



Written by [Bob Adelman](#) on January 30, 2014

California Teachers Unions Threatened in Lawsuit Over Hiring, Firing Rules

Arguments [began in Los Angeles on Monday](#) in a lawsuit that, on the surface, appears to have little to do with teacher unionism but only with a disagreement over some hiring and firing rules in California. The plaintiffs in the case complain that tenure is granted prematurely, that firing incompetent teachers takes too long and costs too much, and that when there's a downsizing move, the newest teachers get the ax. In fact, the lawsuit initially was aimed at the Los Angeles Unified School District (LAUSD), and only when the teachers' unions realized what was really at stake did they ask to join the lawsuit as defendants.



The plaintiffs in the case, *Vergara v. California*, are a group of nine students aged 9 to 17 and their parents, who call themselves [Students Matter](#) and who are backed and funded by the group's founder, David Welch. Welch is a successful engineer and entrepreneur in Silicon Valley, [making fiber optic network equipment](#), and he has children in the public schools. When he discovered that bad teachers were being given tenure, which made it then nearly impossible to fire them, he got interested. When he discovered that during periods of downsizing teachers were let go through "reverse seniority" — "last in, first out" — instead of capability, he got incensed. When he learned that such union rules were destroying California's once highly regarded public schools, he got out his checkbook.

[In explaining why he became personally involved, Welch said:](#)

When it comes to educating the leaders and innovators of tomorrow ... California ranks behind almost every other state in the union. At the fourth grade level, California is 46th in the nation in reading and 45th in math, based on the 2011 National Assessment of Educational Progress. At the eighth grade level, the situation is even worse, with California ranking 48th in both subjects.

The state that once was known for having the best public education system in the country is now failing its children. And the sad irony is that California is imposing this tragedy on itself by failing to employ the strategies that have made it so successful.

Instead of demanding results and rewarding achievement, California's education system is tethered to a handful of statutes that refuse to distinguish between good teachers and bad. These laws encourage the retention of seriously underperforming teachers, require schools to tolerate failure among their teaching ranks, and devalue talented teachers.

Put simply, these laws are destroying California's public education system, demoralizing the teaching profession, and robbing California's children of their future.



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There are five laws in Welch's crosshairs. One requires tenure decisions be made for teachers after just 18 months of experience. Three rules inhibit the firing of underperforming or predatory teachers. And the fifth requires administrators to downsize according to who was hired last, rather than who was performing worst.

Said Welch:

These laws have nothing to do with providing a quality education. To the contrary, they guarantee that some children will suffer the lifelong consequences of grossly ineffective teaching.

After hiring the best lawyers his money could buy, Welch based his lawsuit on the students' "constitutional right" to a quality education, he said, which "the California Supreme Court long ago declared to be fundamental to the state's charter."

On Monday Welch expanded on [why such a lawsuit was needed, instead of some other remedy](#):

We chose to utilize impact litigation to drive sorely needed changes in our public school system — and to shake up the political system that has let American schools, once the envy of the world, decline so far and so fast.

He then expanded on the onerous and outdated union rules that were inhibiting administrators from being able to do the best job they could:

Across the state, public school administrators are forced, by law, to grant permanent employment status to new teachers after only 18 months, before they even complete their beginner teacher training program and way before administrators can assess whether or not a teacher will be effective long-term.

Then, because of the elaborate dismissal procedures for teachers with permanent status, administrators cannot fire even the most egregiously ineffective teachers without navigating an expensive and time-consuming bureaucratic maze.

One attempt at dismissal often costs school districts hundreds of thousands of dollars and takes years upon years of hearings and appeals. The dismissal procedures go so far beyond due process ... that make it impossible to protect students from ineffective teachers.

Perhaps the piece of the puzzle that makes the least sense is the "last-in, first-out" layoff law, which forces school districts to conduct layoffs based solely on teacher seniority. This law forces schools to dismiss passionate, effective teachers and keep some apathetic, ineffective teachers, just because they have seniority.

Welch founded Student Matters in November 2010, and by May 2012, had hired attorneys and found the plaintiffs [to file suit](#) against the state of California and the heads of two of the largest school districts in the state.

In August the defendants asked the court to dismiss Welch's suit. In November [the court overruled them](#). The defendants appealed. In January 2013, the California Court of Appeals [dismissed the appeal and allowed the case to move forward](#). In February the California Superior Court set the trial date for January 27, 2014.

Up to that point, California's two largest teachers' unions, the California Teachers Association (CTA) and the California Federation of Teachers (CFT) had stayed out of the fray, perhaps hoping that the issue would die by itself. But as the evidence against the union rules that Welch's lawyers developed



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began to pile up, the unions got nervous and, on May 2, [asked to join the lawsuit as defendants](#).

In September the timeline in the case took another twist: The school districts charged in Welch's initial lawsuit [wanted out](#). This was acceptable to Welch and his attorneys, as it was clear that the unions and their rules were really his target. Said one of Welch's attorneys:

Like all other school districts in California, LAUSD [Los Angeles Unified School District] is hindered by rigid and outdated state laws that harm students.

We believe the trial should be focused on the actors who are chiefly responsible for devising, promoting, enacting and maintaining those laws — namely, the state of California and the teachers' unions.

It didn't take long for the unions to file a request for a summary judgment — a decision without a jury — in the case. [Welch and his attorneys responded](#), and the revised cast of defendants lost again.

Not ready to let the matter go to trial, with all the public exposure that would mean, the unions [tried once more](#), and once again they failed. On January 14, 2014, the California Court of Appeals affirmed the date for the arguments to begin — this past Monday.

The unions have issued public protestations against the lawsuit and Welch, as might be expected, [claiming](#) that “wealthy benefactors” and “special interests” are using their financial power to “force their policy views on the state.” Unions also defended their rules regarding tenure, seniority, and teacher dismissals, calling them “crucial safeguards” and “essential to recruiting and retaining quality instructors.” The real reason for poor performance is, according to the unions, the lack of adequate funding.

It's interesting to note that among the defendants in this case are Dr. John Deasy, the superintendent of the LAUSD; Jonathan Raymond, the Sacramento City Unified School District superintendent; Dr. Tony Smith, the Oakland Unified School District superintendent; and Xavier de la Torre, the Santa Clara County Office of Education superintendent. [Each of them has expressed his support for Welch and the plaintiffs in the case!](#)

The jury trial is expected to last at least three weeks, perhaps longer, so any predictions at this point would be largely conjecture. But the case is getting national attention, and if Welch and his students win any sort of victory at all, it will shiver the timbers and shake the foundations not only of the CTA and the CFT, but teachers' unions across the country. And all because one man saw what was happening, got mad, and decided to do something about it.

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