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**Beatriz Vergara, et al.**  
**v.**  
**State of California, et al.**

Case No. BC484642

Superior Court of the County of Los Angeles

January 27, 2014

# Fundamental Right to Education

All students in California deserve  
an equal chance to succeed



# Fundamental Right to Education



Education is “essential to the preservation of the rights and liberties of the people.”

–*California Constitution, Article 9, Section 1*

“A person may not be... denied equal protection of the laws.”

–*California Constitution, Article 1, Section 7*

# Fundamental Right to Education

California schoolchildren have a constitutional right to “substantially equal opportunities for learning.”

–*Serrano v. Priest* (Cal. 1976)

“The State itself has broad responsibility to ensure basic educational equality.”

–*Butt v. California* (Cal. 1992)



# Fundamental Right to Education

Several components are essential for educational equality:

- *Serrano*: **funding**
- *Butt*: **time in school**
- *Vergara*: **teachers**

"[D]ifferences in dollars...produce differences in pupil achievement" in part because money allows school districts to employ a "higher quality staff."

—*Serrano v. Priest* (Cal. 1976)

# Strict Scrutiny Applies

Strict scrutiny applies for **two** reasons:

1. The statutes have “a **real and appreciable impact** on...the exercise of [a] fundamental right.”

–*Fair Political Practices Com. v. Superior Court* (Cal. 1979)

–*Butt v. California* (Cal. 1992)

2. “The statutes **disproportionately burden** poor and minority students.”

–*Serrano v. Priest* (Cal. 1976)

# Teachers Matter

Total time **one** student spends with teachers

**175**  
school days



x

**13**  
years



=

**2,275**  
**instructional**  
**days**  
***per student***

# Teachers Matter

Students taught by **one** elementary school teacher:

$$25 \text{ students/class} \times 30 \text{ years} = \mathbf{750 \text{ students}}$$



**One** middle school or high school teacher:  
**Thousands of students**



# Teachers Matter



**Dr. Raj Chetty**

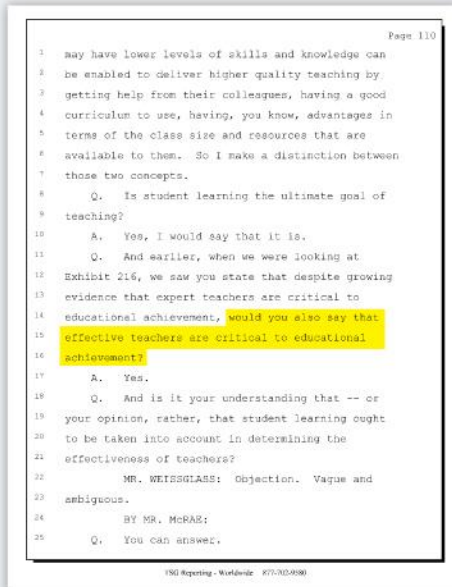
- Professor of Economics, Harvard University
- 2012 "Genius Grant" recipient
- 2013 John Bates Clark Medal
- Study: *Measuring the Impacts of Teachers*

Students taught by effective teachers are more likely to:

- Attend college
- Attend a high-quality college
- Have higher earnings
- Live in better neighborhoods
- Save more for retirement
- Avoid teenage pregnancy

Even **one** ineffective teacher makes these outcomes less likely

# Teachers Matter



**Linda Darling-Hammond**  
Unions' expert witness

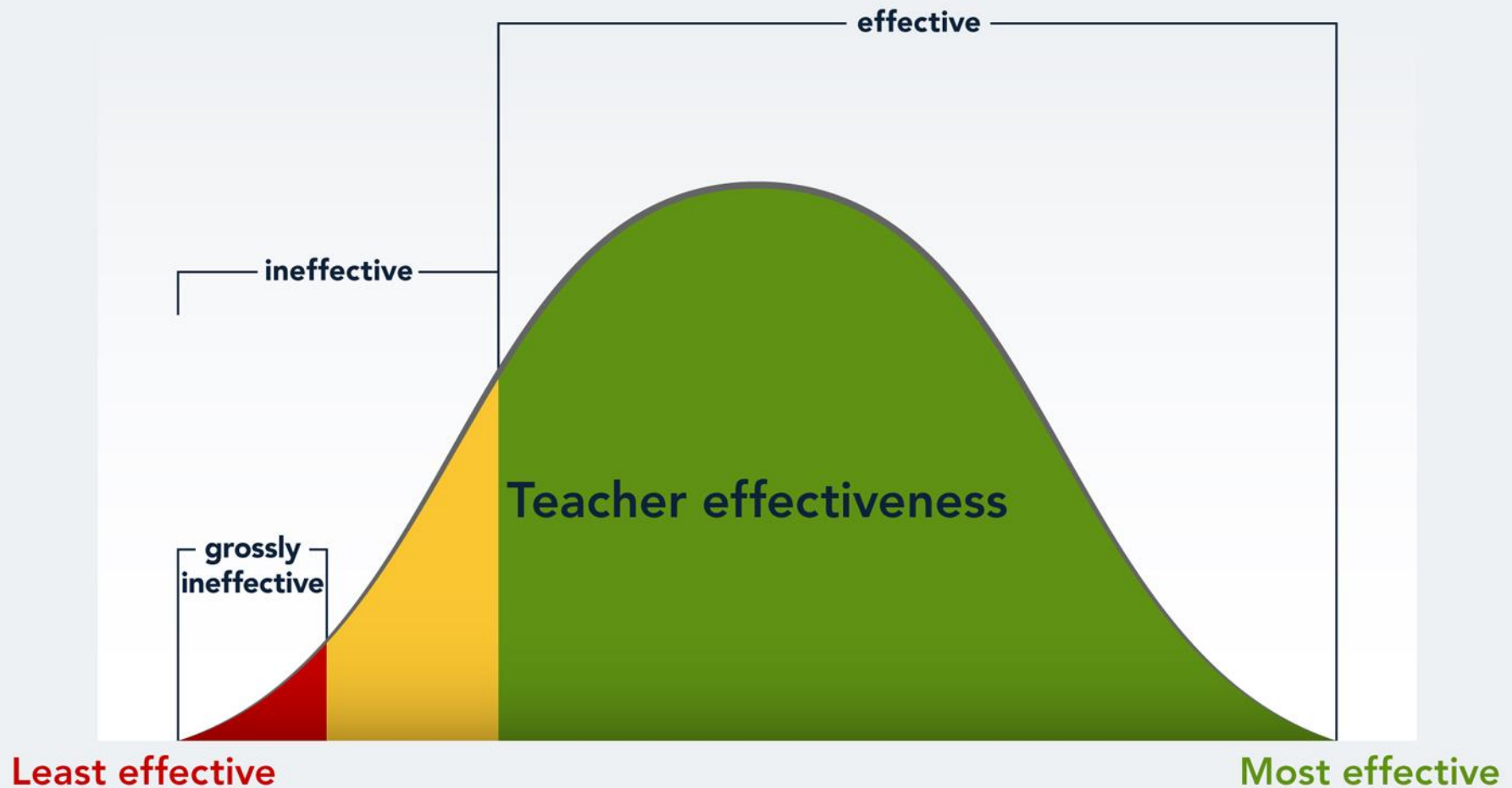
**Q.** [W]ould you also say that effective teachers are critical to educational achievement?

**A.** Yes.

—Depo. at 110:14–17, 1/3/14

# Teacher Effectiveness Matters

An effective teacher is someone who achieves student learning.  
**Most** teachers are effective or highly effective.



Source: *The Economic Value of Higher Teacher Quality*, Eric. A. Hanushek

# Teacher Effectiveness Matters

Students taught by a single ineffective teacher fall far behind their peers.

Effective teacher 1



Grossly  
ineffective  
teacher 1



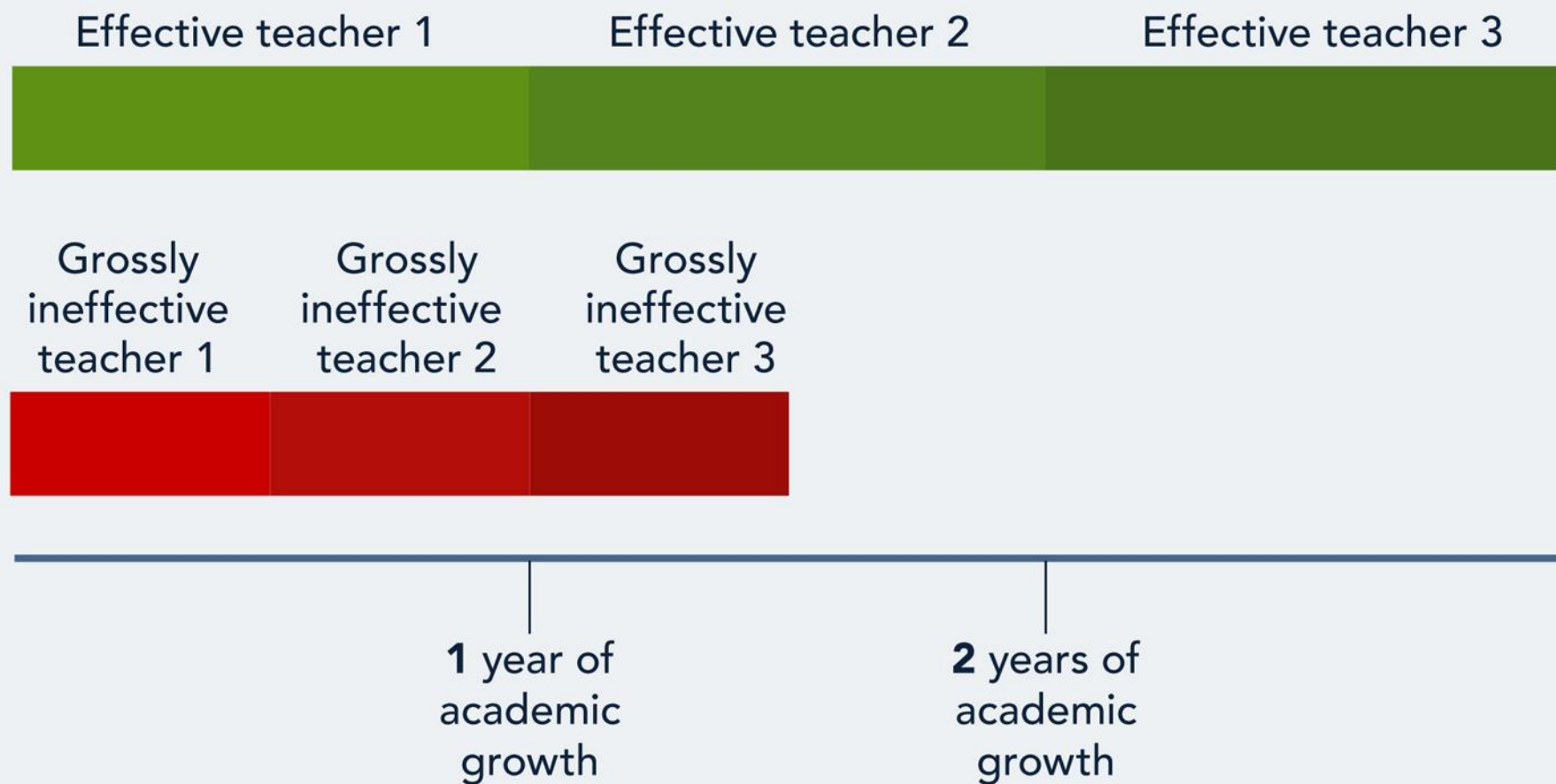
1 year of  
academic  
growth

2 years of  
academic  
growth



# Teacher Effectiveness Matters

Students taught by more than one ineffective teacher are unlikely ever to catch up.



# Dr. Thomas Kane



**Dr. Thomas Kane**

- Professor of Education and Economics, Harvard Graduate School of Education
- Faculty Director, Harvard Center for Education Policy Research
- 2008–2012: Deputy Director for U.S. Education, Bill and Melinda Gates Foundation
- Leader of the “Measures of Effective Teaching Project”
  - A three-year study funded by the Gates Foundation
  - Designed to determine how to best identify and promote great teaching
  - A collaboration between dozens of independent research teams and nearly 3,000 teacher volunteers from seven U.S. public school districts

# Dr. Kane's 2013 LAUSD Study

Analyzed LAUSD data on student achievement growth over seven academic years from 2004–2011

- 1.1 million students
- 58,000 teachers

## Conclusions:

- Teacher effectiveness in LAUSD is both measurable **and** predictable
- LAUSD experiences wide disparity in teacher effectiveness
- The bottom 5% of teachers in LAUSD are achieving very low gains in student learning

# Admissions

## RFA responses:

“[D]efendant admits that some CALIFORNIA SCHOOL DISTRICTS currently employ INEFFECTIVE teachers.”

–State Ed. Defendants

Source: State Education Defendants’ Responses to Plaintiff Elizabeth Vergara’s First Set of RFAs

“California public school districts currently employ teachers who are ineffective...”

–CTA and CFT

Source: Unions’ Supplemental Responses and Objections to Plaintiff Elizabeth Vergara’s First Set of RFAs



# The Challenged Statutes Harm Students

## Permanent employment

Forces school districts to make premature tenure decisions before teacher effectiveness can be properly evaluated

–Cal. Education Code section 44929.21(b)

## Dismissal

Prevents school districts from dismissing ineffective teachers who harm students

–Cal. Education Code sections 44934, 44938(b)(1) & (2), 44944

## Seniority-based layoffs

Forces school districts to make layoff decisions that ignore teacher quality and the best interests of students

–Cal. Education Code section 44955

# Our Evidence

As in *Serrano*, Plaintiffs will introduce testimony from:

- Superintendents and school district officials from across the State, whose decisions are constrained by these laws
- Principals and teachers, who experience the harmful effects of these laws firsthand
- Parents and students, who understand the importance of teachers
- Experts in the fields of education, labor economics, and statistical research

# The Permanent Employment Statute

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# Permanent Employment in "Two Years"

**24 months**

JUL | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | JUN



# But "Two Years" Is Less Than 16 Months

16

~~24~~ months

Mid-August  
School starts

March 15  
Notification  
deadline

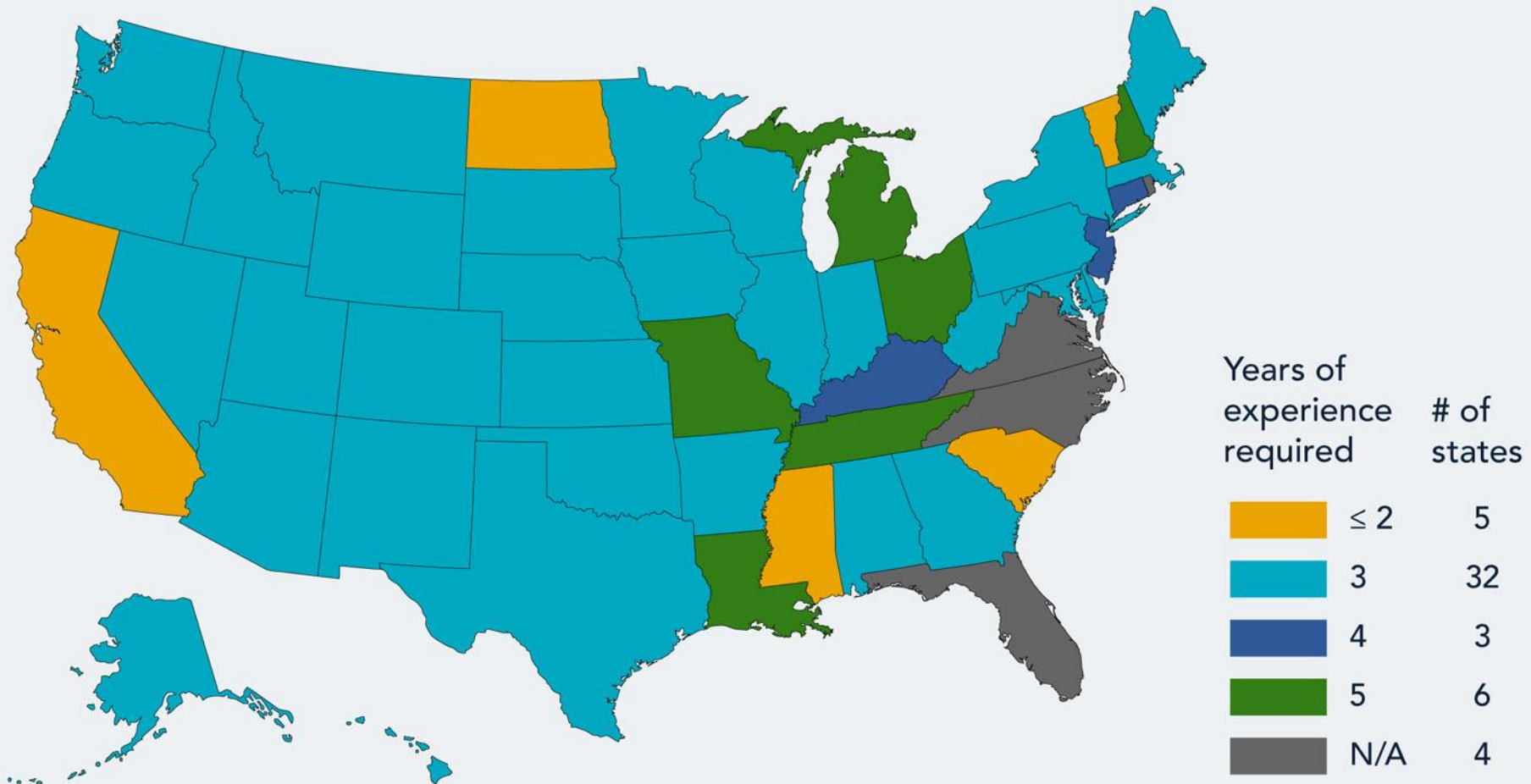
Early June  
End of 2nd  
school year



In practice, superintendents and principals have  
***less than*** 16 months to make a decision

# California Is an Outlier

California's probationary period is shorter than nearly every other state



Source: 2013 State Teacher Policy Yearbook: California, National Council on Teacher Quality

# 16 Months Is Not Enough Time



**Dr. John E. Deasy**  
Superintendent  
of LAUSD

## The Permanent Employment Statute:

- Provides inadequate time for site administrators to make decisions regarding permanent employment
- Limits the amount of classroom evaluation data, student and parent input, and student academic data available to site administrators
- Results in the reelection of ineffective and grossly ineffective teachers

# 16 Months Is Not Enough Time

Plaintiffs' evidence will show that 16 months is not enough time to evaluate teachers' effectiveness:

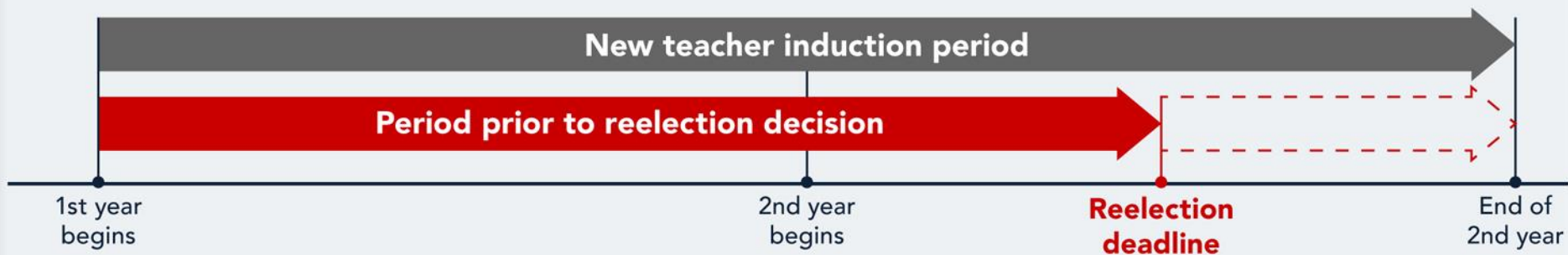
- Superintendents will testify that they cannot screen out all the ineffective teachers in 16 months
- Principals will testify that 16 months forces them to make premature decisions without sufficient information
- Experts will testify that a longer probationary period would result in substantially fewer errors

**Result: Ineffective teachers obtain permanent employment**



# 16 Months Is Not Enough Time

- New teacher training programs last two years or longer
- Permanent Employment Statute forces a tenure decision before training is concluded



# The State's Expert Acknowledges the Problem

Agreed that more time is needed to make the tenure decision. Three or even five [years] would be better.

—Berliner Exhibit 221

Cherry study refuted and effects really minimal: Moshe Almazan

Agreed that more time is needed to make the tenure decision. Three or even five would be better.

Ts are still learning and we don't want to dismiss too soon and we want those that will self select out—50% in 5 years—to do so.

Grossly ineffective teachers employed: Not true. Overstatement. Ts by far are more likely to be rated well rather than poorly.

Says repeatedly that "teacher quality is the most important in-school factor on student Achievement." That's wrong. Aggregate score/mean score is more a function of who is in the class and the school than the teacher. Ts have huge impacts on individual students and much less impact on kids as a group. Big fallacy.

Documents:

On characteristics:

In a study conducted by Laczko-Kerr and Berliner (2002), the academic performance of the students of regularly certified primary-grade teachers was compared to those who were identified as under-certified. In this study, under-certified included emergency, temporary, and provisionally certified teachers, including those who participated in Teach for America. The students of certified teachers outperformed those of under-certified teachers, including those from Teach for America. The authors noted that effect sizes favored students of regularly-certified teachers (Laczko-Kerr & Berliner, 2002).

On experience: See expertise issue. See

Darling Hammond and Youngs

CAEXP00395

**David Berliner**  
State's expert witness  
Deposition preparation notes

# The Dismissal Statutes

## Permanent employment

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–Cal. Education Code section 44929.21(b)

## Dismissal

Prevents school districts from dismissing ineffective teachers who harm students

–Cal. Education Code sections 44934, 44938(b)(1) & (2), 44944

## Seniority-based layoffs

Forces school districts to make layoff decisions that ignore teacher quality and the best interests of students

–Cal. Education Code section 44955

# Dismissal: Lengthy, Costly, Burdensome



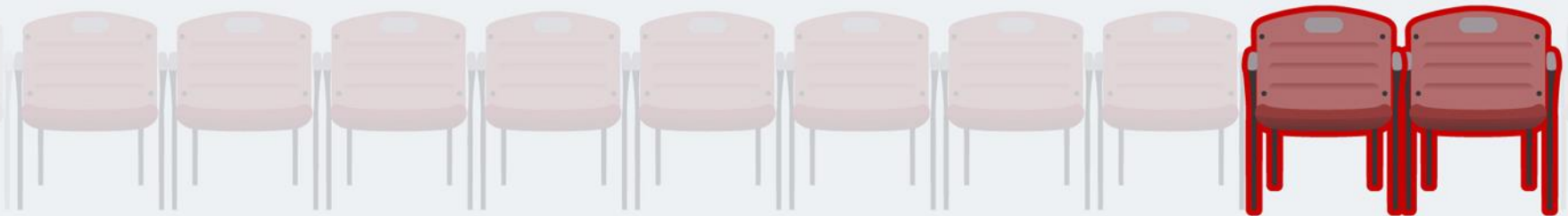
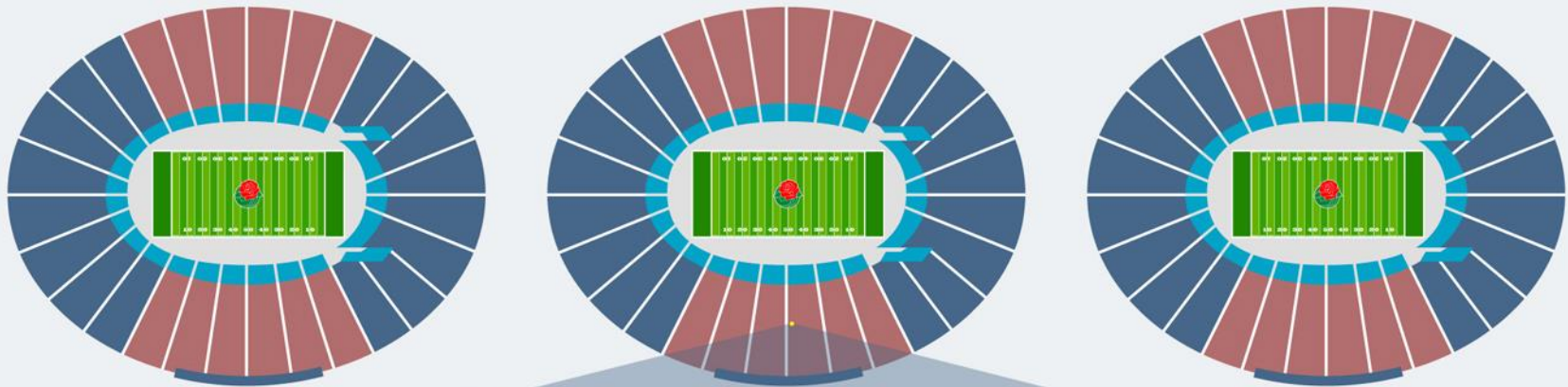


# Dismissal: Lengthy, Costly, Burdensome



# Dismissal: Rarely Successful

**275,000 teachers statewide** could fill the Rose Bowl 3 times over



**Less than 10 teachers (0.003%) dismissed** per year on average

**...Only 2 (0.0007%) for poor performance**



# The Dismissal Process Prevents Dismissal



**Troy Christmas**  
Labor Relations,  
Oakland Unified  
School District

## The Dismissal Statutes:

- The amount of time it takes for OUSD to dismiss a permanent teacher is very lengthy, requiring at least two to five years
- The costs associated with dismissal are very high, often hundreds of thousands of dollars
- Given the difficulty of the dismissal process, OUSD rarely seeks dismissal except in the most extreme cases
- During his 9½ year tenure at OUSD, they have sought dismissal of eight to ten teachers, and only successfully dismissed two or three—**none** of which were for unsatisfactory performance

# The Dismissal Process Prevents Dismissal

Plaintiffs' evidence will show that the dismissal process makes it impossible for school districts to dismiss all of their ineffective teachers:

- Superintendents will testify that they cannot dismiss all the ineffective teachers in their school districts
- Principals will testify that dismissal is not a realistic option, forcing them to find workaround solutions or leave ineffective teachers in classrooms
- Teachers will testify that they are forced to work with ineffective colleagues who are impervious to dismissal
- Experts will testify that costly and time-consuming dismissal procedures lead to ineffective teachers who harm students

**Result: Ineffective teachers continue teaching year after year**



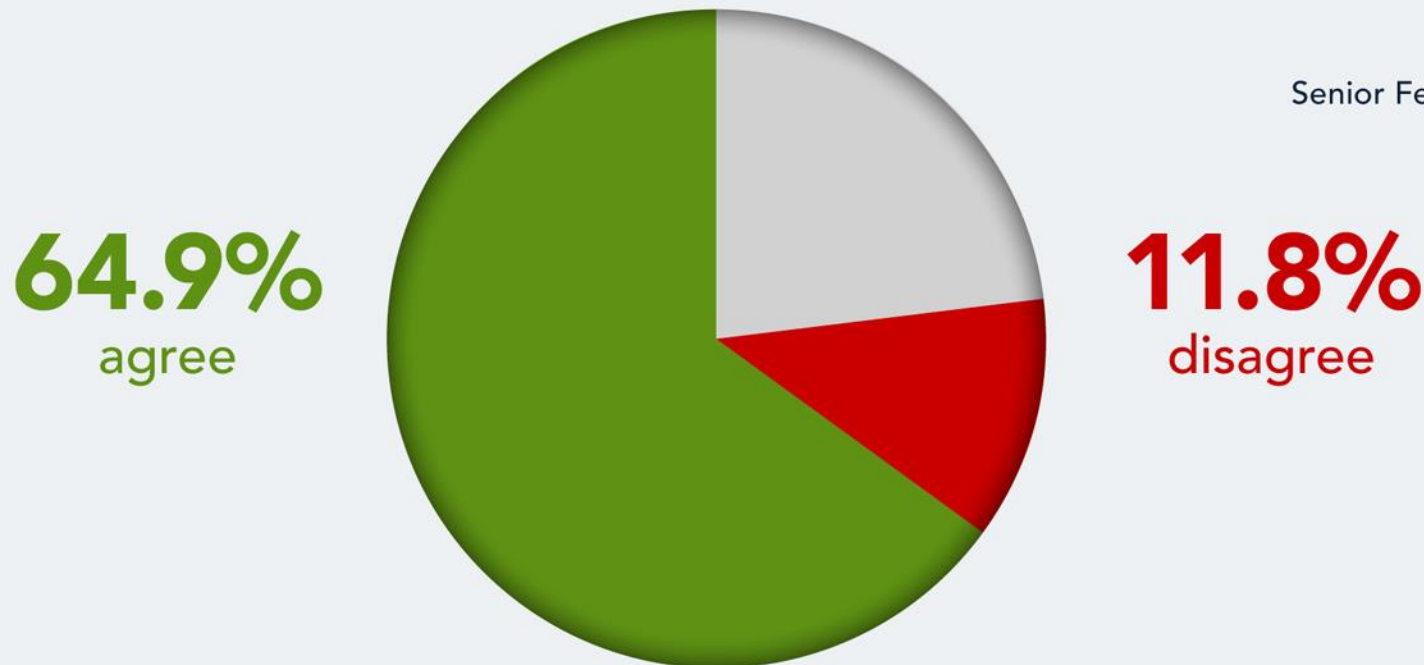
# Teachers Acknowledge the Problem

Teacher survey question:

Based on my experiences and observations, ineffective teachers with permanent status/tenure in my school are unlikely to be dismissed for unsatisfactory performance.



Dr. Eric Hanushek  
Senior Fellow, Hoover Institution  
Stanford University



# Teachers Acknowledge the Problem

Teacher survey question:

Students' interests would be better served if it were easier to dismiss ineffective teachers.



Dr. Eric Hanushek  
Senior Fellow, Hoover Institution  
Stanford University



# The Unions' Expert Acknowledges the Problem

Beyond Dollars and Cents

substantial cost-savings by preventing such teachers from achieving tenure and reducing the costs of dismissing tenured teachers who do not meet district standards.

Dismissing teachers with tenure is ordinarily a very expensive and time-consuming process, which very few districts actively pursue. There has been no national study that quantifies dismissal costs; however, the legal fees, arbitration costs, and the expenses associated with several levels of appeals create substantial expenditures. Bridges (1992) interviewed district administrators in the 1980s and found, even then, that districts expected to pay \$50,000 for a single dismissal, with some proceedings costing upwards of \$200,000. A recent analysis by the New York State School Boards Association found that the average cost of legal fees from pursuing a disciplinary case in New York was \$128,941 (Honawar, 2007). In addition, these figures do not count the substantial amount of time that principals and district Human Resources administrators must spend to document and build the case.

The districts we studied all have succeeded in removing tenured teachers without incurring expensive legal challenges (see Table 3). Although the districts formally dismissed no more than ten teachers per year, these dismissal rates far exceed those before PAR. Furthermore, tenured teachers assigned to the PAR Intervention program often choose to resign or retire instead of facing formal dismissal. Such teachers were said to see "the writing on the wall," realizing that both the union leaders and administrators supported their removal. In Rochester, the union president described how he talked with underperforming teachers: "the union, without burning an eye, says, 'If you're not doing the kids any good and we can't help you come up to that level, then you're not doing the rest of us any good.'" Because such frank conversations often lead veteran teachers to resign or retire, it is not enough to simply count formal dismissals in assessing PAR's impact on the district's teaching force.

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Dismissing teachers with tenure is ordinarily a very expensive and time-consuming process, which very few districts actively pursue.

*—Is PAR a Good Investment?, p. 19*

**Susan Moore Johnson**  
Unions' expert witness

# Work-Arounds: Symptom, Not Solution

- Settlement agreements
- Transfer to other schools (the “dance of the lemons”)
- Administrative duties
- Peer assistance and review (“PAR”) programs
- “Counseling out”
- “Housed status”

## LAUSD example: “Housed status”

- Removed an average of 150+ teachers per year from classrooms due to alleged misconduct
- Assigned to “alternate locations”
- Teachers spent an average of 333 days in “housed” status while receiving pay and benefits

**Work-arounds cannot remove all ineffective teachers from classrooms**



# Teachers Will Always Have Due Process Rights

## Protections for all State employees

FEHA	Written notice of proposed action	Copy of charges/materials	Right to respond ahead of termination	Basic evidentiary hearing	5 days to prepare response	Hearing before impartial observer	Limited discovery rights
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## Protections for teachers

FEHA	Written notice of proposed action	Copy of charges/materials	Right to respond ahead of termination	+	+	+	+
				Full evidentiary hearing	60 days to prepare response	Hearing before peers	Full discovery rights
+	+	+	+	+	+	+	+
90 days to "correct and cure"	Written findings of fact	No evidence over 4 years old	Entitlement to attorney's fees	Written notice of specific behavior	Notice cannot be given 5/15–9/15	Right to appeal to Superior Court	Right to appeal to Court of Appeal

# The Seniority-Based Layoff Statute

## Permanent employment

Forces school districts to make premature tenure decisions before teacher effectiveness can be properly evaluated

–Cal. Education Code section 44929.21(b)

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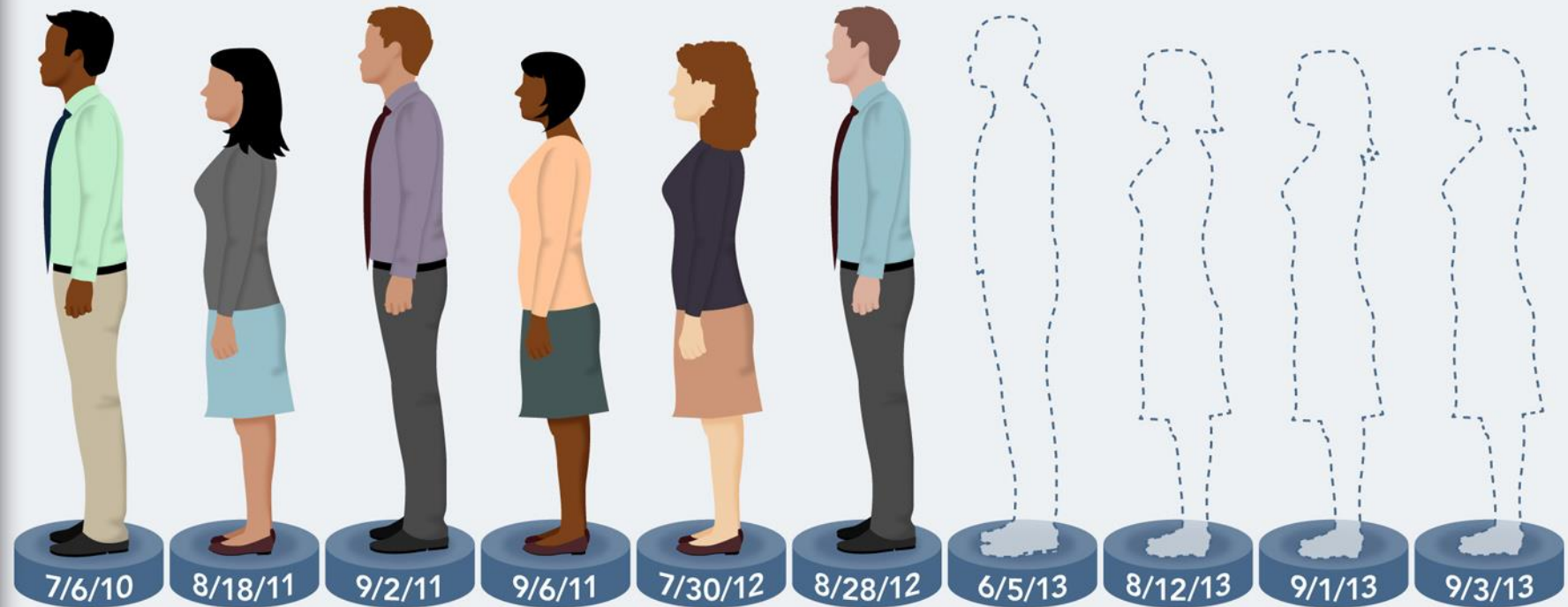
## Seniority-based layoffs

Forces school districts to make layoff decisions that ignore teacher quality and the best interests of students

–Cal. Education Code section 44955

# Seniority-Based ("LIFO") Layoffs

New teachers go to the end of the line



When layoffs occur, districts must layoff last-hired teachers **regardless of effectiveness**



# LIFO Layoffs Harm Teachers and Students



**Bhavini Bhakta**  
Teacher,  
Arcadia Unified School  
District

## Seniority-Based Layoffs:

- In 2009, received the Monrovia Unified School District Golden Apple Teacher of the Year Award and was laid off that same year
- LIFO layoffs are demoralizing to teachers who get laid off despite achieving significant and tangible growth in student achievement
- Many talented and effective teachers leave the public school system because they want to be judged on their performance, not their seniority



# LIFO Layoffs Harm Teachers and Students



**Dr. Dan Goldhaber**  
Director, Center for  
Education Data & Research

- Dr. Goldhaber compared LIFO-based layoffs to effectiveness-based layoffs
- He concluded that only **16%** of teachers laid off under the LIFO system would be laid off under an effectiveness-based system

Source: *Managing the Teacher Workforce in Austere Times*, Dan Goldhaber



**Dr. Raj Chetty**  
Professor of Economics,  
Harvard University

- Dr. Chetty compared LIFO-based layoffs to effectiveness-based layoffs in LAUSD
- He concluded that LIFO-based layoffs:
  - Reduce student test scores by **11%**
  - Reduce lifetime earnings by **\$87,000** per student
  - Reduce lifetime earnings by **\$2.1 million** per classroom

Source: *The Impacts of Last-In, First-Out vs. Effectiveness-Based Teacher Layoff Policies*, Chetty et al.

# LIFO Layoffs Harm Students

Plaintiffs' evidence will show that conducting layoffs in order of seniority forces school districts to lay off effective teachers and retain ineffective teachers:

- Superintendents will testify that laying off teachers without taking effectiveness into account is senseless and harmful to students
- Principals will testify that seniority-based layoffs deprive students of bright, enthusiastic teachers in favor of ineffective teachers with more seniority
- Teachers will testify that seniority-based layoffs dissuade high-achievers from entering the public school system
- Experts will testify that conducting layoffs on the basis of seniority, rather than effectiveness, imposes significant and measurable harm on students

**Result: School districts lay off effective teachers and retain ineffective teachers**



# Disparate Impact on Poor and Minority Students

The Challenged Statutes impose disproportionate harm on poor and minority students:

## Make a bad situation worse:

Poor and minority students are more vulnerable to the harms of ineffective teachers, who districts cannot dismiss

## Accumulation problem:

As more effective teachers transfer to more affluent schools, ineffective teachers are left behind rather than being dismissed

## "Dance of the lemons":

Dismissal is not a viable option, so ineffective teachers get transferred to poor and minority schools where there are more vacancies

## Increased churn:

Teachers in high-need areas have less seniority on average and are more likely to be fired under LIFO-based layoff system

**Inability to close achievement gap**

# Disparate Impact of LIFO



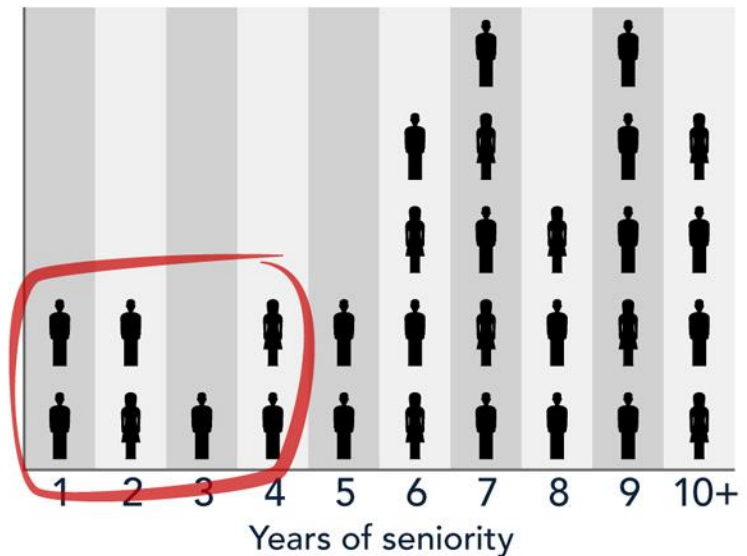
Low-income school

**More teachers  
susceptible to layoff**



More affluent school

**Fewer teachers  
susceptible to layoff**



***Reed v. California: Some high-needs LAUSD schools lose 60% or more of their teachers under a LIFO-based layoff system***



# Disparate Impact on Poor and Minority Students



**Arun Ramanathan**

- Executive Director, Education Trust—West
- Former Chief Student Services Officer, San Diego Unified School District
- Study: *Learning Denied*

LAUSD Study: **Ineffective** English Language Arts teachers



Source: *Learning Denied*, The Education Trust—West

# Disparate Impact on Poor and Minority Students



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- Executive Director, Education Trust—West
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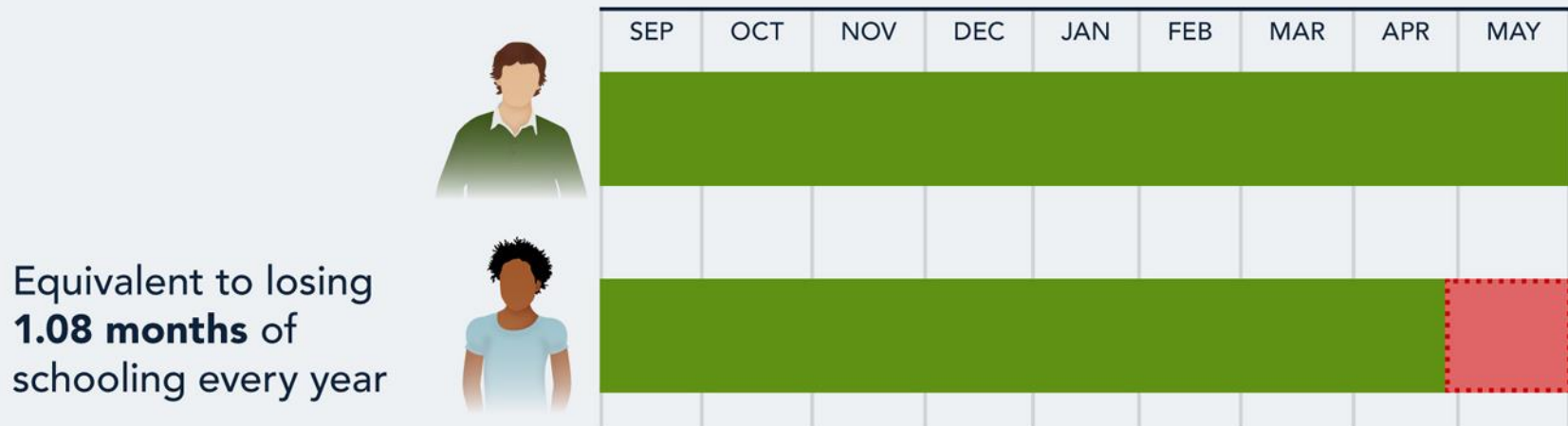
LAUSD Study: **Ineffective** math teachers



Source: *Learning Denied*, The Education Trust—West

# Dr. Kane's 2013 LAUSD Study

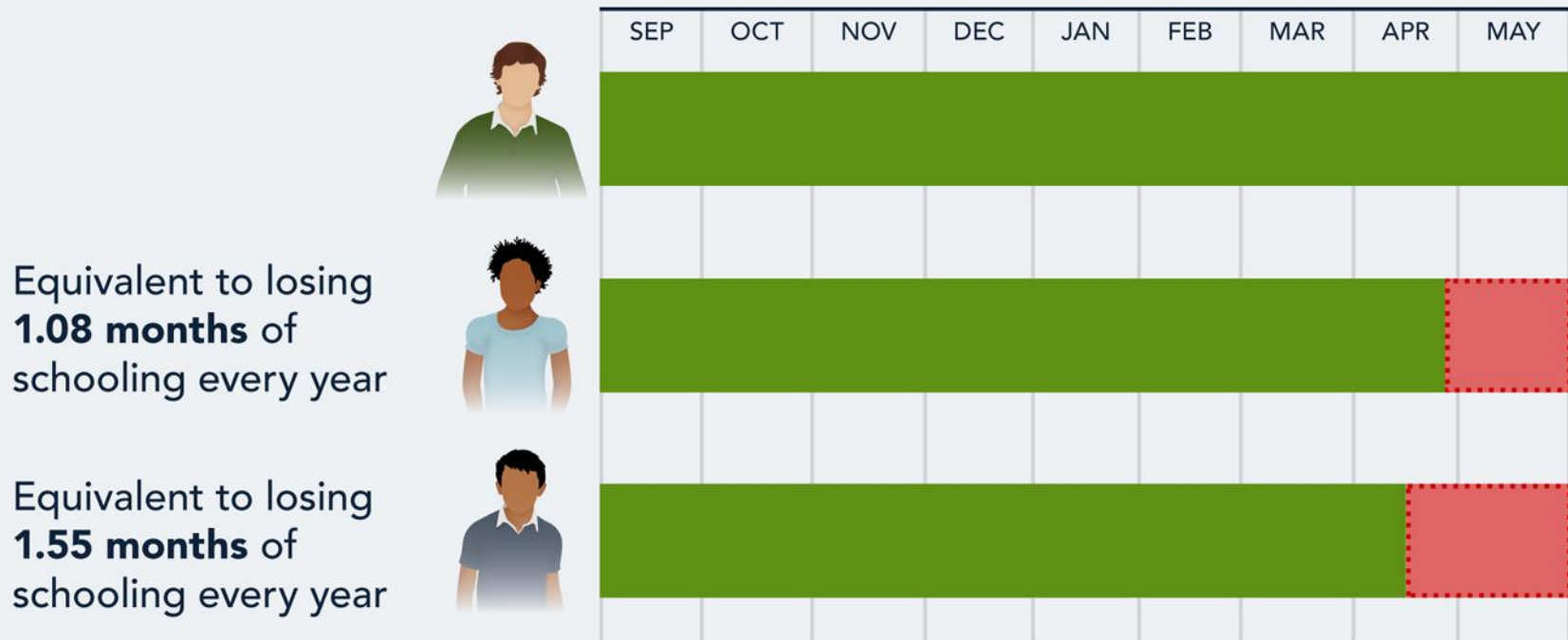
Black students in LAUSD are **43% more likely** than white students to be taught by a teacher in the bottom 5%



Source: *Validating Teacher Effect Estimates Using Changes in Teacher Assignments: A Replication of Chetty et al. in Los Angeles*, Thomas J. Kane

# Dr. Kane's 2013 LAUSD Study

Black students in LAUSD are **43% more likely** than white students to be taught by a teacher in the bottom 5%



Hispanic students in LAUSD are **68% more likely** than white students to be taught by a teacher in the bottom 5%

Source: *Validating Teacher Effect Estimates Using Changes in Teacher Assignments: A Replication of Chetty et al. in Los Angeles*, Thomas J. Kane



# Strict Scrutiny Applies

Strict scrutiny applies for **two** reasons:

1. The statutes have “a **real and appreciable impact** on...the exercise of [a] fundamental right.”

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–*Butt v. California* (Cal. 1992)

2. “The statutes **disproportionately burden** poor and minority students.”

–*Serrano v. Priest* (Cal. 1976)

# Strict Scrutiny Applies

Under the strict scrutiny standard, "the **state** bears the burden of establishing not only that it has a **compelling** interest which justifies the law but that the distinctions drawn by the law are **necessary** to further its purpose."

–*Serrano v. Priest* (Cal. 1971)

# The Parties Agree on Many Key Facts

**The State Defendants and Unions will make several irrelevant arguments:**

- Factors other than teachers also affect student achievement
- Multiple measures can be used to measure teacher effectiveness
- Some ineffective teachers can improve with additional training

**PLAINTIFFS  
AGREE**

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**But on the key issues at stake, there is widespread agreement:**

- Teachers are a key determinant of student success
- There are ineffective teachers in the California public school system
- Ineffective teachers who cannot or do not improve must not teach students
- A teacher's seniority does not determine his or her effectiveness
- Every student in California deserves quality teachers







# Separating Fact and Fiction

## What this case is not:

-  An attack on teachers' due process rights
-  A solution to all of the challenges facing the California education system
-  An attempt to impose a particular teacher evaluation system
-  An attempt to scapegoat teachers for problems caused by poverty and racism

## What this case is:

-  A recognition of the harms imposed on students by unconstitutional statutes
-  A challenge to laws that are imposing real and appreciable harm on students
-  An opportunity to empower school districts to make rational employment decisions
-  A demand to stop imposing unnecessary burdens on poor and minority students



# Challenged Statutes Fail Strict Scrutiny

As in *Serrano*, Plaintiffs will show that the Challenged Statutes:

- Produce “substantial disparities in the quality and extent of availability of educational opportunities;”
- Make the “quality of a child’s education depend[ent] upon the resources of his school district and ultimately the pocketbook of his parents;” and
- Are “not necessary to the attainment of any compelling state interest.”

# Fundamental Right to Education

All students in California deserve  
an equal chance to succeed

