

IMPACT OF THE 'STUDENTS FIRST' DECISION ON NON-TEACHER EMPLOYEES OF SCHOOL DISTRICTS

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Judge Rolf Treu's decision in the *Students First* case is effectively an indictment of the termination process of all California public school employees, not just teachers. Under current law, California public school employers are forced to expend significant resources to terminate employees who are ineffective, engage in misconduct, or whose job performance continues to fall below standards. This applies both for teachers (or "certificated" employees) and non-teachers (or "classified" employees), though the termination process is more long-drawn and expensive for teachers. The criticisms of the current process for terminating teachers generally apply, perhaps on a lower scale, to classified employees.

The reality of the mandated termination process is that it is excessively expensive. School districts are having to spend what little funds they have on attorneys' fees and administrative costs just to terminate a few employees whom everyone agrees should be fired, and then to defend such terminations in administrative and judicial proceedings. "Bad apple" employees are often placed on administrative leave pending the outcome of the process, leave which the law requires to be paid. Because of all the hurdles and hoops school districts must jump through, many districts make tough decisions to not pursue the termination of some ineffective employees. Pursuing termination is reserved for only the worst cases, such as criminal misconduct. And when districts pursue termination, they are faced with fierce resistance from both the employees and their union representatives. In some cases, even the

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union representatives know and would admit “off the record” that the employee they are defending in an administrative proceeding did engage in misconduct worthy of disciplinary action. The union’s duty of fair representation, however, obligates it to represent its members in such proceedings, and it will continue to do so even where the evidence clearly supports the employee’s ultimate termination. This results in prolonging the process and increasing its costs.

Judge Treu found the termination process for certificated employees unconstitutional in part because of the reality that this process results in retention of ineffective teachers, particularly by school districts in economically depressed and ethnically diverse areas. This finding—which a future case may reach with respect to classified employees—does not mean that the process itself, without consideration of its practical impacts and current context, is unconstitutional or unsupported by public policy reasons. It may have been a well-intended process that protected academic freedom at a time when such freedom was truly under attack (e.g., McCarthyism), but it has since become a financially prohibitive process for the state’s poorest school districts to terminate not just ineffective teachers, but also employees who engage in workplace misconduct. If Judge Treu’s decision is upheld on appeal, school districts will finally be able to hold all teachers accountable and to swiftly but fairly toss the “bad apples.” Districts may suddenly have substantial amounts of money they can dedicate to areas of need, and activists may look for opportunities to challenge the termination process mandated for classified employees.

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