

# The Legal Road Map to Better Public Schools

The Vergara v. California ruling clears the way for courts across the country to weigh student outcomes.

By Joshua Lipshutz

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.

The most notable example is *Brown v. Board of Education* (1954), when the Supreme Court struck down racial segregation in schools as a violation of constitutional rights. But less famous decisions in state courts have played a crucial role in ensuring that all children—regardless of race, ethnicity or wealth—have access to the educational opportunities they are guaranteed under state constitutions.

The role of courts is critical because children have no seat at the legislative table. They cannot vote or lobby and have no union representing their interests. Their very ability to participate in democracy as adults and be successful members of society depends in large part on education.

As the California Supreme Court has described in *Serrano v. Priest* (1971) and other cases, education serves a “distinctive and priceless function,” and “unequal education . . . leads to unequal job opportunities, disparate income, and handicapped ability to participate in the social, cultural, and political activity of our society.” Education, the court found in *Serrano*, is even more important for children from less-advantaged backgrounds, serving as “the bright hope for entry of the poor and oppressed into the mainstream of American society.”

In most education-related constitutional cases, however, state courts have focused on a very limited set of concerns—usually, disparities in educational inputs that are obvious and easy to measure, like funding and time in school. But the easiest inputs to measure are not necessarily those that matter most to student learning. Achieving equality in funding or in the

number of school days does not always improve education quality.

That is why last month’s landmark *Vergara v. California* ruling is so important for reforming failing public schools. *Vergara* was brought by nine public-school students who argued that tenure and other teacher job protections undermined the quality of their education. On June 10, following a two-month bench trial with 51 witnesses, Los Angeles Superior Court Judge Rolf M. Treu found that California’s education statutes—specifically its policies on teacher tenure, dismissal and layoffs—cause vast disparities in teacher quality that result in equally vast disparities in educational outcomes. This, the court ruled, violates the equal protection clause of the state’s constitution.

“Substantial evidence presented makes it clear to this court that the challenged statutes disproportionately affect poor and/or minority students,” Judge Treu wrote. “The evidence is compelling. Indeed, it shocks the conscience.”

*Vergara* provides a road map for future education litigation in other states, including two New York cases that are already moving forward. As such litigation progresses, it is important that it focus on three critical parameters.

First, courts should focus on inputs that are strongly correlated with student success, such as the quality of teachers and administrators. Every witness in *Vergara*, on both sides, agreed that teacher quality is the most important in-school determinant of student outcomes. Yet data from Los Angeles Unified School District showed that African-American and Latino students are, respectively, 43% and 68% more likely than white students to be taught by teachers in the bottom 5% of the quality distribution.

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. These measurements have become feasible due to the improved availability of student data and modern statistical techniques.

When Dr. Thomas Kane, a Harvard researcher who led the Gates Foundation's Measures of Effective Teaching project, examined student outcomes in California for the Vergara litigation, he found that students assigned to bottom-5% teachers are being deprived of nine or more months of learning every year compared with students assigned to average teachers. That is a far larger disparity than researchers have found in other states. It is also direct evidence of irreparable harm that leaves students less likely to attend college and reduces their expected lifetime earnings.

Third, as Judge Treu explained in Vergara, courts must address "the quality of the educational experience," not just the "lack of equality of education." If a state's educational system is not meeting the basic needs of students, courts must intervene even if all children are receiving an equally bad education.

In the past, courts have been reluctant to address matters of educational quality because they lack the institutional understanding to establish minimum-quality thresholds. 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. To give but one example of a quality threshold that courts can apply, the Federal Register now contains regulations defining "effective teacher" and "effective principal."

This 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. Once those educational barriers are identified, they can be eliminated through judicial action—exactly what courts are supposed to do in our system of checks and balances, and exactly what the court did in Vergara v. California.

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