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Connecticut's Tenure Reform In The Wake of Vergara v. State of California

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In a 1789 letter, Benjamin Franklin made the now oft-quoted observation that "in this world nothing can be said to be certain, except death and taxes." For many years, however, that certitude has been equally applicable in Connecticut to tenure for public school teachers. Thus, when on June 10, 2014, a California Superior Court judge in the case of Vergara v. State of California struck down California's teacher tenure laws as unconstitutional, there was much consternation among members and supporters of teacher unions.

In a nutshell, the Vergara court held that California's tenure laws violated the California Constitution's equal protection clause because they resulted in "grossly ineffective teachers obtaining and retaining permanent employment," because "these teachers are disproportionately situated in schools serving predominately low-income and minority students," and because these statutes consequentially violated students' "fundamental rights to quality of education by adversely affecting the quality of the education they are afforded by the state." Essentially, once these teachers were granted tenure, it became next to impossible to dislodge them, the court noting that "the current torturous process" for terminating teachers was "so complex, time consuming and expensive as to make an effective, efficient yet fair dismissal of a grossly ineffective teacher illusory."

There are similarities between California's and Connecticut's tenure laws, and Connecticut's own "time consuming and expensive" termination process has often resulted in the same hesitancy to move against incompetent teachers. In an effort to address this, the Connecticut General Assembly revised Connecticut's tenure law -- set forth in Section 10-151 of the Connecticut General Statutes -- most notably with respect to cases predicated upon "[i]nefficiency, incompetence or ineffectiveness," which have traditionally proven to be the most nettlesome in terms of complexity, time and expense. The purpose of these amendments was to facilitate the removal of incompetent teachers, but whether they serve that goal remains an open question.

Under Section 10-151(d), a school board or a committee of at least three board members may preside over the termination hearing. Prior to the July 1, 2014 amendments to Section 10-151(d), either party was also entitled to request that the hearing instead be held before either a single hearing officer or a tripartite panel, which was the option most commonly utilized. The teacher's union and the Superintendent of Schools each selected one member of the tripartite panel, who, in turn, selected the third member. The union and the district bore the cost of their respective panel members and split the cost of the third member, an expense

which, when added to the district's own legal fees, made termination hearings a costly proposition.

The July 1 amendments seek to reduce the cost of the termination hearing by eliminating the tripartite panel, leaving the school board, board committee, or single hearing officer as the only hearing options. Doing so, however, also limits the school administration's opportunity to obtain the factual findings required for termination. More specifically, although the school board is strictly bound by the factual findings issued by the hearing body, those findings do *not* have to be the ones issued by the panel majority; rather, even if the majority's findings did not support a termination, the administration could still rely upon the dissenting member's findings in recommending to the school board that it terminate the teacher's contract of employment. As there will now only be a single hearing officer, that obviously will no longer be a possibility.

Perhaps more significantly, the July 1 amendments truncated the amount of time that can be spent on cases pertaining to incompetence or ineffectiveness, restricting it "to twelve total hours of evidence and testimony, with each side allowed not more than six hours to present evidence and testimony." The district administration bears the burden of proof, and six hours is an extraordinarily limited amount of time in which to prove that a teacher – to whom the district previously awarded tenure – is actually so incompetent that his or her employment should be terminated and career derailed. Recognizing this, the union might adamantly oppose an administration request to extend the length of the hearing, which the statute permits "when good cause is shown." At the same time, because teachers are on paid administrative leave during the pendency of the termination hearing, they have a financial interest in prolonging the hearing. Additionally, the union might also need more than six hours to defend the teacher's livelihood. Thus, this proposed reform of the lengthy hearing process might prove chimerical.

In conclusion, while the reforms to Connecticut's teacher termination process create new issues while seeking to resolve old ones, these amendments are likely sufficient to bolster Connecticut's tenure law against Vergara-like challenges.

Attorney McKeon is a Member of the law firm of Pullman & Comley LLC, which represents a number of Connecticut school districts. Attorney McKeon has written more extensively about the potential effect of the Vergara v. State of California decision on the firm's blog: Education Law Notes. Reposted with permission from the October 2014 Connecticut Association of Boards of Education Journal.

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