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Tenure Reform: The Latest Attempt at Equality of Education

Sixty years ago the United States Supreme Court stated in the landmark case, *Brown v. Board of Education*, that "[i]n these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."[1] Since that time, advocates continue to seek equal educational opportunity for all students either through legislation, like the No Child Left Behind Act, or litigation.

Adequacy of Funding Litigation

The most prevalent form of litigation challenges the adequacy of educational funding. In all but seven states, state high courts have considered whether their K-12 systems were equitably or adequately providing public education in accordance with their respective state constitution.[2] These cases have met with varying levels of success because courts have struggled with defining an adequate education and whether it is their role to make such a determination.[3] Consequently, in the adequacy cases in which plaintiffs prevail, the courts have primarily focused on the equality of educational opportunity.[4]

In Florida, the story is not much different. In 1996, the Florida Supreme Court held that there are not sufficient standards to determine "adequacy" and that a judicial determination may intrude upon the powers and duties of the legislature. However, in 1998 the constitutional provision was amended to describe education as a fundamental right and to require an education system that is "efficient, safe, secure, and high quality."[5]

In 2009, a group of students, parents, and non-profit organizations filed a lawsuit contending that the state has breached its duty to "make adequate provision for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education." The plaintiffs claim that:

- The state does not devote an adequate share of financial resources for a high-quality school system;
- The state gives public money to charter and virtual schools without holding them to the same standard as traditional public schools;

See "Tenure Reform" page 5

Instructional Materials – New Opportunities for Parents

Recent changes to the laws governing instructional materials may affect the timeframes for selection, adoption, and purchase of instructional materials by district school boards. These changes also reinforce that each district school board is responsible for the content of all instructional materials. This article discusses the requirements for review, selection, and adoption of instructional materials by district school boards, opportunities for the public to review and comment on instructional materials, and a parent's ability to challenge a district school board's adoption and use of a specific instructional material.

The law expressly provides that each district school board is responsible for the content of all instructional materials used in a classroom whether purchased through an adoption process or otherwise purchased or made available in the classroom.[1] Instructional materials must align with state standards.

Each district school board must provide a process for public review and comment on instructional materials. The process begins by providing the public with online access to student editions of all instructional materials recommended for use in a classroom.[2] The instructional materials must be available for at least 20 calendar days before the school board hearing and public meeting. The district school board must hold an open, noticed school board hearing to receive public comment on the recommended instructional materials. The district school board must also hold a public meeting, on a different date than the hearing, to approve an annual instructional materials plan that identifies any instructional materials that will be adopted and purchased by the district school board.[3] The notice for the school board hearing and public meeting must disclose the instructional materials being reviewed and explain how to access the materials.[4]

A parent may file a petition challenging the adoption of a specific instructional material within 30 calendar days of adoption by the district school board.[5] Within 30 days of the expiration of the challenge period, the school board must conduct at least one public hearing on all timely received petitions. The school board must make all contested instructional materials available online and notify all petitioners of the hearing date at least 7 days before the hearing. The school board's decision is final and not subject to further review. However, a parent may still object, throughout the school year, to his or her child's use of a specific instructional material.[6]

Each year, the district school superintendent must certify to the department that the instructional materials for core courses[7] "are aligned with all applicable state standards and have been reviewed, selected, and adopted by the district school board in accordance with the school board hearing and public meeting requirements."[8]

Finally, each district school board must annually notify parents, in writing, of the ability to access their child's instructional materials through the district's local instructional improvement system.[9] This notification must be prominently displayed in the school district's website.[10] In addition, each principal must communicate to parents how instructional materials will be used to implement the curricular objectives of the school.[11]

Endnotes:

1 Sections 1006.28(1)(a)1., and 1006.40(5), F.S.

2 *Id.*

3 Because the review process includes all instructional materials used in the classroom, this instructional materials plan will satisfy the instructional materials plan required by April 1. Section 1006.28(2)(b), F.S.

4 Section 1006.283(2)(b)9., F.S.

5 Section 1006.28(1)(a)3., F.S., requires the district school board to develop the form and make it available on its website.

6 Section 1006.28(1)(a)2., F.S.

7 While the law does not define "core courses" it does define "core subject areas" as mathematics, language arts, social studies, science, reading, and literature. Section 1006.28(1), F.S.

8 Sections 1006.40(5)(b) and 1006.283(1) and (4), F.S.

9 Section 1006.28(1)(a)3., F.S.

10 Section 1006.283(2)(b)11., F.S.

11 Section 1006.28(3)(b), F.S.

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Editors' Note:

Each district school board must adopt zero tolerance policies that define criteria for reporting to law enforcement acts by students within the jurisdiction of the district school board. In 2006, the Department of Juvenile Justice began to annually report on delinquency in Florida schools as part of its effort to reduce juvenile delinquency and turn around the lives of troubled youth.[1] The report summarizes delinquency arrests, by school district, for offenses occurring on school grounds, a school bus (or bus stop), or at an official school event.

In 2008, the Legislature revised the requirements for zero tolerance policies with the anticipation that there will be fewer incidences of petty acts of misconduct or misdemeanors reported to law enforcement. Over the past eight years delinquency arrests for school-related offenses declined 50% and 48% fewer youth are being arrested in Florida's schools. School districts continuously seek ways to reduce the number of school related arrests. One approach is described in the article below. Even though Broward County has a low-average arrest rate[2] for a large school district, it was still identifying ways to reduce arrests in school settings.

Broward's PROMISE – Reducing the School House to Jail House Pipeline

J. Paul Carland, II - General Counsel
The School Board of Broward County, Florida
October 2014

Discussions have been ongoing in Broward County, and across the country, for some time about the unfortunate wave of arrests in school settings leading to permanent criminal records for students. During the 2011-2012 school year, there were 1,062 school-related arrest, with more than half being the student's first referral to the Juvenile Justice System.[3] These records follow the students as they transition through the secondary educational system and can cause significant impediments to gaining admission to the best technical and higher learning programs and/or institutions. Another unfortunate fact about this trend is that it appears to affect minority students to a much higher degree.

In order to address this issue, a team of education professionals, community advocates and other stakeholders began meeting to discuss ways of combating this problem. While a variety of options were on the table for consideration, including civil citations, one program of interest quickly became the target of the groups' work. The program came out of Clayton County, Georgia and involved a collaborative agreement between the school district, judicial system and law enforcement agencies, among others, to create an integrated system for reviewing and processing student misconduct to avoid arrests wherever possible.

This program became the model for the Broward County concept. The main driver for the program was to be a collaborative agreement between the School Board of Broward County, Florida (SBBC) and relevant community and law enforcement partners very much like that created in Clayton County. The authority for such an agreement is well established in Florida law. The pertinent provisions in §1006.13 are as follows:

> (1) It is the intent of the Legislature to promote a safe and supportive learning environment in schools, to protect students and staff from conduct that poses a serious threat to school safety, and to encourage schools to use alternatives to expulsion or referral to law enforcement agencies by addressing disruptive behavior through restitution, civil citation, teen court, neighborhood restorative justice, or similar programs. The Legislature finds that zero-tolerance policies are not intended to be rigorously applied to petty acts of misconduct and misdemeanors, including, but not limited to, minor fights or disturbances. The Legislature finds that zero-tolerance policies must apply equally to all students regardless of their economic status, race, or disability.
>
> (4)(a) Each district school board shall enter into agreements with the county sheriff's office and local police department specifying guidelines for ensuring that acts that pose a serious threat to school safety, whether committed by a student or adult, are reported to a law enforcement agency.
>
> (b) The agreements must include the role of school resource officers, if applicable, in handling reported incidents, circumstances in which school officials may handle incidents without filing a report with a law enforcement agency, and a procedure for ensuring that school personnel properly report appropriate delinquent acts and crimes.
>
> (c) Zero-tolerance policies do not require the reporting of petty acts of misconduct and misdemeanors to a law enforcement agency, including, but not limited to, disorderly conduct, disrupting a school function, simple assault or battery, affray, theft of less than $300, trespassing, and vandalism of less than $1,000.
>
> (d) The school principal shall ensure that all school personnel are properly informed as to their

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responsibilities regarding crime reporting, that appropriate delinquent acts and crimes are properly reported, and that actions taken in cases with special circumstances are properly taken and documented.

(8) School districts are encouraged to use alternatives to expulsion or referral to law enforcement agencies unless the use of such alternatives will pose a threat to school safety.

[emphasis added]

The agreement was finalized and approved by the SBBC on November 15, 2013. Highlights of the agreement include:

- Targeting "non-violent" misdemeanors[4]
- "Consultation" and "Collaboration" between school administration and law enforcement
- Reservation of Rights, law enforcement officer retains ultimate discretion to arrest
- Signatories (buy in) by significant community partners including Court Administration, State Attorney's Office, Public Defender's Office, Sheriff, NAACP, Department Juvenile Justice, and multiple municipal police departments
- Provides for data collection, review oversight by collaborative committee involving signatories to the agreement

The agreement created a PROMISE to students within the Broward school system: **P**reventing **R**ecidivism through **O**pportunities, **M**entoring, **I**nterventions, **S**upports & **E**ducation. It established within the Student Code of Conduct, PROMISE eligible incidents which if committed lead to referrals to the PROMISE program. The program consists of an alternative education setting separate and apart from the student's regularly assigned school in which the student engages in intensive services to address the referring behavior with the hope of correcting it and preventing recidivism. The program is voluntary but contains a critical intervention component should a student decline intensive services or be at risk of dropping out of the program. The intervention involves a meeting with a local juvenile court judge as well as representatives of the state attorney's and public defender's offices during which the officials seek to impress upon the student the importance of addressing their behaviors now through the PROMISE program rather than later through the criminal justice system. Details about the program and its services are available through the SBBC's website. (http://www.browardprevention.org/behavior/promise/)

The first year of the program concluded in June of this year. On June 17, 2014, the School Board reviewed the statistics on the program and saw a marked improvement (reduction) in both arrests and recidivism. Specifically, the number of misdemeanor arrests for the 2013-2014 school year fell to 208 from 560 in the previous year. Charts and other statistics on the program for the 2013-2014 school year can be found on the School Board's website in the presentation to the School Board about the program.[5] With the new school year underway, the School Board remains committed to the program and its growth. Efforts continue to get sign-off ("buy in") on the collaborative agreement by the remaining municipalities in the County which have yet to enter into the agreement.

Endnotes:

1 Florida Department of Juvenile Justice, *Delinquency in Florida Schools: An Eight Year Study (Jan. 2013), available at* http://www.djj.state.fl.us/docs/research2/fy-2011-12-delinquency-in-schools-analysis-(final-june-2013)-recvd-sj-07-08-13-final.pdf?sfvrsn=0.

2 In *Delinquency in Florida's Schools,* a school district is considered to have a low to average arrest rate if its rate is less than or equal to the statewide average (10 arrests for every 1,000 students). School districts with an arrest rate higher than 10 per 1,000 students are considered to have a high arrest rate. *Id.*

3 *Id.* Although Broward County had one of the highest numbers of school-related arrests it actually has a low arrest rate relative to student population.

4 "Non-violent" misdemeanors are limited to: disrupting or interfering with a school function; affray; theft of less than $300; vandalism of less than $1,000; disorderly conduct; trespassing; criminal mischief; gambling; loitering or prowling; harassment; incidents relating to alcohol; possession of cannabis (requires consultation with law enforcement); possession of drug paraphernalia; threats; and obstructing justice without violence.

5 http://bcpsagenda.browardschools.com/agenda/2031H/57678/Files/1final_-promise_workshop_6_3_14rr_2.pdf

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TENURE REFORM, from page 1

- The state's education accountability system focuses too much on testing and is not efficient;
- The state's graduation rate (73 percent) and persistent achievement gap prove that the system is not high quality.[6]

The state sought a writ of prohibition with the First District Court of Appeal arguing that the trial court lacked jurisdiction to rule on plaintiff's complaint which raised only nonjusticiable "political" questions. Although the First District Court of Appeal denied the writ of prohibition, it also questioned the trial court's ability to grant any relief beyond declaratory judgment. The case is currently schedule for trial in March of 2016.

Access to Quality Instruction (Tenure Litigation)

Meanwhile, recent litigation to improve the quality of education focuses on one component of a quality education. Plaintiffs contend that the quality of teaching is the most important factor in improving student outcomes and that teacher tenure impacts a student's fundamental right to equality of education and places a disproportionate burden on poor and minority students.

The term tenure generally refers to job security provided through due process rights governing employment decisions. These due process rights are often cited as a barrier to replacing ineffective teachers with highly effective teachers. Some states have enacted laws to remove tenure. For example, North Carolina recently repealed its tenure laws prospectively and *retroactively* to give school administrators greater latitude to dismiss ineffective teachers. However, Superior Court Judge Robert Hobgood found that school administrators already had this flexibility and that additional flexibility could be provided through less drastic means. He held that the law was unconstitutional because it impaired contractual rights of tenured teachers and that the contractual rights were property rights protected by the North Carolina Constitution.[7]

In *Vergara v. California*,[8] nine schoolchildren alleged that laws governing the employment, retention, and dismissal of teachers prevented school administrators from providing students with equal access to a meaningful education by:

- Requiring administrators to grant or deny permanent employment status well before administrators were able to determine if a teacher will be effective long-term;
- Requiring school districts to base layoffs on seniority without considering the teachers' performance in the classroom; and
- Requiring a time consuming and expensive dismissal process.[9]

California Superior Court Judge Treu found that students taught by "grossly ineffective teachers costs students $1.4 million in lifetime earnings per classroom" and that students in English language arts that are taught by a teacher in the bottom 5% of competence lose 9.54 months of learning in a single year when compared to students with average teachers.[10] Judge Treu held that the laws "impose a real and appreciable impact on students' fundamental right to equality of education and that they imposed a disproportionate burden on poor and minority students."[11] Judge Treu concluded that the State's/Intervenors' position required them to defend the proposition that the state has a compelling interest in the de facto separation of students from competent teachers, and a like interest in the de facto retention of incompetent ones."[12]

The ruling found that the two-year period for determining whether to award tenure to a teacher under the permanent employment statute was insufficient for making the critical determination.[13] Students and teachers are unfairly, unnecessarily, and for no legally cognizable reason, disadvantaged by the statute.[14] Two of the state's experts testified that a three-to-five year period would be a better time frame for making tenure decisions.[15] Moreover, California is only one of five states that have the shorter two-year period.[16] Therefore, the State failed to meet its burden under strict scrutiny and was enjoined from enforcing its permanent employment statute.[17]

Inspired by *Vergara*, the Partnership for Educational Justice ("PEJ"), an advocacy group headed by former television journalist Campbell Brown and David Boies, the trial attorney who led the legal charge that overturned California's same-sex marriage bans, seeks to overturn New York's tenure laws and other job protections for teachers.[18]

PEJ contends that job protections for teachers are archaic and make it difficult for school systems to get rid of incompetent teachers.[19] The lawsuit argues that poor, minority students are more likely than more affluent peers to be taught by weak teachers.[20]

Tenure Reform in Florida (Legislation and Litigation)

Since the passage of SB 736, "Student Success Act," tenure has ended for teachers hired in Florida after July 1, 2011.[21] Prior to SB 736, teachers in Florida were hired on one-year contracts for three years before being awarded "professional service contracts."[22] Those contracts, which were often referred to as a form of tenure, gave teachers special protections from firing. The Act also ended "last-in-first-out" for reduction in force decisions, required that teachers be evaluated using student performance data and that employment decisions be based upon these evaluations.[23]

When SB 736 was signed by

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Governor Rick Scott, he stated that "the law will improve the ranks of teachers by rewarding the most ambitious and competent while maintaining job protections for current teachers who don't want change."[24] Governor Scott said in a statement following the signing, "We must recruit and retain the best people to make sure every classroom in Florida has a highly effective teacher."[25]

In *Robinson v. Stewart,*[26] six teachers alleged that the provisions of the Student Success Act relating to salary and employment contracts were an unconstitutional violation of collective bargaining rights and that requiring the State Board of Education to establish student growth levels for each performance rating was an unlawful delegation of legislative authority. The trial court dismissed the complaint and found that the Act was a lawful constitutional delegation of authority and that it did not explicitly bar collective bargaining. The Plaintiffs only appealed on the unlawful delegation issue. The First District Court of Appeal affirmed the trial court's decision that the Act is constitutional. *Robinson v. Stewart*, No. 1D13-3583, 2015 WL 292481, at *1 (Fla. 1st DCA Jan. 23, 2015).[27]

In federal court, a number of teachers, the Florida Education Association ("FEA"), Florida's teachers union, and the National Education Association ("NEA") challenged provisions of the Act which tie teacher evaluations to student test scores.[28] Plaintiffs' argue that Florida's sweeping merit-pay law violates the equal protection and due-process clauses of the U.S. Constitution because it unfairly resulted in many teachers' evaluations being based on the performance of students that they do not teach.[29]

United States District Judge Mark Walker ruled that while the teacher evaluation system may be unfair, it is not unconstitutional.[30] Although Judge Walker agreed with the teachers and unions that the law was unfair because teachers who did not teach the primary subjects tested on standardized tests had their evaluations based on test results anyway, he dismissed their suit.[31] "This case is not about the fairness of the evaluation system," Walker wrote.[32] "The standard of review is not whether the evaluation policies are good or bad, wise or unwise; but whether the evaluation policies are rational within the meaning of the law."[33]

Other Strategies to Improve Access to Effective Educators

Some have criticized the current strategy for achieving equality of education as being that of "if you first do not succeed in the legislative context, go to court."[34] Jessica Levinson, an Associate Professor of Law, believes that "the questions should boil down to how we attract and keep talented teachers. Even if the courts do rule in favor of anti-tenure advocates, the questions as to how best to structure teacher hiring and firing remain open and left to lawmakers. Query as to whether our lawmakers should tackle these issues now instead of waiting for the courts to rule on these and other suits."[35]

This position was further reiterated by Catherine Rampell of the *Washington Post*, who stated that "improving the *quality* of teachers who work with poor kids seems more about insufficient inflow of the talented than insufficient outflow of the untalented."[36] She therefore concludes that "Reducing job security may sound like a cheap way to improve teacher *quality*.[37] But without some of the costlier changes necessary to make the most difficult teaching jobs more appealing to the most desirable workers, it seems unlikely to be the silver lining school reformers are hoping for."[38]

However, Joseph Lipshutz, the principal trial attorney representing the nine student plaintiffs in the case of *Vergara v. California*, asserts that "Courts in the U.S. have a long tradition of protecting the educational rights of students. Although education is typically a legislative matter, courts have stood as bulwarks against egregious and inequitable policies that harm students."[39] Mr. Lipshutz suggests that "a three-pronged approach will let courts identify pernicious state laws, school-district policies, and collective-bargaining provisions that are hindering academic progress and violating the right of students to a *quality* education."[40] He asserts that "In the past, courts have been reluctant to address matters of educational *quality* because they lack the institutional understanding to establish minimum *quality* thresholds."[41]

He suggests that "Today, however, with the U.S. Department of Education's Race to the Top and Common Core Standards initiatives, as well as comparable state programs, courts can simply apply the minimum learning goals established through those programs."[42] He goes on to propose that one *quality* threshold courts could apply is the definition of "effective teacher" and "effective principal."[43]

Recently, the U.S. Department of Education's has renewed interest in increasing access to highly effective teachers by creating the Excellent Educators for All Initiative. As part of the initiative each state must submit a State Plan to Ensure Equitable Access to Excellent Educators that "ensures poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.'"[44] To help states identify equity gaps, the department is providing "Educator Equity Profiles that compare certain teacher characteristics in high- and low-poverty schools, and in schools with high and low concentrations of minority students, disaggregated by district and urbanicity."[45] State Plans are due June 1, 2015.

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Conclusion

The fight for educational equality has been going on for decades. Even in states where school finance plaintiffs have been successful litigation is ongoing and legislatures have been slow to respond. Whether the most recent reforms will result in "equality of education" will take some time to determine. First, the elimination of some job protections only applies to newly hired teachers, which is relatively small compared to teachers with tenure. Second, the ability to accurately evaluate teachers based, in part, upon student performance remains at issue. Finally, whether students are provided greater access to highly effective teachers depends upon local decisions regarding the evaluation, assignment, promotion and dismissal of teachers. Future litigation may focus on local implementation of these decisions.

Endnotes:

1 *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).

2 State Role in Education Finance, National Conference of State Legislatures, http://www.ncsl.org/research/education/state-role-in-education-finance.aspx#EdFinanceLitigation

3 *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles*, 680 So.2d 400, 408 (Fla. 1996)(holding that the there are not sufficient standards to determine "adequacy" and that a judicial determination may intrude upon the powers and duties of the legislature).

4 James E. Ryan, *Standards, Testing, and School Finance Litigation*, 86 Tex. L. Rev. 1223

5 William A. Buzzett and Deborah K. Kearney, Commentary to 1998 Amendment, 26A, Fla. Stat. Ann., Art. IX, § 1, Fla. Const.

6 *Id.*

7 Order in *N.C.A.E. v. State of North Carolina*, (Wake County General Court of Justice Superior Court Division), File No. 13 CVS 16240, June 5, 2014. Pages 6 & 7.

8 *Vergara v. California*, No. BC484642, 2014 WL 6912923 (Cal. Super. Jun. 10, 2014)

9 Evidence presented at trial showed that it could take from two to ten years and cost from $50,000 to $450,000 to dismiss a grossly ineffective teacher.

10 Dr. Thomas J. Kane, *Presentation on Measurements of Teacher Effectiveness and Teacher Effectiveness in the Los Angeles Unified School District,* available at http://studentsmatter.org/wp-content/uploads/2014/02/SM_Kane-Demonstratives_02.06.14.pdf. The presentation also shows that math students taught by a teacher in the bottom 5% of competence lose 11.73 months of learning in a single year.

11 See *Vergara,* at 8.

12 *Id.* at 14.

13 *Id.* at 9.

14 *Id.* at 10.

15 *Id.*

16 I*d.*

17 *Id.* at 16. California's Teachers Association, an affiliate of the National Education Association, said that there is nothing unconstitutional about these laws and it is appealing. http://legalclips.nsba.org/2014/06/12/california-court-rules-that-teacher-tenure-and-dismissal-laws-violate-state-constitutions-equal-protection-clause/ U.S. Secretary of Education Arne Duncan hailed the ruling as a "mandate" to fix a broken teaching system and that the ruling will spark a national dialogue on a teacher tenure process that is "fair, thoughtful, practical and swift". Id. On July 23, 2014, California's Attorney General ("AG"), Kamala Harris filed a request, without indicating whether the State will file an appeal, to clarify some points in the tentative decision and issue a final opinion. In particular, the AG's request focuses on how the Court concluded that the laws served no valid purpose, had subjected the nine plaintiffs to substandard educations, and disproportionately compromised the rights of low-income and minority children. http://legalclips.nsba.org/2014/07/25/california-attorney-general-asks-court-to-clarify-opinion-and-issue-final-decision-in-vergara-teacher-tenure-case/ On August 29, 2014, Attorney General Harris filed on behalf of Governor Jerry Brown, a one-page appeal that argued that a decision of such scope needed to be made by a higher court and that the judge in the case had declined a request by the governor and attorney general "to provide a detailed statement of the factual and legal bases for its ruling." http://legalclips.nsba.org/2014/09/03/california-governor-appeals-court-ruling-overturning-tenure-protections-for-teachers/

18 See Complaint in *Wright v. State of New York,* (Supreme Court of the State of New York, County of Albany), filed on July 28, 2014.

19 *Id.* at p. 2.

20 *Id.* at p. 3. There are clear differences between teacher job protections in California and New York. For instance, under the laws that were recently struck down in California, tenure was awarded after eighteen (18) months. In New York, that probationary period is three years, and teachers unions say administrators have more time to make informed decisions and weed out poor performers.

21 Chapter 2011-1, Laws of Florida.

22 *Id.*

23 *Id.*

24 http://www.reuters.com/article/2011/03/24/us-florida-teachers-idUSTRE72NK320110324.

25 *Id.*

26 *Robinson v. Stewart,* No. 2011-CA-2526 (Fla. 2d Cir. Ct. May 2, 2013).

27 *Id.*

28 See Complaint of *Cook v. Bennett*, Case 1:13-cv-00072-MW-GRJ (U.S. Dist. Ct., No. Dist. of Fla.,) filed on April 16, 2012. http://articles.orlandosentinel.com/2013-04-16/features/os-teacher-evaluations-union-challenging-20130416_1_teachers-union-suit-evaluation-system-te... Seven teachers in Alachua, Escambia and Hernando County School Districts are the Plaintiffs, along with their local teacher unions. The Education Commissioner, the State Board of Education and the Alachua, Escambia and Hernando School Boards are the Defendants.

29 *Id.*

30 *Cook v. Stewart*, 28 F. Supp. 3d 1207, 1215 (N.D. Fla. 2014).

31 *Id.*

32 *Id.*

33 *Id.*

34 http://politix.topix.com/story/13410-teacher-tenure-taking-it-to-the-courts

35 *Id.*

36 http://www.washingtonpost.com/opinions/catherine-rampell-eliminating-teacher-tenure-wont-improve-education/2014/06/12/26d1314c-f25d-11e3-914c-1fbd0614e2d4_story.htm In her column dated June 12, 2014, she further notes that "One study, based on a policy change in Chicago, found that even when dismissal rules are relaxed, many principals still choose not to fire anyone-including the worst-performing schools-perhaps at least partly because of the challenge of finding decent replacements." *Id.* She further states that "attrition among teachers is huge and increasing. An estimated 40 to 50 percent of educators nationwide leave the job within five years and the most common level of experience for teachers in less than a full year." *Id.*

37 *Id.*

38 *Id.*

39 http://online.wsj.com/articles/joshua-lipshutz-the-legal-road-map-to-reform-public-schools-140486153...

40 http://online.wsj.com/articles/joshua-lipshutz-the-legal-road-map-to-reform-public-schools-140486153... The three prongs encompass the following. "First, courts should focus on inputs that are strongly correlated with student success, such as the *quality* of teachers and administrators. Second, courts should scrutinize the equality of educational outcomes, using test scores, literacy rates, graduation rates, college-attendance rates and other direct measures of student learning, rather than focus only on inputs. Third, as Judge Treu explained in *Vergara,* courts must address "the *quality* of the educational experience," not just the "lack of equality of education."

41 *Id.*

42 *Id.*

43 *Id.*

44 http://www2.ed.gov/programs/titleiparta/equitable/letter11102014.html *See also* Section 1012.2315, F.S., providing district school boards with the flexibility to equitably distribute teachers in schools across the district.

45 *Id.*