

Vergara v. State of California: A Political Analysis and Implications for Principal Practice

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This political analysis uses the Vergara case as an example of how principals can be dynamic leaders who are well prepared for and engaged in their political terrain. This will be important to decrease judicial dependency and legislative interference to better ensure that reform begins with those closest to the problem.

Introduction

Public schools have moved at a glacial pace to reform the existing system to one that is responsive to a nation whose students have become increasingly more diverse (Cohen, Moffitt, & Goldin, 2007; Plank & Davis, 2010). Indeed, it seems the public education system has insulated itself and become reluctant to change. At least four waves of education reform have been directed towards the United States public education system with little change in performance gaps among racially diverse students (Boyd, 2010; Gay, 2009). As a result, third party criticisms (businesses, teacher unions, taxpayers) have created a space for the government to intervene (Plank & Davis).

The 2012 the *Vergara v. State of California* case became a prime example of how a tug of war between political actors led to government intervention. Specifically, our policy analysis covers the political tensions that surround three California statutes:

1. Permanent Employee Status “Tenure” (Code 44929.21): Teachers receive permanent employment status after teaching for two consecutive years. Tenure decisions are finalized and publicized to teachers after 18 months of teaching.
2. Dismissal “Due Process” (Codes 44938(b)1, 44938 (b)2, 44934, 44944): These three codes delineate the administrative process, including timelines and costs, for teacher dismissal. These codes demand a substantial financial commitment from the state and districts if teacher dismissal is pursued. Some of the administrative costs that surround teacher dismissal include lawyer fees, facility costs, accrued travel and lodging fees, and teacher compensation for missed work.
3. Last-in-First-Out “Seniority” (Code 44955): This code mandates that administrators lay off staff based on seniority as the sole factor. This criterion holds unless there is substantial evidence that the teacher in question teaches a subject or possesses demonstrated skills that are critical for the students’ learning needs.

In this case, claims were made that these three statutes, hereinafter known as the Challenged Statutes, were in violation of the equal protection clause of the California Constitution, because these statutes denied educational equality to students in the Los Angeles Unified School District (LAUSD), Oakland Unified School District (OUSD), and Alum Rock School District (ARUSD).

The analysis begins with the facts of the case followed by critical events and reform efforts that led up to the filing of the case. The discussion continues with an analysis of the Los Angeles Supreme Court ruling followed by implications for practice. We use the *Vergara* case to stress the importance of the principal’s role as an instructional leader and to illustrate the hesitancy of the courts to infringe upon this autonomy. Our aim is that the analysis be used to facilitate deliberate discussions on ways principals can leverage limited resources to maximize their roles as instructional leaders while minimizing the fear of lawsuits from politically charged and highly contested decisions such as teacher evaluation and dismissal.

Background of the Problem

According to the 2012-2013 California Department of Education's (CDOE) Adequate Yearly Progress Report, no student group (including White) met the 89% state proficiency target in Math (59.5%) or English Language Arts (58.1%) statewide (California DOE, 2014). From the same CDOE report, the highest performing students groups on the English Language Arts and Math assessments as identified by group proficiency levels were Asians (80% ELA, 85% Math) and Whites (74% ELA and 71.2% Math), and the lowest performing groups were African Americans (45.6% ELA and 42.3% Math), Hispanics (46.9% ELA and 50.6% Math), and English Learners (40.6% ELA and 49.5% Math). This is interesting in that all children, particularly those who are second language learners, had been in the system under another voted policy—Proposition 227 (1998) which had all second language learning students taught in English without bilingual education support.

The plaintiffs of the *Vergara* case claimed that California's permanent status statutes protected ineffective teachers that were disproportionately assigned to the lowest-performing and most racially homogenous (predominantly African American or Hispanic) schools. The plaintiffs' expert witnesses, Harvard professor Dr. Thomas Kane, testified that African Americans are 43% more likely and Hispanics 68% more likely to be taught by a teacher in the bottom 5% of effectiveness than Whites (Kane, 2014). He further contended that a student assigned to a grossly ineffective teacher loses almost a year's worth of learning compared to a student assigned to an average teacher (Kane, 2014). Dr. Raj Chetty, also a plaintiff expert witness, testified that one long-term impact for the student assigned to an effective teacher is the loss of \$50,000 in potential lifetime earnings compared to a student with an average teacher. These examples drawn from the LAUSD seem to reflect the larger national picture, where Linda Darling-Hammond (2010) contended that most low-income and students of color will only be prepared to become "part of a growing underclass, cut off from productive engagement in society" (p.23). Nine students who claimed to experience unequal schooling took action and were represented by Students Matter, a "national non-profit organization dedicated to sponsoring impact litigation to promote access to quality public education" (Students Matter, 2012, para 1).

Case Facts

With the help of Students Matter, nine California public school children filed the lawsuit *Vergara v. California* against the State of California in May 2012 under the premise that the students' equal protection had been violated, because the Los Angeles district systematically discriminated against poor students and students of color "by assigning them to weaker teachers" (Sawchuk, 2014, p. 2). The plaintiffs contended that the California statutes made it virtually impossible to remove grossly ineffective teachers. The defendants' response was that the district has increased its teacher dismissal recommendations, but due to a competitive labor market, teacher tenure was necessary to recruit and retain teachers in high poverty areas.

Distinct from the national 3-year teacher probation average (*Vergara v. California*, 2014), California beginning teachers have the opportunity to earn a permanent employment status after 18 months of employment. The law governing lay-offs required administrators to dismiss by seniority status as the last one in and first one out policy. Finally, teachers could not be dismissed without due process. However, previous court rulings such as the *Serrano v. Priest* (1971) and

Butt v. State of California (1992) led to the questioning of whether students' equal protection under the Fourteenth Amendment had been violated due to California's tenure, dismissal, and seniority statutes.

Legal Precedence

The landmark *Brown v. Board of Education* (1954) is likely the most referenced Supreme Court case in education to date. The *Brown* decision was momentous, finding racial segregation to be unconstitutional and that all children were constitutionally entitled to an "equal educational opportunity" (Rebell & Wolff, 2008, p. 1). The *Serrano v. Priest* (1971) California Supreme Court case was about the State's inequitable public education financing system. The significance of the *Serrano I and II* (1971, 1976) rulings was that funding disparities violated students' equal educational opportunity under the California Constitution. The *Butt v. State of California* (1992) ruling held that the district's six week premature closing in response to budget cuts was unconstitutional and deprived students of their right to equal public education. These court rulings show that racial segregation, funding disparity, and school term length could be considered a deprivation of students' of equal educational opportunities.

The Dilemma

Essentially, the *Vergara v. State of California* case is about teacher quality, systematic sorting, and the perceived barriers that make it difficult for K-12 school administrators to recruit and retain the best teachers and remove the worst teachers in the lowest-performing schools. For both parties, teacher attrition of effective teachers, especially in urban and low-income schools, has been one of the most prevalent problems identified regarding beginning teachers (Vergara v. California, 2014). Highly-credentialed teachers often flock to highly-respected suburban schools which can offer a substantially higher pay than under-resourced urban districts, thereby decreasing the hiring pool. As a result, low-income schools seem to be the "dumping grounds" for unqualified teachers (Darling-Hammond, 2010, p. 43). This is significant as Darling-Hammond found that having a qualified teacher in comparison to an unqualified teacher had larger effects on student achievement than did race and parent education combined. That is,

the difference in student achievement due to having a well-qualified teacher rather than a poorly qualified one was larger than the average difference in achievement between a typical White student with college-educated parents and a typical Black student with high school educated parents. (p. 43)

What heightens this problem is that the number of high-poverty districts will steadily increase, and "new teachers, who have an inordinate rate of attrition and are assigned to the neediest students in schools with the least resources, will comprise the large majority of the teaching force" (Weiss & Weiss, 2003, p. 5). This, in turn, leaves students, particularly students of color, enrolled in high-poverty schools and districts, with a revolving door of novice and underprepared teachers (Darling-Hammond, 2010).

Nationally, there also continues to be concerns of teacher quality. According to published report by the Education Trust (2008), Texas, at that time, had large inequities in teacher quality between rich and poor schools. This report revealed that Black and Hispanic students were less

likely to have a credentialed or experienced teacher, and they were more likely to be enrolled in a school with an unstable teaching force (Education Trust, 2008, p. 2). Illinois gained national attention from the 2012 Chicago Teacher Strike regarding methods to ensure and protect teacher quality. Haycock and Crawford (2008) reported similar problems and teacher quality issues in New York and Tennessee. There are others who have indicated similar issues with teacher quality and suggested that removing underperforming teachers could significantly improve student achievement (Brill, 2009; Hanushek, 2009; Rothstein, 2010)

To be clear, the distribution of quality teachers to all students is not a new issue or problem specific to California. The concerns of both the plaintiffs and defendants of the *Vergara* case were grounded in both the literature and national concerns regarding teacher quality. However, both the plaintiffs and defendants in the *Vergara* case held different views on how to ensure the best teachers are teaching students who need it most.

Plaintiff Position

Students Matter, a non-profit organization that uses litigation to promote access to quality public education, was the leader for the plaintiffs. The crux of the plaintiff's argument was that a disproportionate number of poor and students of color did not have access to equal educational opportunities due to California statutes. California state standards required access to adequate resources, and such resources had been restricted (*Vergara v. California*, 2014). The plaintiffs contended that a major resource absent in the lowest performing schools was quality teachers. To remedy this problem, they proposed changes to teacher permanent status, lay off procedures, and due process so administrators could have more autonomy to dismiss ineffective teachers. Under the Challenged Statutes, the plaintiffs argued that removing an ineffective teacher was an arduous process that often resulted in considerable costs in time and money. Consequently, the ineffective teacher would remain in the classroom for an extended time precluding those students from access to a quality education. According to the plaintiffs' website, removing the statutes would allow school administrators to "reward and retain excellent teachers and hold those accountable who are failing our children" (Students Matter, Case Summary, 2012, para 3).

The plaintiffs also contended that the 18-month automatic permanent status is hardly enough time to evaluate a teacher's effectiveness. Next, they posited that due process was not to be removed but updated for better efficiency. Finally, the Last In and First Out Statute did not provide protection for all teachers; even the best teachers were in danger of being dismissed depending on their years of service. The plaintiffs further contended that there was little to no empirical research that linked tenure with attracting and retaining quality teachers. In other words, the plaintiffs believed that years of teaching experience did not automatically result in good teaching. Essentially, the position of the plaintiffs was that the Challenged Statutes made it extremely difficult and costly to dismiss grossly ineffective teachers.

Defendant Position

California teacher unions were interveners for the defendants. Both websites of the California Teacher Association (CTA, Issues & Action, n.d.) and the California Federation of Teachers (CFT, What's At Stake, 2014) had remarks that claimed that it was difficult to get quality teachers to teach in high-need schools and consequently saw tenure as a necessary part of recruitment strategies critical to student learning and respect for the teaching profession. Second,

the defendants claimed that teachers did not have a job for life. They asserted that administrators had free range to dismiss a teacher within their first two years with or without cause. After those 2 years, teachers could be dismissed with proper due process procedures. Finally, the lay-off policy was thought to be important to avoid the dismissal of the most experienced teacher and to avoid the potential possibility of making personal rather than professional and objective staffing decisions. Essentially, the position of the defendants was that the shortages of effective teachers in high poverty schools were not caused by the Challenged Statutes but by the challenging work conditions that make teaching in such contexts less attractive.

Court Ruling

Judge Rolf M. Treu rendered the decision for the *Vergara* case on March 27, 2014 in favor of the plaintiffs. Judge Treu used the *Brown* (1954), *Serrano* (1971/1976), and *Butt* (1992) cases to demonstrate that education is a fundamental interest nationally and protected right in California. In his decision, he wrote that the plaintiffs presented compelling evidence that demonstrated how the three statutes made it near impossible to dismiss grossly ineffective teachers who were disproportionately assigned to low-income and schools with a majority student of color enrollment (Vergara Decision, p. 3). Judge Treu was moved by Dr. Chetty's testimony that "a single year in a classroom with a grossly ineffective teacher costs students \$1.4 million in lifetime earnings per classroom," and also Dr. Kane's testimony "that students in LAUSD who are taught by a teacher in the bottom 5% of competence lose 9.54 months of learning in a single year compared to students with average teachers" (Vergara Decision, p. 8). The defendants' cited 1-3% of teachers in California were ineffective teachers. However, this was then quantified to demonstrate that a range of 2,750- 8,250 ineffective teachers in active positions across the state disproportionately taught poor and/or students of color. In Treu's decision he wrote,

based on the criteria set in *Serrano* I and II and *Butt*, and on evidence presented at trial, Plaintiffs have proven, by a preponderance of the evidence, that the Challenged Statutes impose a real and appreciable impact on students' fundamental right to equality of education and they impose a disproportionate burden on poor and minority students (Vergara Decision, p. 8).

Consequently, Treu examined the case with "strict scrutiny" and the defendants had to carry the burden of proof that the Challenged Statutes were necessary to accomplish the goals of attracting and retaining effective teachers in high poverty, under resourced schools.

Permanent Employment Statute.

Judge Treu ruled that two school years were not a sufficient amount of time to evaluate and award tenure. In fact, California is in the minority of states who offered tenure in less than two years. Instead, Judge Treu recommended that tenure decisions be made after beginning teacher induction was over and teachers received full credentials. He found that the induction program for new teachers ran concurrently with the Permanent Employment Statute, and therefore principals could not effectively evaluate a new teacher before tenure decisions had to be made, consequently, raising the probability that non-credentialed teachers would be granted tenure. He ruled that the Permanent Employment Statute violated students' fundamental right to a quality

education because the statute granted tenure based on a passing of time rather than teacher credentials (licensure) or indicators of effectiveness. He used the defendants' expert testimony of Rothstein and Berliner that between three and five years was a more appropriate time to make tenure decisions namely because this time frame transcended the induction period. From the presented evidence from both sides, Judge Treu believed this to be mutually beneficial for both teachers and students. He reasoned that teachers do not want to work with and students do not want to be taught by grossly ineffective teachers.

Dismissal Statutes.

The plaintiffs presented compelling evidence that teacher dismissals of grossly ineffective teachers could take "almost ten years and cost \$50,000- \$450,000 or more to bring these cases to conclusion under the Dismissal Statutes" (Vergara Decision, p. 11). The idea was that time and cost constraints made principals very reluctant to start dismissal procedures. Judge Treu cited evidence that due process was not in jeopardy for teachers. Instead, he referenced evidence that tenured teachers had *uber* due process (Vergara Decision, p. 12). That is, tenured teachers' due process protections were so extensive that it tied the hands of school principals and districts in ways that made it near impossible for their dismissal decisions to come to fruition. Since it was agreed by both parties that the most underprepared teachers disproportionately teach students of color or those from low-income households, Treu ruled that the Dismissal Statute served as a hindrance for principals' ability to ensure that a "grossly ineffective teacher" was not teaching their students and infringing upon the students' equal educational opportunities as protected by the California constitution. Therefore, all three of the dismissal statutes were found unconstitutional.

Seniority

California's is one of only 10 states to use seniority as its sole factor in lay-off decisions. Under the strict scrutiny test, Judge Treu wrote in his decision that the defendants had to provide evidence that the "state had a compelling interest in *de facto* separation of students from competent teachers, and a like interest in the *de facto* retention of incompetent ones. The logic of this position is unfathomable and therefore constitutionally unsupportable" (Vergara Decision, p. 14). Essentially, the flaw identified in this statute was the fact that it did not contain an exception or waiver that considered other variables that illustrate teacher performance and effectiveness. Judge Treu found that this statute needed to be updated and more aligned with other state practices that allow seniority to be considered among other factors or left to the discretion of the school district.

Summary of the Ruling

In sum, Judge Treu found that the Challenged statutes disproportionately affected poor and/or students of color, and consequently negatively affected their learning process. He ruled that the plaintiffs provided substantial evidence that illustrated that low income and students of color were vulnerable to staffing inequalities. According to the strict scrutiny test, he did not find that the defendants carried the burden of proof as to: (a) why teachers and students were unfairly penalized by the permanent employment statute, (b) how teachers' property rights (due process)

were in jeopardy, and (c) why seniority as a sole factor in lay-off decisions should prevail. Judge Treu's ruling was ordered stayed pending appellate review, which, some may interpret as a passing of the buck or passive because there was no legally binding injunction attached to his decision.

Analysis and Implications for Practice

During a time where litigation appears to be the education reform tool of choice, today's principal must not only be adept at managing their school structure, but also in preparing for the cultural and political shifts that yield complex challenges. Principals must be dynamic leaders who are well prepared for and engaged in their political terrain. The *Vergara* ruling is evidence of the importance of the principal's role as an instructional leader and the hesitancy of the courts to infringe upon this autonomy. What follows is an example of how principals could use the *Vergara* case to facilitate deliberate discussions on ways limited resources can be leveraged to maximize principals' role as instructional leaders while minimizing the fear of lawsuits from politically charged and highly contested decisions such as teacher evaluation and dismissal.

Policy Instruments

Administrators should understand that the three California statutes (Tenure, Due Process, and Seniority) in question are mandates. This policy instrument was selected to ensure widespread compliance and diffusion of benefits/protection of all classroom teachers. The expected outcome was exact compliance or face legal repercussions. Typical of mandate instruments, the initiating agency (government) prescribes the course of action but the burden is on the implementing agency—the school administrators (McDonnell & Elmore, 1987). Administrators are responsible for ensuring equitable opportunities and choices for all students or risk losing their job. Principals must provide evidence that they are closing the achievement gap and preparing students in the twenty-first century knowledge-based economy. Yet, in many ways principals may feel their hands are tied regarding staff dismissals as evidenced in the *Vergara* case.

After review of the Judge Treu's ruling, it seems a greater emphasis on capacity building policy instruments and more research on the impacts these laws have on teacher employment decisions is needed. School leader motivation and capacity to differentiate objectively between effective teachers and teaching practices will also be critical. However, if principals are to lead their schools without the fear of lawsuits from politically charged decisions such as teacher evaluations and teacher dismissal, they must understand the importance of their role as an instructional leader.

The Importance of Principals as Instructional Leaders

Principals have great influence over whether a novice teacher stays or leaves their school or profession (Darling-Hammond, 2010; & Brown, 2009). The reasons beginning teachers reported for their decision to leave had more to do with internal working conditions than external factors such as school demographics which includes race, socio-economic status, and family educational background (Greenlee & Brown, 2009). Novice teachers are leaving the high need students because they are not receiving the support they perceive is needed for them to be effective in teaching students of color and students from low-income households; principals matter and can

reverse this trend (Ingersoll, 2012). One reason is because effective principals recruit and are able to retain effective teachers, and also because good teachers seek out good principals. Further, if teachers feel supported, they are more effective in their instructional practice and develop at greater rates over time (Kraft & Papay, 2014).

Administrator support. In the *Vergara* case, the Challenged Statutes were viewed as an effective mechanism to attract and retain teachers in hard-to-staff contexts especially due to financial constraints where offering bonuses or competitive salaries were challenging. However, evidence presented within the literature has suggested that “discipline problems, inadequate administrator support, lack of autonomy, and heavy workload are among the most common factors that influence their [teachers] decision to leave” schools with large concentrations of students who are disadvantaged (Greenlee & Brown, 2009, p. 2). Tenure, due process, and lay-off guidelines were not revealed as key factors influencing teacher employment decisions or instructional practice within the extant literature.

Frequently, principals expect that teachers could be hired with a pre-packaged knowledge base and requisite skills needed for effective instruction because of their teacher preparation programs (Donaldson, 2013). Many principals believe “that their best chance to increase teacher effectiveness in their schools is through hiring people with the ‘right’ mindset and then shaping their skills through professional development” (Donaldson, p. 868). In other words, there is an assumption that hiring a highly qualified teacher means effective instructional practice within the classroom. Thus, school-based induction programs lean heavily towards orientating the teacher to the administrative procedures of the school (Smith & Ingersoll, 2004). As a result, school leaders fall more into the category of a manager than an instructional leader.

Instead, we reemphasize evidence found in the extant literature in which Kraft and Papay (2014) suggested that school context matters and is interconnected with teacher effectiveness. Principals should structure support systems that are more aligned with the idea that teacher effectiveness is malleable and not a fixed trait that a teacher does or does not possess. Teacher effectiveness can be cultivated or constrained depending on the school context in which they work (Kraft & Papay). As such, principals’ and beginning teachers’ perceptions of what it means to be effective along with the support perceived needed to do so must be in alignment within the same school setting. After all, they are the two most important factors affecting students’ success in the classroom (Darling-Hammond, 2010). To achieve alignment, the perception of what it means to be an effective teacher must no longer be ambiguous and divergent.

Another way principals can increase teacher effectiveness and provide support is through teacher assignments. Specifically, principals should consider the load and the teaching assignments they give to new teachers (Donaldson & Johnson, 2010). The presumption of the school leader is often that the beginning teacher is fully equipped and ready to handle a heavy work load and can effectively teach all students in a challenging context, such assignments leads to lower teacher efficacy and voluntary high turnover (Donaldson & Johnson, 2010). Alternatively, support could be provided to principals so that they are able to create leadership pipelines for teachers who want to stay in the classroom and not transition to administration. Under this leadership pipeline, master teachers would have more challenging assignments in exchange for greater autonomy, resources for curriculum innovations, increased decision making authority, and improved professional development opportunities, all of which are been shown to be effective inducements for a teacher’s decision to transfer or remain in a challenging school context (Greenlee & Brown, 2009, p.6). This practice would cultivate teacher leadership for enhanced school performance (Marks & Printy, 2003, p. 233). Principals could also work to find

ways for more peer observations and peer support (Papay & Johnson, 2012), because teachers can learn from each other in peer evaluations (Darling-Hammond, 2012).

The first lesson gleaned from the *Vergara* case is that there was no evidence presented that directly connected the presence or absence of the Challenged Statutes with changes in instructional practice or the successful recruitment and/or retention of effective teachers at hard-to-staff schools. Evidence from the literature suggests that principals need to provide ongoing support for beginning teachers beyond their first year(s) as opposed to simply a fall orientation, snapshot observations, and mid and end of year evaluations, assuming such practices are currently implemented (Brock & Grady, 2010). Beginning teachers want ongoing support that addresses classroom management, instruction, emotional support, and assistance harvesting positive relationships with students, parents, school leaders, and colleagues (Brock & Grady). Brock & Grady (2010) indicated that this is the type of support that beginning teachers perceive they need in order to increase their effectiveness in the classroom.

Principal voice in defining teacher effectiveness. The second lesson gleaned from the *Vergara* case is that the Courts seem to defer to the expertise of those in the field to provide evidence or ways to measure teacher effectiveness. In the *Vergara* case, the plaintiffs presented Value-Added Modeling (VAM) as a reliable indicator of teacher effectiveness. Value-added models are used to evaluate teachers based on a student's growth (indicated by test scores) from previous years and are argued to be fairer, because they control for contextual factors that are outside of the teacher's control (Kane & Staiger, 2008). VAM was highly contested by the defendants, and although Judge Treu accepted the evidence that was produced from VAM, interestingly, his decision did not mention the model. VAM is but one indicator of teacher effectiveness that should be included in the portfolio of many other indicators that include the voices of all stakeholders, including students and parents; this stance is supported by the American Federation of Teacher (AFT; 2010). However, the National Education Association as of 2008 had not support such compensation plans based on student test scores as a major component of measuring teacher effectiveness for monetary rewards (Flannery & Jehlen, 2008)

As the instructional leader of the school, principals should know and be able to provide evidence of what it means to be an effective teacher in their school context. One way to collect such evidence is through teacher observations and evaluation. However, many principals do not regularly evaluate tenured teachers (Toch & Rothman, 2008). This behavior could be reflective of the ideology of effectiveness as a fixed trait or from what Donaldson (2013) cited as lack of time for rigorous teacher observations. More concerted efforts should be made towards finding ways to free the time of principals so that they can be in classrooms observing and supporting their teachers. If principals had the time to be in the classroom more, they could have the evidence needed to determine what effective teaching looks like in their school context, inform evaluation decisions, and it would further inform what type of professional development is needed for their staff.

Separation of powers. A third lesson that should be gleaned from the *Vergara* case is that Treu ruling indicated hesitancy from the Court to infringe upon local autonomy. According to California Rules of Court 3.1590, Treu's stayed opinion meant that his suggested injunctions were not binding. Treu's stayed ruling indicated that though he believed the statutes were unconstitutional, because of separation of powers, he was unsure if judicial interference for education reform of this nature was appropriate. This was made clear when he wrote,

Under California's separation of powers framework, it is not the function of this Court to dictate or even advise the legislature as to how to replace the Challenged Statutes. All this Court may do is apply constitutional principles of law to the Challenged Statutes as it has done here, and trust the legislature to fulfill its mandated duty to enact legislation on the issues herein discussed that passes constitutional muster, thus providing each child in this state with a basically equal opportunity to achieve a quality education. (*Vergara* Decision, p. 16)

This reemphasizes the idea that principals' instructional leadership and how they foster school culture matter (Leithwood et. al, 2004). Principals are charged with the task of figuring out how to develop teachers and increase their effectiveness. Such is necessary if there is to be a preservation of principal autonomy and a respect of local expertise to maintain professionalization of the field.

Concluding Thoughts

In sum, the *Vergara* case serves as a great reminder that it is in error to assume complete efficacy in a policy (Cohen, Moffitt, & Goldin, 2007). Policies "cannot mandate what matters" (Cohen, Moffitt, & Goldin, 2007, p. 518). Both sides should understand that the presence or absence of these California statutes do not guarantee that the best and most effective teachers will be teaching the students who need it most. Conversations that stem from the *Vergara* case continue to remind political actors that student achievement is a shared responsibility. However, those safeguards, or Challenged Statutes, designed to protect could actually harm quality teachers. For example, the Last In First Out policy overemphasizes experience as evidence of teacher effectiveness. A recently hired or novice teacher could prove to be effective but under the existing lay-off guidelines would be dismissed. It also sends the message of mistrust in principals' professional judgment. In other words, principals are qualified to hire but not fire.

We suggest that principals survey their political climate, understand their positionality, and in this case, how the *Vergara* case may impact their role as school leaders if at all. Principals should not be overly consumed with the management of their school that they become oblivious to the political and cultural changes around them that could impact their school climate, instruction and student learning. The *Vergara* case is also a reminder of the importance of principals as instructional leaders who have great influence over teachers and their effectiveness potential. Principals must be trained on how to evaluate and provide the support teachers need for teaching in challenging contexts. Efforts must be made to figure out how principals can have more time to be in the classroom so that they are able to collect the necessary evidence to make decisions about the effectiveness of teachers in their school context. Administrators who document succeed in dismissal (Donaldson, 2014), and thus should not be fearful of whether their tenure or dismissal decisions will stand up against the law.

However, to better protect their autonomy, we urge principals to be familiar with policy instruments used and the expected outcomes of those instruments (see McDonnell & Elmore, 1987) to be in better position to negotiate and actively engage in their political arena. It is also critical that principals consider the cultural relevance of policy decisions and recommendations and its potential impact on their students, staff, family, and community they serve. Principals should continue to advocate for social justice for all of their students and should be prepared to answer any call to action. They should be ready to offer informed insight and recommendations

for what would work best for their school and community. This will be important to decrease judicial dependency and legislative interference to better ensure inside-out reform; that is, reform that begins with those closest to the problem.

Finally, this case provides a unique opportunity for multiple political actors to come together, despite competing interests, and make a positive impact on student achievement. One finding is very clear, “it is very hard to change the regularities of how teachers teach but much easier to change structures and policies” (Boyd, 2007, p. 233). Indeed, policy and practice contain opportunities for both cooperation and conflict (Cohen, Moffitt, & Goldin, 2007, p.523). Cohen et al. (2007) argued that the key problem solvers are those closer to the problem; however, the government is needed to frame action and offer resources. Just as it is erroneous to think that there is complete efficacy within a policy, so too is it to think practitioners have the capability to make wide-sweeping change on their own (Cohen, Moffitt, & Goldin, 2007). Practitioners, community members, families need to work together to problem-solve, or there will be mistrust and a question of legitimacy of the policy, policymakers (government), and practitioners, which increases the risk of failure (Cohen, Moffitt, & Goldin, 2007). Future discussion and work should be focused on (a) how to broaden definitions of teacher effectiveness to ones that are inclusive of more stakeholders including students and parents, (b) how to better prepare principals to lead as instructional leaders in challenging contexts, and (c) how principals can reevaluate the efficacy of current school practices and teacher support systems within their locus of control.

References

- AFT. (2010). *Professional compensation for teachers*. Washington DC: Author. Retrieved from <http://www.aft.org/about/resolution>
- Anderson, N. (2010, January 17). A shot at school reform fund provokes tensions, fast changes. *The Washington Post*. Retrieved from <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/16/AR2010011602687.html>
- Association of California Administrators (2009). History of collective bargaining. Retrieved from <http://www.acsa.org/sp/Search.aspx?SearchMode=1&SearchPhrase=collective+bargaining>
- Booher-Jennings, J. (2005). Below the bubble: Educational triage and the Texas accountability system. *American Educational Research Journal*, 42(2), 231-268.
- Boyd, W. L. (2000). The R's of school reform and the politics of reforming or replacing public Schools. *Journal of Educational Change*, 1(3), 225-252.
- Brill, S. (2009). The rubber room: The battle over New York City's worst teachers. *The New Yorker*, Aug. 31, 2009. Retrieved from www.newyorker.com/reporting/2009/08/31/090831fa_fact_brill.
- Brock, L. B., & Grady, M.L. (2010). Beginning teacher induction: The role of the principal. *Journal of Educational Strategies*. 71(3), 179-183.
- California Department of Education (2007). Evaluating progress toward equitable distribution of effective educators. Retrieved from <http://www.cde.ca.gov/nclb/sr/tq/documents/toolkit.doc>
- California Department of Education (2011). 2011-2012 AYP state overview. Retrieved from <http://dq.cde.ca.gov/dataquest/Acnt2012/2012APRStAYPReport.aspx>
- California Teacher Association (2005). Evaluation: Key to Excellence. Retrieved from <http://www.cta.org/Issues-and-Action/Education-Reform/Due-Process/Myths.aspx>
- Center for Research on Education Outcomes (2014). Charter School Performance in Los Angeles. Retrieved from https://credo.stanford.edu/pdfs/Los_Angeles_report_2014_FINAL_001.pdf
- Cibulka, J. G. (1995). 1. The reform and survival of American public schools: An institutional perspective. *Journal of Education Policy*, 10(5), 7-22.
- Cohen, D., Moffitt, S., & Goldin, S. (2007). Policy and practice: The dilemma. *American Journal of Education*, 113(4), 515-548.
- Cooper, B. S., Fusarelli, L. D., & Randall, E. V. (2004). *Better policies, better schools: Theories and applications*. Boston, MA: Allyn & Bacon.
- Darling-Hammond, L. (2010). *The flat world and education: How America's commitment to equity will determine our future*. New York, NY: Teachers College Press.
- Darling-Hammond, L., Amrein-Beardsley, A., Haertel, E., & Rothstein, J. (2012). Evaluating teacher evaluation. *Phi Delta Kappan*, 8-15.
- Donaldson, M. L. (2011). Principals' approaches to hiring, assigning, evaluating, and developing teachers. *Education Digest: Essential Readings Condensed for Quick Review*, 76(9), 27-32.
- Donaldson, M. L. (2013). Principals' approaches to cultivating teacher effectiveness constraints and opportunities in hiring, assigning, evaluating, and developing teachers. *Educational*

- Administration Quarterly*, 49(5), 838-882.
- Donaldson, M. L., & Johnson, S. M. (2010). The price of misassignment the role of teaching assignments in Teach For America teachers' exit from low-income schools and the teaching profession. *Educational Evaluation and Policy Analysis*, 32(2), 299-323.
- Duemer, L. S., & Mendes-Morse, S. (2002, September 23). Recovering policy implementation: Understanding implementation through information communication. *Education Policy Analysis Archives*, 10(39). Retrieved from <http://epaa.asu.edu/epaa/v10n39.html>.
- Education Trust (2008). Their fair share: How Texas-sized gaps in teacher quality shortchange poor and minority students. Retrieved from <http://www.edtrust.org/dc/publication/their-fair-share-how-texas-sized-gaps-in-teacher-quality-shortchange-poor-and-minority>
- Fiarman, S. E., Johnson, S. M., Munger, M. S., Papay, J. P., & Qazilbash, E. K. (2009). *Teachers leading teachers: The experiences of peer Assistance and review consulting teachers* (Doctoral dissertation, Harvard Graduate School of Education).
- Flannery, M. E., & Jehlen, A. (2008, March). *Where is your pay plan heading? NEA Today*. Retrieved from <http://www.nea.org/home/4221.htm>.
- Flores, M. & Day, C. (2006). Contexts which shape and reshape new teachers' identities: A multi-perspective study. *Teaching and Teacher Education* 22(2), 219– 32.
- Gay, G. (2010). *Culturally responsive teaching: Theory, research, and practice*. New York, NY: Teachers College Press.
- Glass, F. (2014, June 10). Flawed decision hurts students, punishes all for a few poorly run districts. California Teachers Association. Retrieved from <http://www.cft.org/news-publications/media-center/news-release/861-california-educators-and-state-of-california-to-appeal-judge's-ruling-in-vergara-v-state-of-california.html>
- Greenlee, B., & Brown Jr, J. J. (2009). Retaining teachers in challenging Schools. *Education*, 130(1), 96-109.
- Hanushek, E. A. (2009). Teacher deselection. In D. Golhaber & J. Hannaway (Eds.), *Creating a new teaching profession*, p, 163-180. Washington, D.C.: Urban Institute Press.
- Hanushek, E., Kain, J., Rivkin, S., & Branch, G. (2007). Charter school quality and parental decision making with school choice, *Journal of Public Economics*, 91(5-6), p. 823-848.
- Haycock, K. & Crawford, C. (2008). Closing the teacher quality gap. Retrieved from <http://www.ascd.org/publications/educational-leadership/apr08/vol65/num07/Closing-the-Teacher-Quality-Gap.aspx>
- Hoxby, C., & Murarka, S. (2009). Charter schools in New York City: Who enrolls and how they affect their students' achievement. [MBER Working Papers: No. 14852] National Bureau of Economic Research, Inc.
- Ingersoll, R. M. (2012). Beginning teacher induction: What the data tell us. *Phi Delta Kappan*, 93(8), 47-51.
- Kane (2014). Validating teacher effect estimates using changes in teacher assignments: A replication of Chetty et al. in Los Angeles. Retrieved from http://studentsmatter.org/wp-content/uploads/2014/02/SM_Kane-Demonstratives_02.06.14.pdf
- Kane, T. J., & Staiger, D. O. (2008). *Estimating teacher impacts on student achievement: An experimental evaluation* (No. w14607). National Bureau of Economic Research.
- Kraft, M. A., & Papay, J. P. (2014). Can professional environments in schools promote teacher development? Explaining heterogeneity in returns to teaching experience. *Educational Evaluation and Policy Analysis*, 36(4), 476-500.
- Krieg, J. M. (2008). Are students left behind? The distributional effects of the No Child Left

- Behind Act. *Education*, 3(2), 250-281.
- Layton, L. (2014, April 17). Study: Charter get less funding than traditional public schools. *Washington Post*. Retrieved from http://www.washingtonpost.com/local/education/study-says-charters-get-less-funding-than-traditional-public-schools/2013/04/17/ba264d34-a794-11e2-8302-3c7e0ea97057_story.html
- Leithwood, K., Seashore Louis, K., Anderson, S., & Wahlstrom, K. (2004). Review of research: How leadership influences student learning. Retrieved from <http://conservancy.umn.edu.libezproxy.tamu.edu:2048/bitstream/handle/11299/2035/1/CAREI%20ReviewofResearch%20How%20Leadership%20Influences.pdf>
- Lunenburg, F. C., & Irby, B. J. (2006). *The principalship: Vision to action*. Belmont, CA: Thomson Wadsworth.
- Marks, H. M., & Printy, S. M. (2003). Principal leadership and school performance: An integration of transformational and instructional leadership. *Educational administration quarterly*, 39(3), 370-397.
- McDonnell, L. M., & Elmore, R. F. (1987). Getting the job done: Alternative policy instruments. *Educational evaluation and policy analysis*, 9(2), 133-152.
- McGuinn, P. (2012, November 13). The state of teacher evaluation reform. *Center for American Progress*. Retrieved from <http://www.americanprogress.org/issues/education/report/2012/11/13/44494/the-state-of-teacher-evaluation-reform/>
- Meyer, J. W., & Rowan, B. (1977). Institutionalized organizations: Formal structure as myth and ceremony. *American Journal of Sociology*, 83(2), 340-363.
- Papay, J. P., & Johnson, S. M. (2012). Is PAR a good investment? Understanding the costs and benefits of teacher peer assistance and review programs. *Educational Policy*, 26(5), 696-729.
- Plank, D., & Davis, T. (2010). The economic role of the state in education, In D. Brewer and P. McEwan (Eds.), *Economics of Education*, (p. 299-306). San Diego, CA: Academic Press.
- Public Impact (2011). Teacher tenure reform: Applying lessons from the civil service and higher education. Retrieved from http://opportunityculture.org/images/stories/teacher_tenure_reform-public_impact.pdf
- Public Policy Institute of California (2014). California and Education. Retrieved from http://www.ppic.org/content/pubs/survey/S_414MBS.pdf
- Rand Corporation (2003), Charter school operations and performance: Evidence from California. Santa Monica, CA: RAND Corp.
- Ravitch, D. (2011). *The death and life of the great American school system: How testing and choice are undermining education*. New York: Basic Books.
- Rebell, M. & Wolff, J. (2012, January 18). We can overcome poverty's impact on school success. *Education Week*. Retrieved from <http://www.edweek.org/ew/articles/2012/01/18/17rebell.h31.html>
- Rothstein, J. (2010). Teacher quality in educational production: Tracking, decay, and student achievement. *The Quarterly Journal of Economics*, 125(1), 175-214.
- Sawchuck, S. (2014, February 3). Teachers' job protections debated in California trial. *Education Week*. Retrieved from http://www.edweek.org/ew/articles/2014/02/05/20lawsuit_ep.h33.html
- Song, J. & Felch, J. (2009, August 21). Schwarzeneggers's plan would reshape education in California. *Los Angeles Times*. Retrieved from <http://articles.latimes.com/2009/aug/21/local/me-gov-schools21>

- Smith, T. M., & Ingersoll, R.M. (2004). What Are the Effects of Induction and Mentoring on Beginning Teacher Turnover? *American Educational Research Journal*, 41(3), 681-714.
- Springer, M. (2008). The influence of an NCLB accountability plan on the distribution of student test score gains, *Economics of Education Review*, 27(5), 555-63.
- Toch, T., & Rothman, R. (2008). Rush to Judgment: Teacher Evaluation in Public Education. Education Sector Reports. *Education Sector*.
- U.S. Department of Education (2010). ESEA reauthorization: A blueprint for reform. Retrieved from <http://www2.ed.gov/policy/elsec/leg/blueprint/index.html>
- Vergara v. California, 2014, Case No.: BC484642 Retrieved from <http://studentsmatter.org/wp-content/uploads/2014/06/Tenative-Decision.pdf>
- Weiher, G. & Tedin, K. (2002). Does choice lead to racially distinctive schools? Charter schools and household preferences, *Journal of Policy Analysis and Management* 21(1), 79-92.
- Weiss, E. M., & Weiss, S. G. (1999). Beginning teacher induction [ERIC digest]. Washington, DC: ERIC Clearinghouse on Teaching and Teacher Education.
- Zimmer, R., & Buddin, R. (2006). Making sense of charter schools: Evidence from California. Retrieved from http://www.rand.org/content/dam/rand/pubs/occasional_papers/2006/RAND_OP157.pdf