

Students Matter

Defending students' rights through impact litigation

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***Vergara v. California* Day 7: Witnesses Provide Emotional Testimony On Harm Statutes Cause Students, Teachers**

Ms. Bhakta: “...[N]o matter what work I did in the classroom or how hard I worked... none of it mattered because a seniority date mattered way more than how much I did for kids, or what principals would say about me, or what parents would say about me.”

Mr. Kappenhagen: “When a student from a lower income family has an ineffective teacher, it puts their life trajectory on hold or even backwards.”

LOS ANGELES, CA – The education equality trial, *Vergara v. California*, completed its seventh full day of testimony today, with former Superintendent of Sacramento City Unified School District (SCUSD) Jonathan Raymond completing his testimony, and Plaintiffs calling Ms. Bhavini Bhakta and Mr. Bill Kappenhagen to the stand.

Ms. Bhakta currently serves as a Common Core coach in the Arcadia Unified School District and has 10 years of experience as a classroom teacher. Despite being recognized as the Golden Apple Teacher of the Year in 2009, Ms. Bhakta has received several layoff notices under the “Last-in, First-out” (or “LIFO”) Statute.

Mr. Kappenhagen is the principal of the Phillip and Sala Burton Academic High School in San Francisco. He began his career in education as a 1996 Teach for America corps member and later served as the principal of Burton High School in San Francisco. Mr. Kappenhagen received the 2009-2010 Mayor’s Principal of the Year Award from San Francisco Mayor Gavin Newsom.

Today’s witnesses focused on the devastating experience of receiving quality-blind layoff notices, as well as the harms that the Permanent Employment and Dismissal Statutes have on students, particularly low-income and minority students. Testimony also concentrated on the burdensome dismissal process and the ways in which school administrators are forced to use alternate means to attempt to remove grossly ineffective teachers from the classroom.

Testimony by Superintendent Raymond

Yesterday, Superintendent Raymond testified on the impact of the LIFO Statute on his own son's education. During the emotional testimony, Superintendent Raymond recounted how his son's first grade teacher, who he considered among the five best teachers he had ever observed, was laid off due to the LIFO Statute. He testified:

"To know that she was laid off, not because of her ability to engage and motivate children...but because of her start date and to have to explain to my son's mother that as Superintendent, there was nothing I could do about that. And to explain to my 6 year old son, because I'm following the law, that doesn't feel real good...I think a system that treats its best teachers this way and a system that ultimately doesn't serve children and its families like they're supposed to, in my humble opinion, is broken."

A clip from Superintendent Raymond's testimony can be found [here](#).

Today, Superintendent Raymond added to his testimony on the LIFO Statute, confirming that SCUSD has retained ineffective teachers due to seniority-based layoffs. He also explained that the LIFO Statute disproportionately impacts SCUSD's high-poverty, high-minority schools:

"I observed a constant churn of the faculty and staff from year to year, with no synergy, and no real concept of collective efficacy amongst adults, trying to teach children that are often significantly behind their peers."

Superintendent Raymond further testified that in order to minimize the "damage that grossly ineffective teachers have on students," the district has used involuntary transfers, moving teachers as many as two to three dozen times within the district. In relevant part, he stated that SCUSD engaged in such transfers "... to minimize the amount of time and the amount of children that they [had] on a regular basis."

When asked for his opinion on the Permanent Employment Statute, Superintendent Raymond stated: **"I consider our school district well run while I was superintendent. I believe the statute is just fatally flawed. There's simply not enough time. Fourteen months is not enough time to determine whether a teacher is effective or ineffective."**

Furthermore, Superintendent Raymond added that he does not believe that tenure is a factor for attracting teachers to the profession: **"Teachers want to be respected, they want to be compensated fairly. They want to be part of a winning team. That in my opinion is why people get into the profession."**

Testimony by Bhavini Bhakta

During an examination by Plaintiffs' counsel, Kyle A. Withers, Ms. Bhakta gave emotional testimony about the impact of receiving seniority-based, quality-blind layoff notices. **Ms. Bhakta, who lost teaching positions in four schools over eight years**, stated:

"Well, at the beginning I was just receiving notices, and said ok I just have to do this and still keep

teaching because this is what I love. And over time as I become more involved in the school community, and you know just... was teaching for more years **I just felt like no matter what work I did in the classroom or how hard I worked that none of it mattered because a seniority date mattered way more than how much I did for kids, or what principals would say about me, or what parents would say about me.** And, my love for it. Like, none of it, none of it mattered. Nothing... And, all that mattered was my hire date. And, after that happening for that many years, you know, you just think that, you know, I'm not even a person. I'm not even doing anything. It's just my hire date that matters. I'm a number and not a person and that's not easy."

Ms. Bhakta also shed light on how seniority-based layoffs make the teaching profession less attractive, saying: **"I wanted to get out. I looked elsewhere for jobs where these job protections and these things didn't exist because, I just didn't want to be a number, and I wanted to be valued for my work."**

Testimony by Bill Kappenhagen

During his examination by Plaintiffs' counsel, Joshua Lipshutz, Mr. Kappenhagen shared his experience with an ineffective music teacher at Burton High School. Mr. Kappenhagen, a self-professed "band geek," testified that the teacher was so ineffective, and the dismissal process so burdensome, that he closed down the music program at the school to remove the teacher from the classroom.

Mr. Kappenhagen, who testified that he has spent most of his career in schools with low-income students, also remarked upon the increased importance of having quality teachers teaching in lower-income schools, saying:

"When a student from a lower income family has an ineffective teacher, it puts their life trajectory on hold or even backwards."

"I have spent most of my career in schools that have a large majority of students who are lower income. Burton High School currently has about 75 percent of our kids qualify for free and reduced lunch. And it's my experience that students who come from families that are lower income often have a hard time because of financial constraints and accessibility to programs to remediate the school's failure to educate a kid... So, I would say a quality teacher working with students during the school day is imperative, especially for students who are from lower income families. It's a must."

Mr. Kappenhagen also touched on the value that teachers see in retaining other effective educators in the classroom: **"Good teachers want to be surrounded by good teachers, they understand the rising tide effect wholly, they understand that when students leave their classrooms and they go to other teachers classrooms, that they're in good hands, they really want to see students being taken care of, they want to know that their students are in good hands when they're not in their presence."**

Due to scheduling constraints, Mr. Kappenhagen will continue his testimony on Friday under cross-examination by Defendants.

Look Ahead: Tomorrow's Witnesses

Tomorrow morning, Plaintiffs are expected to call [Mark Douglas](#) to the stand. Mr. Douglas is the Assistant Superintendent of Personnel Services for the Fullerton School District and oversees the

certificated and classified personnel functions of the District.

Plaintiffs are also expected to call **Harvard Professor of Education and Economics Dr. [Thomas Kane](#)**. **Dr. Kane is expected to testify on measurements of teacher effectiveness; teacher effectiveness in the Los Angeles Unified School District; the distribution of effective and ineffective teachers in the Los Angeles Unified School District; the importance of teacher quality on student achievement; and the long-term effects of teacher effectiveness on students.**

Students Matter has made available video of Plaintiffs' opening statement given by Theodore J. Boutrous, Jr. Video of the presentation can be found on the [Students Matter website](#).

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Students Matter is a national nonprofit organization dedicated to sponsoring impact litigation to promote access to quality public education. Learn more at studentsmatter.org.