of 30 Teach Plus Teaching Policy Fellows who teach across diverse Los Angeles Unified School District (LAUSD) schools and charter schools in Los Angeles. The recommendations aim to blend the need for consideration of performance in key educational policies with retention of due process for California's public school teachers. We call upon legislators to use these recommendations in developing policies that lead to improved results for our students.

POTENTIAL FOR UNINTENDED CONSEQUENCES

While the landmark Vergara decision is not prescriptive in spelling out specific legislative changes, any new legislation that results from it carries the potential for negative, unintended consequences. The pendulum could swing too far and, as a worst case scenario, could lead to arbitrary dismissal of teachers if due process rights are eroded. Clearly, this would not benefit schools. Likewise, a system without clear performance metrics could put experienced and high-performing teachers (who may have higher salaries) at greater risk of dismissal than their early-career peers (who may have lower salaries) by creating a perverse financial incentive for schools to dismiss higher-salaried teachers. These and other unintended consequences need to be carefully considered in the crafting of new legislation.

At the same time, changed legislation or practices resulting from the Vergara ruling should not be seen as a panacea for our challenged educational system in California. Certainly, legislation that improves California's tenure, dismissal and layoff-related statutes is indispensable to a stronger, more equitable education system in our state. However, addressing these issues alone will not ensure equitable access and results for California's students. Other necessary steps must include improving working conditions in high-poverty schools, including appropriate staffing levels, and providing the professional growth opportunities and resources teachers need to succeed on behalf of our kids and our state's future.

RECOMMENDATIONS

TENURE

Context and Current System:

Tenure, also known as “permanent employment,” is not unique to California but is the norm for most teachers across the United States. California’s permanent employment statute requires school administrators to make tenure decisions – entitling teachers to extensive due process rights – after teachers have been on the job for only 18 months. In some cases, tenure is actually granted in less than that. California is one of only five states that require tenure determinations in two years or less.

Vergara Ruling:

Judge Treu found that “both students and teachers are unfairly, unnecessarily, and for no legally cognizable reason (let alone a compelling one), disadvantaged by the current Permanent Employment Statute” (p. 10:15-17). It is important to note that Judge Treu did not find that permanent status, in itself, is unconstitutional. Rather, he found that the current statute related to “permanent status” is unconstitutional under the equal protection clause of the California Constitution because it “does not provide nearly enough time for an informed decision to be made regarding the decision of tenure (critical for both students and teachers).”¹

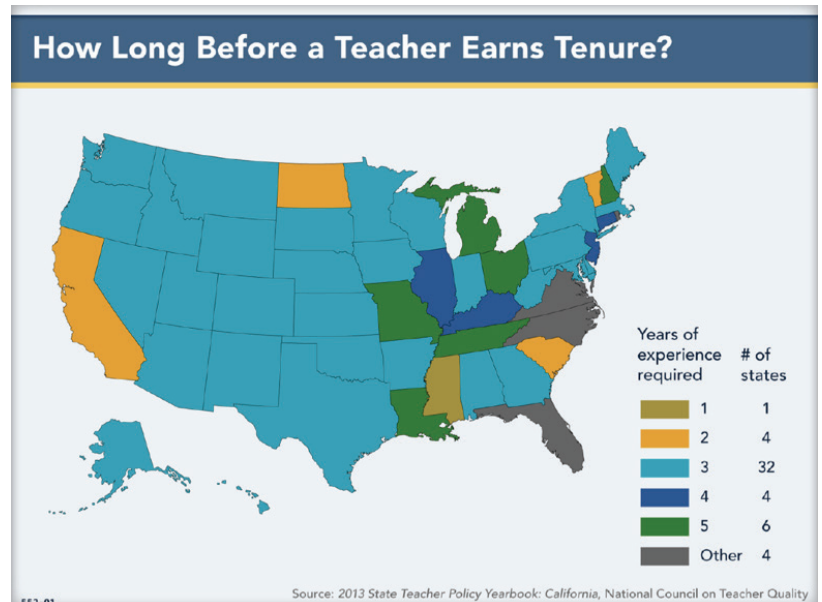
Recommendations:

We believe that the best solution is ultimately to make tenure a performance-driven job benefit. This would serve our students best while helping make the concept of tenure more meaningful and elevating the profession. This extraordinarily important change would likely need to be phased in because a comprehensive evaluation system must be created first. Therefore, we suggest the following short- and long-term recommendations.

Short-Term Recommendation:

Extend the time needed for a teacher to gain “permanent status” from two years to four years.

Rationale: Extending the time needed to gain tenure will serve students by ensuring that their teachers have demonstrated effective teaching before being automatically given tenure. Under the current system, administrators have just 18 months to determine if new teachers are effective in the classroom or if they should be “non-elected” (i.e. effectively dismissing them to prevent them from reaching “permanent status”). Research shows that teachers typically do not reach the height of their effectiveness until after three to five



¹ Furthermore, the judge noted that as a result of the current permanent status statutes, “teachers are being re-elected who would not have been had more time been provided for the process. Conversely, startling evidence was presented that in some districts, including LAUSD, the time constraint results in non-reelection based on ‘any doubt’ thus depriving 1) teachers of an adequate opportunity to establish their competence, and 2) students of potentially competent teachers.” In other words, the short time frame did not provide adequate time to make the best determination of which teachers would be best for students.

years of teaching,² yet the system forces principals to make staffing decisions about teachers when they are still in the developing stages of their career and, in essence, to predict whether or not a teacher will be effective based on an insufficient amount of data. Extending the time to four years would allow principals to have significantly more and better data.

Furthermore, districts should consider using multiple trained observers in conjunction with an administrator's recommendation to "non-elect" a teacher (effectively dismissing them through lack of contract renewal) after the two-year mark. This would help ensure protection from unilateral actions by a single administrator.

Long-Term Recommendations:

1. Require three consecutive years of evaluations demonstrating effective teaching for a teacher to earn "permanent status."

Rationale: Research shows that the effect of the current system, which grants "permanent status" to all teachers regardless of performance, disproportionately harms low socioeconomic children and African-American and Hispanic students. We believe that tenure should be earned by requiring teachers to demonstrate effective teaching for three consecutive years. This will ensure that all students have consistent access to high-quality teachers, which research shows affects their achievement in immediate years and earning potential throughout their lifetime.³

2. Base tenure decisions solely on performance.

We strongly recommend that the state adopt a new evaluation model that is a composite of multiple measures. This model should use a five-level ratings system (see Figure 1) that includes standards-based observation, teacher attendance, and student progress.⁴

Figure 1



Rationale: In order for all students to have highly-qualified teachers, it is essential that these teachers are evaluated to determine who should be recognized for their expertise and who should be counseled out of the profession. When these evaluations are executed with fidelity, there is a greater likelihood that students will have access to a quality instruction. Teachers who continue to grow as professionals and develop an expertise

² <http://www.nber.org/papers/w11936.pdf>

³ http://obs.rc.fas.harvard.edu/chetty/va_exec_summ.pdf

⁴ Observations should include two full (55 minute+) observations with a teacher's supervising administrator, and four 15-minute observations from four different same-certification peers. Each observation should include detailed written feedback and ratings on a district-designed rubric (copy to be given to classroom teachers). In order to ensure fair and accurate ratings, the district should provide all observers with intensive training on the evaluation rubrics and observation procedures.

in their field should be rewarded with tenure. Teachers who have consistently demonstrated inability to achieve effectiveness should not continue to teach.

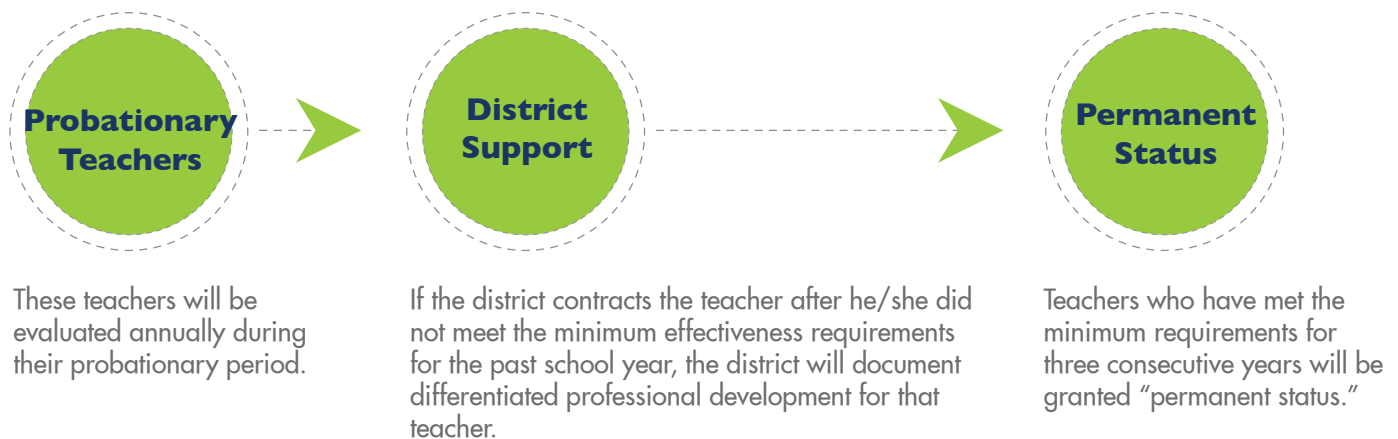
It is imperative for both schools and districts to utilize measures that evaluate teacher effectiveness in the classroom and to implement a system that will allow them to retain effective teachers and non-elect those who are ineffective.

Tenure isn't a meaningful achievement to me. We teach our students that earning achievements requires investing a great deal of time and effort into something, whereas I was given tenure just for showing up.

- Kat Czujko

3. Require schools to provide evidence of support for teachers who received an unsatisfactory evaluation if those teachers continue their employment.

Rationale: If a school continues to employ a teacher after he/she has received an unsatisfactory rating (as indicated by receiving scores of one or two out of five in any evaluation category), then it should provide that teacher with targeted professional development in all areas for which he/she did not demonstrate proficiency. Documenting the support given to teachers with unsatisfactory ratings will ensure that schools are working diligently to immediately improve the quality of instruction available to students as soon as unsatisfactory practices are identified.



DISMISSAL

Context and Current System:

All public employees are guaranteed reasonable due process protections under the California Constitution. In addition to these protections, three specific statutes that relate to dismissal (see Supplement) provide extra layers of protection that often make the process of removing an ineffective teacher extremely costly and lengthy. *Out of 275,000 teachers statewide, 2.2 teachers, on average, are dismissed for unsatisfactory performance per year, which amounts to just 0.0008 percent of all teachers in the state.*

Los Angeles Unified School District spent \$3.5 million from 2000 to 2010 in efforts to dismiss seven of the district's 33,000 employees for inadequate classroom performance. Ultimately, only four were actually dismissed.- LA Weekly

Vergara Ruling:

Judge Treu found the Dismissal Statutes unconstitutional under the equal protection clause of the Constitution of California, noting that “the current system required by the Dismissal Statutes to be so complex, time consuming and expensive as to make an effective, efficient yet fair dismissal of a grossly ineffective teacher illusory.”⁵

Recommendations:

Our focus should be on doing away with ineffective teaching, not ineffective teachers. In other words, teachers who want to improve should be given an opportunity to do so and receive meaningful professional – but time-limited – support.

1. Improve and expand programs that support teachers, particularly those that target new and struggling teachers.

Rationale: Most teaching today happens “in a vacuum” where teachers and their students receive little feedback or assistance from others. Although teachers participate in professional development, very little of it is individualized, ongoing, or reflective. These practices can lead to teachers plateauing, rather than developing as practitioners of their craft. We believe that targeted individualized support can have a tremendous impact on remediating ineffective teachers by melding professional development with actual classroom practice. Districts may decide on a particular support system and/or professional development plan, but must demonstrate that this support is specific, targeted, and measurable of teacher growth.

When I speak to my colleagues about the Vergara case, they are fearful about eroding the due process for teacher dismissal. Our recommendations emphasize the need for school districts to provide meaningful assistance to struggling teachers. If we want the best teachers, districts must provide ample opportunities for teacher growth.

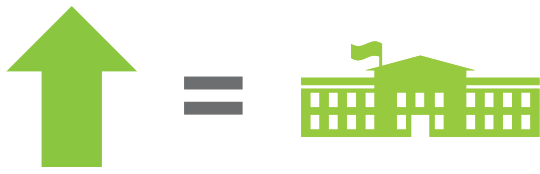
- Bootsie Battle-Holt

2. Connect teacher evaluation to the dismissal process.

Rationale: Currently, an ineffective teacher can remain in the classroom for years before being targeted for support or given notice that his/her practices are unsatisfactory. When a teacher is evaluated as ineffective, it is imperative for administration to act immediately. A first action should always be to assist the teacher in the effort to improve and to have targeted, documented evidence of this assistance. We propose that a struggling teacher is assisted for a year in bringing the unsatisfactory area of need up to a passing rating before dismissal proceedings are discussed.

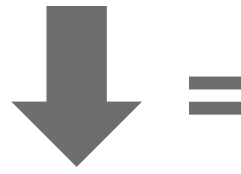
If the teacher receives a second unsatisfactory rating in the next evaluation, he/she would enter a remediation process. This period includes three-month benchmarks to ensure the teacher is making progress toward the stated goals of improvement. If the teacher does not show progress toward the three-month goals, a dismissal process is initiated.

⁵ Judge Treu referred to the Dismissal Status of teachers as showing “uber due process.” While recognizing the need for due process, the Judge found that the extent of due process for certificated teachers was far greater than due process for classified employees - despite the fact that both groups of employees should hold equal claims to due process. In his ruling, the judge noted that “grossly ineffective teachers are being left in the classroom because school officials do not wish to go through the time and expense to investigate and prosecute these cases.”



**Progress
toward
goals**

**Stay in the
classroom**



**Lack of
Progress**

**Initiates
dismissal
process**

Our recommendation gives consideration to a teacher who had “one bad year,” while being supportive of teachers who want to improve their craft. At the same time, it creates a viable paper trail for administrators to back up claims that they offered support but saw no improvement.

Promising Practices: Colorado

Teachers are evaluated every year and students’ academic progress counts for half the instructors’ overall rating. Elementary and high school teachers need three consecutive years of positive evaluations to earn tenure, which guarantees them an appeals process before they can be fired.

3. Improve the Commission for Professional Competence hearing process

- Professionalize requirements for those who serve on dismissal panels (i.e. NBCT hours; Teacher of the Year duties)
- Conduct trainings for Administrative Law Judges (ALJ’s) in effective teaching
- Limit the length of hearings to six working days
- Limit the number of appeals to one
- Prior to returning to the classroom, require teachers who go through the dismissal hearing to have an explicit finding on record that it serves the students’ best interests for that teacher to return to the classroom.

Rationale: Almost all of the time and money spent attempting to dismiss ineffective teachers is tied up in the selection, scheduling, hearing, and unlimited appeals prescribed by the current Commission on Professional Competence process. If more teachers were asked to serve on the panel as part of their professional duties the pool would be expanded, thus expediting the hearing panel’s process. Furthermore, Administrative Law Judges (ALJ) do not have a background in education, so they often defer to the teachers on the panel. If teachers with a high level of content and pedagogical knowledge are selected to serve, and the ALJ is trained in effective teaching, then decisions will be better informed. Limiting the trial to six days, with one appeal, does not take our best teachers out of their classrooms for an extended period of time. With a competent panel of teacher leaders and trained ALJ judges, the time period becomes equitable and justifiable.

LIFO

Context and Current System:

The seniority-based layoff statute, or “Last-In, First-Out” (LIFO), requires districts to let go of newer teachers when layoffs need to occur. California’s statute does not account for teacher effectiveness in layoff determinations. Additionally, California’s LIFO policy disproportionately impacts schools that serve low-income and minority students.⁶

Vergara Ruling:

Judge Treu found the LIFO statute unconstitutional under the equal protection clause of the Constitution of California. In his judgment, Judge Treu noted that the LIFO statute does not carry any exception or waiver based on teacher effectiveness. As a result, the “last-hired teacher is the statutorily-mandated first-fired teacher.”⁷

Recommendations:

Instead of using a seniority-based process for layoffs, we recommend an approach that accounts for teacher effectiveness and uses seniority as a secondary criterion.

Short Term Recommendation:

Start layoffs with teachers who have the least seniority and received unsatisfactory scores on their most recent evaluations.

Primary Criteria	Secondary Criteria
Unsatisfactory Evaluation Ratings	Seniority-based (Start with newest teachers)

Long Term Recommendation:

Use an annual 5-point teacher evaluation system.

Rationale: Students in urban communities are more likely to be taught by less experienced and less effective teachers than their peers.

It doesn't seem possible that a teacher could be named a LAUSD Teacher of the Year and receive a 'Reduction in Force' notification in the same month but it happened to me. The policy of terminating teachers based solely on seniority means that our students are routinely losing exemplary educators.

- Pam Chirichigno, 2012 LAUSD Teacher of the Year

⁶ <http://files.eric.ed.gov/fulltext/ED516845.pdf>

Round of Layoffs	Primary Criteria	Secondary Criteria
First	Level 1 (Ineffective) Evaluation Rating	Seniority-based (Start with newest teachers)
Second*	Level 2 (Needs Improvement) Evaluation Rating	Seniority-based (Start with newest teachers)
Third*	Level 3 (Developing) Evaluation Rating	Seniority-based (Start with newest teachers)

*if necessary

Rationale: Using both a performance measure and seniority will ensure that highly-effective, effective, and developing teachers stay in the classroom. Without an improved, statewide five-point evaluation system, many districts will continue to use a binary rating system of satisfactory/unsatisfactory. As the evaluation system improves, districts can begin to make more informed layoff determinations.

When necessary, layoffs would begin with teachers who have received a Level 1 rating (using data from the last three evaluations when available), beginning with teachers with the least seniority and concluding with teachers with the most seniority. If more layoffs are required, then all teachers with a level 2 rating will become affected by the layoffs, again beginning with teachers with the least seniority. If necessary, the process would continue with all cumulative scores that are unsatisfactory.

The recession hit just when our school was about to exit Program Improvement status. As our staff dwindled, some of our best and brightest teachers spent three years fearing for their jobs. The team we had built over several years was decimated; now we have to start all over again.

- Lisa Blackwell

It has been shown by many studies that student results are directly related to teacher efficacy. A student who is taught by a top-quartile LAUSD ELA teacher gains half a year of learning when compared to a student taught by a bottom-quartile teacher. In math, the differences between the top and bottom quartile amount to 4 months.⁸ In terms of financial gain, the study by Chetty, Friedman, & Rockoff (2011) found that replacing a teacher in the bottom 5% with just an average teacher would gain \$50,000 per student in lifetime earnings. Our recommendations aim to retain our best teachers when unfortunate teacher layoffs must take place.

CONCLUSION

Our students cannot afford to wait for the appeals process to play out in the court system. As classroom teachers who teach across diverse schools in Los Angeles, we believe that our recommendations will help improve California's schools and create opportunities for children harmed by the current system. The first step is to lengthen the time it takes for a teacher to obtain tenure. Performance must become a meaningful part of a comprehensive decision-making process that includes tenure, dismissal and layoffs. We must help struggling teachers get better so that students are consistently taught by strong educators. Teaching must become a profession that values excellence *and* growth.

⁸ <http://www.edtrust.org/west/publication/learning-denied-the-case-for-equitable-access-to-effective-teaching-in-california%E2%80%99s>



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